



# CENTER FOR INDIAN COUNTRY DEVELOPMENT



FEDERAL RESERVE BANK OF MINNEAPOLIS

## What is Indian Country?

*Uncertain about the term “Indian Country”? Read this.*

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*Andrew Huff  
Center for Indian Country Development  
Federal Reserve Bank of Minneapolis*

### ABSTRACT

The term “Indian Country” refers to areas in the United States that are home to Native communities. But where, exactly, are the boundaries of Indian Country? What history shapes our modern understanding? And, perhaps most importantly, how do different concepts of Indian Country impact Native people today?

“Indian Country” can mean different things depending on the legal, policy, or cultural context. Some interpretations reflect Native perspectives, while others reflect non-Native-led policies and laws. For many Native peoples, “Indian Country” means homeland. It can refer to anywhere that Native communities exist and thrive across the United States. “Indian country” with a lowercase “c” reflects statutory definitions and federal case law.

Understanding the experience and legal rights of Native Americans requires a clear understanding of “Indian C/country.” This paper provides an overview of “Indian C/country” and related concepts, and the modern implications for Native peoples’ land and sovereignty.

### DISCLAIMER

*This paper reflects the views of the author but not necessarily those of the Center for Indian Country Development (CICD) or anyone in the Federal Reserve System. As a research and policy institute, CICD focuses on supporting tribal communities in achieving their economic objectives. This paper contributes to that mission by providing evidence and ideas that may be useful to decision makers in Indian Country.*

“Indian Country” is a widely used term among Native peoples, tribal governments, and legal and policy experts. For many Native peoples, “Indian Country” means homeland—anywhere that Native communities exist and thrive. For legal and policy experts, “Indian country,” typically written with a lowercase “c,” is a technical term defined in statutes, regulations, and case law, with a wide variety of specific applications. “Indian country” also encompasses other legal concepts—such as “trust lands” or “restricted fee lands”—with different meanings.

“Indian country” as a legal and administrative term under federal law profoundly affects the daily lives of Native peoples. It impacts civil regulatory authority within reservations. It can determine which government prosecutes certain crimes. It defines eligibility for grant programs. It directly affects homeownership, rights-of-way, and real property inheritance. It determines the ownership and management of natural resources such as water, minerals, and timber. It can factor into the management of hunting and fishing rights. The term touches on nearly every aspect of Native peoples’ lives.

An understanding of “Indian C/country” is essential to Native law and policy analysis, and more broadly to understanding governance in the United States. This paper summarizes the uses and meanings of “Indian C/country” and related legal terms.<sup>1</sup>

## **Ancestral or traditional territories**

Prior to contact with Europeans, an array of Native societies had long endured and thrived throughout the Western Hemisphere. Native traditions, languages, and histories describe the Native presence in these lands from time immemorial. Archaeologists continue to affirm what Native peoples already know: human existence in the Americas is ancient and widespread.<sup>2</sup> Native peoples maintained diverse languages and cultures; extensive trading networks; well-developed societies; and defined homelands and territories.<sup>3</sup> No matter where you live in the Americas, you are very likely on lands once occupied, shaped, and safeguarded by a Native nation.

The term “Indian Country,” in its broadest formulation, means the ancestral or traditional territories of Native peoples, including communally held ancestral territories as they existed prior to European contact.

## **“Aboriginal title” or “original Indian title” land**

“Aboriginal title” land, also known as “original Indian title” land, is a technical term that describes the rights that Native peoples have in their ancestral or traditional territories, from a *non-Native* legal perspective. The Native nations of North America have for millennia lived according to their own land-tenure systems and cultural practices with respect to land and territory. European explorers brought to the Western Hemisphere their own cultural and legal norms. In the centuries-long encounter that followed first contact, European cultural and legal norms were incorporated into American federal law and imposed on Native peoples. Aboriginal title is a legal concept adapted from European legal norms. As discussed below, the concept continues to be heavily criticized and debated by legal scholars but remains a foundational basis of federal Indian law.

### ***Aboriginal title and the Doctrine of Discovery***

In the 1823 case of *Johnson v. McIntosh*,<sup>4</sup> the U.S. Supreme Court described the legal concept of aboriginal title as derived from the customs and practices of European governments in their interaction with Native nations.<sup>5</sup> In *McIntosh*, the Court recognized the undisputed right of Native nations to occupy their traditional territories.<sup>6</sup> But the Court went on to assert that “discovery” by a European nation of a tribal territory “gave title to the [European] government by whose subjects, or by whose authority, it was made, against all other European governments, which title might be consummated by possession.”<sup>7</sup> The legal concept of “discovery” conveying to a European nation an exclusive title or right to Native lands is known as the Doctrine of Discovery. The Court further explained as follows:

In the establishment of these relations, the rights of the original inhabitants were, in no instance, entirely disregarded; but were necessarily, to a considerable extent, impaired. They were admitted to be the rightful occupants of the soil, with a legal as well as just claim to retain possession of it, and to use it according to their own discretion; but their rights to complete sovereignty, as independent nations, were necessarily diminished, and their power to dispose of the soil at their own will, to whomsoever they pleased, was denied by the original fundamental principle, that discovery gave exclusive title to those who made it. While the different nations of Europe respected the right of the natives, as occupants, they asserted the ultimate dominion to be in themselves; and claimed and exercised, as a consequence of this ultimate dominion, a power to grant the soil, while yet in possession of the natives. These grants have been understood by all, to convey a title to the grantees, subject only to the Indian right of occupancy.<sup>8</sup>

With these words, the Court summarized the incorporation of the Doctrine of Discovery and the concept of aboriginal title into American federal law.

The Doctrine of Discovery has been heavily criticized as a tool rooted in medieval notions of racial and religious superiority used to legally sanction the taking of Native lands.<sup>9</sup> In 2007, for example, the United Nations adopted the Declaration on the Rights of Indigenous Peoples, condemning doctrines advocating racial superiority and recognizing the right of Indigenous peoples to “redress ... for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.”<sup>10</sup> In 2023, the Vatican formally disclaimed the Doctrine of Discovery, stating, “The Catholic Church ... repudiates those concepts that fail to recognize the inherent human rights of indigenous peoples, including what has become known as the legal and political ‘doctrine of discovery.’”<sup>11</sup>

Despite modern criticism of the Doctrine of Discovery and aboriginal title, these concepts remain the law in the United States and other common law countries. Legal controversy continues to this day as to the nature and scope of the title possessed by a European or successor nation, and by Native nations, post-discovery.<sup>12</sup> Some scholars argue that under federal case law, European nations gained near-complete rights of ownership to Native lands upon first contact with Native peoples.<sup>13</sup> Other scholars maintain that under federal case law, discovery did not diminish Native land rights, but merely conferred upon the discovering European nation an exclusive right to obtain lands from Native nations.<sup>14</sup> While there exist differing notions of the meaning and scope of aboriginal title and the Doctrine of Discovery, American courts have clearly recognized (1) a Native right of occupancy in their ancestral territories and (2) that the Doctrine of Discovery restricted the ability of Native nations to transfer their own lands to whomever they wished.<sup>15</sup>

### ***Ongoing impacts of aboriginal title land and the Doctrine of Discovery***

Most Native lands are no longer held based on aboriginal title, having lost that status through the establishment of reservations or other means of aboriginal title extinguishment.<sup>16</sup> But aboriginal title land and the Doctrine of Discovery as legal concepts continue to shape the lives of Native peoples. While these concepts have been criticized for depriving Native peoples of full rights of ownership to their own lands, they have also been used by Native peoples to regain lands lost in violation of the prohibition on their transfer to anyone other than the European “discoverer” or successor nation. At the conclusion of the Revolutionary War, Great Britain relinquished its claim to all territorial rights within the boundaries of the United States.<sup>17</sup> The exclusive right to purchase or otherwise obtain aboriginal title lands within U.S. boundaries thus passed to the new American federal government.<sup>18</sup> Despite the law prohibiting transfer of Native lands to any party except as authorized by the federal government, early state governments and private parties did engage in unauthorized land transactions with Native nations.

In the 1970s tribes in the eastern United States began pursuing federal litigation challenging the loss of their aboriginal title lands in illegal transfers to private parties and state governments in the first decades after the country's formation. Many of these challenges resulted in federal land claims settlements for tribes from Maine to Florida which formally extinguished aboriginal title in exchange for compensation and other designated lands.<sup>19</sup> For example, pursuant to the Connecticut Indian Land Claims Settlement Act of 1983, the Mashantucket Pequot Tribe obtained federal recognition and used settlement funds to purchase the initial 800 acres of land that would become the modern Mashantucket Pequot Reservation.<sup>20</sup>

In a second example illustrating the ongoing impacts of aboriginal title, Congress in 1971 passed the Alaska Native Claims Settlement Act (ANCSA).<sup>21</sup> At that time, the territories of most Alaska Natives were held as reservations or aboriginal title land.<sup>22</sup> After statehood and the discovery of massive oil reserves in the 1950s and 1960s, intense political pressure built to clear the way for state land selections and unimpeded oil exploration.<sup>23</sup> In response to this pressure, Congress passed ANCSA, revoking existing reservations and extinguishing the aboriginal title of Native peoples in Alaska in exchange for compensation and certain designated lands to be owned and managed by Alaska Native Corporations.<sup>24</sup> Although Indian Country is no longer primarily held as aboriginal title land, the concept continues to profoundly impact Native peoples through the federal land claim settlements that remain in effect today.

## **“Reservations” and “recognized title” land**

The U.S. Constitution, ratified in 1789, and the Indian Trade and Intercourse Acts, first adopted in 1790, vested the federal government with exclusive authority to enter into treaties and regulate trade with Native nations, and prohibited unauthorized persons from settling on or obtaining tribal lands.<sup>25</sup> Following ratification of the Constitution and continuing until 1871, the federal government entered into more than 350 treaties with tribes, mainly for the purpose of regulating commerce and obtaining aboriginal title lands.<sup>26</sup> In treaty negotiations, tribes acceded to the extinguishment of their aboriginal title to large areas, while reserving for themselves smaller areas of their ancestral lands with clearly marked borders, protected from encroachment, and within which tribes would remain in control. These smaller areas were named “reservations.”<sup>27</sup>

Native lands reserved in accordance with a treaty approved by Congress would come to be known as “recognized title” lands. However, the term encompasses more than reservation lands protected by treaty. It includes any Native land explicitly recognized by Congress through a treaty, statute, or by some other means.<sup>28</sup> Recognized title lands differ from aboriginal title lands in that explicit recognition by Congress brings those lands within the scope of the Fifth Amendment to the U.S. Constitution, requiring just compensation for any government taking.<sup>29</sup>

Once a reservation has been established, it can only be diminished in size or disestablished through an act of Congress.<sup>30</sup> As described by the U.S. Supreme Court in 1984, “Once a block of land is set aside for an Indian reservation and no matter what happens to the title of individual plots within the area, the entire block retains its reservation status until Congress explicitly indicates otherwise.”<sup>31</sup> In 2020, the Court reaffirmed this principle in *McGirt v. Oklahoma*,<sup>32</sup> a case involving the Muscogee Creek Nation of Oklahoma. In that case, the Court held that neither the passage of time, the loss of lands held by tribal members, nor assertions of state authority could make the Creek reservation disappear.<sup>33</sup> As Justice Neil Gorsuch, writing for the majority, observed, “The federal government promised the Creek a reservation in perpetuity. Over time, Congress has diminished that reservation. It has sometimes restricted and other times expanded the Tribe’s authority. But Congress has never withdrawn the promised reservation.”<sup>34</sup> Thus, contrary to the assertions of the state, the Creek reservation continues to exist. Since the decision in *McGirt*, the courts have affirmed the continuing existence of the Cherokee, Choctaw, Chickasaw, Seminole, Miami, Ottawa, Peoria, Wyandotte, and Quapaw reservations within the state of Oklahoma.<sup>35</sup>

## Indian allotments: Trust and restricted fee parcels

The century from 1789 to 1889 marked an era of turbulence for tribes. During this time the central premise of treaties—that Native peoples would be able to live within their reservations according to their own traditions, secure from outside intrusion—came apart. In the wake of the Revolutionary War, conflict continued unabated as non-Natives trespassed on tribal territory, including treaty-protected lands east of the Mississippi River, and later west of the Mississippi River. Beginning in the 1830s, the U.S. government removed many tribes from their territories to lands west of the Mississippi. In the latter half of the 19th century, the “new” treaty-protected lands of removed eastern tribes, and the treaty-protected lands of western tribes, attracted the attention of homesteaders, miners, and others.

### *Division of reservations into allotments*

Although treaty terms specified that the lands of Native peoples would be protected, Congress later enacted laws opening treaty-protected lands for non-Native occupation. In 1887 Congress passed the General Allotment Act, also known as the “Dawes Act.”<sup>36</sup>

The Dawes Act subdivided reservations into “allotments,” which were then assigned to Native individuals for use as small farms. In assigning parcels of land to tribal members, federal officials intended to end the traditional Native practice of communal land use and accelerate Native assimilation. The federal government held these allotments in “trust” for a period of 25 years “for the sole use and benefit of the Indian to whom such allotment shall have been made ... and ... at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs ... in fee, discharged of said trust...”<sup>37</sup> The title to trust land was (and is) held by the federal government as trustee for the benefit of Native individuals and tribes, who were the beneficiaries of the trust property. Natives were therefore understood to be the “beneficial” owners of trust lands. Under the Dawes Act, while in trust an allotment could not be sold or taxed.<sup>38</sup> The Dawes Act allowed the federal government to change the period of trust under certain circumstances.<sup>39</sup> Perhaps most importantly, the act authorized the conveyance to non-Natives of any “surplus” reservation lands remaining after allotments were assigned to tribal members.<sup>40</sup>

Subsequent to the Dawes Act, Congress enacted dozens of allotment acts specific to certain tribes. Just as with the Dawes Act, many of these tribe-specific acts subdivided lands to be held in trust for the benefit of the Native allottees, and conveyed “surplus” lands to non-Natives.<sup>41</sup> Other allotment acts, however, distributed lands to individual tribal members to be held in “restricted fee” title status, rather than in trust.<sup>42</sup> Allotments in restricted fee status are owned by the Native allottee rather than by the federal government. Although owned by the Native allottee, restricted fee parcels are subject to various restraints—including restraints on alienation and taxation—similar to trust allotments.<sup>43</sup>

Between 1887 and 1934, the federal government redistributed an estimated 60 percent of Native land to non-Natives under the Dawes Act and other allotment statutes.<sup>44</sup> After the lapse of the 25-year trust period, Native people often lost allotments because they were unable to pay newly imposed property taxes or sold the allotments to non-Natives out of economic necessity. Further, the federal government conveyed an enormous amount of acreage to non-Natives as “surplus” land after the allotment of reservations. Between 1887 and 1934, Native lands were reduced from 138 million acres to 48 million acres.<sup>45</sup> In 1934 the Indian Reorganization Act (IRA) halted this massive loss of Native land by ending allotment and securing the trust status of the remaining allotted lands.<sup>46</sup>

### *Legacy of allotment*

The results of allotment can be seen today within reservations characterized by a checkerboard pattern of land ownership, with non-Native-owned fee simple lands (that is, lands for which non-Natives have full rights

of ownership) interspersed with Native-owned allotments and fee simple lands. Native allotments are also impacted by fractionation, which occurs when the descendants of an original Native allottee own an ever-diminishing (with each new generation) beneficial interest in the same allotment. Some allotments have well above one hundred beneficial owners.<sup>47</sup> Fractionation of Native allotments has made their use for leasing and other purposes extremely difficult and has contributed to past mismanagement of these lands by the federal government.<sup>48</sup> Not only did allotment break treaty terms and transfer tens of millions of acres out of individual Native beneficial ownership, it left a legacy of deep poverty and jurisdictional disarray that exists to this day.<sup>49</sup>

## Tribal trust lands

The trust status of lands beneficially owned by tribes (as opposed to Native individuals) arises from various statutes authorizing the federal government to take lands into trust for tribes, and more generally from early American law recognizing a trust relationship between tribes and the federal government and restricting the conveyance of Native lands.<sup>50</sup>

The principal statutory mechanism for taking land into trust for the benefit of tribes is the Indian Reorganization Act (IRA). The IRA followed release of the Meriam Report in 1928. The Meriam Report, prepared by the Brookings Institution (then known as the Institute for Government Research), criticized the federal policy of allotment as a contributing factor to Native poverty.<sup>51</sup> The IRA, passed in 1934, ended allotment and permanently extended the trust status of the remaining allotted lands. The act further sought to remedy the damage of the allotment era by authorizing the U.S. Secretary of the Interior to take lands back into trust for tribes and for Native individuals. Section 5 of the act authorizes the Secretary:

to acquire through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands within or without existing reservations, including trust or otherwise restricted allotments whether the allottee be living or deceased, for the purpose of providing land for Indians. ... Title to any lands or rights acquired pursuant to this Act ... shall be taken in the name of the United States in *trust* for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation” (emphasis added).<sup>52</sup>

In addition to taking specific lands into trust for the benefit of tribes through the IRA, Congress has authorized and directed that lands be taken into trust for tribes’ benefit through many other acts—including taking lands into trust for tribes that have recently attained federal recognition.<sup>53</sup> Through these legal mechanisms, tribes have begun to return to trust status some of the lands lost during the allotment era.

## Dependent Indian communities

The U.S. Supreme Court in *Alaska v. Native Village of Venetie Tribal Government*, a case decided in 1998,<sup>54</sup> summarized the law with respect to a unique category of Indian Country: dependent Indian communities. The Court wrote that “the term dependent Indian communities” refers to a “limited category of Indian lands that are neither reservations nor allotments, and that satisfy two requirements—first, they must have been set aside by the Federal Government for the use of the Indians as Indian land; second, they must be under federal superintendence.”<sup>55</sup> The Court held in *Venetie* that after the passage of ANCSA in 1971, the lands of the Native Village of Venetie could no longer be construed as set aside for use as Native land, and that the lands of the village were not under federal superintendence. According to the Court, the village lands therefore could not be categorized as a dependent Indian community and were not Indian country for jurisdictional purposes.<sup>56</sup>

The Court has held that the lands of certain Pueblo communities and Native colonies in the American Southwest are dependent Indian communities and therefore Indian country. In *United States v. Sandoval*, the Court found the lands of the Santa Clara Pueblo of New Mexico, although held in fee, to be a dependent Indian community.<sup>57</sup> In *United States v. McGowan*, the Court held that the lands of the Reno Indian Colony of Nevada, although not a reservation, were set aside for the colony's use as Native land and were under federal superintendence.<sup>58</sup> The colony's lands therefore comprised a dependent Indian community and were Indian country.

## "Indian country" for jurisdictional purposes

The principal statutory definition of "Indian country" is found in the federal criminal code at United States Code title 18, section 1151 (18 U.S.C. §1151). This definition determines jurisdiction for criminal prosecutions in Indian country and functions as the starting point for determining legal authority in civil matters.<sup>59</sup>

[T]he term "Indian country," as used in this chapter, means (a) all lands within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.<sup>60</sup>

As summarized by the U.S. Supreme Court, "Indian country" includes "all lands set aside by whatever means for the residence of tribal Indians under federal protection, together with trust and restricted Indian allotments."<sup>61</sup>

The logical clarity of the §1151 definition has not resulted in jurisdictional clarity. Rather than recognizing expansive tribal jurisdiction within Indian country, federal law instead divides Indian country jurisdiction between three governments: federal, state, and tribal. The allotment era resulted in a mix of tribal members and non-members living on legally different kinds of land—trust, fee simple, restricted fee—within Indian country. Jurisdiction over the people and activities in Indian country can be (1) exclusive to one government, (2) in conflict or unclear, or (3) overlapping—depending on who is involved, what activity is occurring, and on what type of land. This shifting legal framework—largely the case-by-case creation of the federal courts—has caused jurisdictional uncertainty and undermined tribal governance.

## Additional Native lands

Many forms of Native land exist outside of the narrow categories of "Indian country" as defined in 18 U.S.C. §1151. Some Native lands have unique legal or administrative status, including Native Hawaiian trust lands, the lands of Alaska Native Corporations, state-recognized American Indian reservations, and Native statistical areas.

### *Native Hawaiian trust lands*

Native Hawaiians have long inhabited the islands of the Hawaiian archipelago as a self-governing people.<sup>62</sup> Treaties of peace, friendship, and trade were entered into between the United States and the Kingdom of Hawaii in 1826, 1842, 1849, 1875, and 1887.<sup>63</sup> In 1893, the kingdom was overthrown by private landowners supported by elements of the U.S. government and military.<sup>64</sup> Following the overthrow of the Native Hawaiian government and the subsequent taking of their lands, Native Hawaiians suffered a steep decline in their health and welfare. Remarking on the loss of Native Hawaiian land and resulting impoverishment, Congress in 1921 passed the Hawaiian Homes Commission Act.<sup>65</sup> The act placed 200,000 acres of land into trust for the use of Native Hawaiians as homesteads.<sup>66</sup> As part of its 1959 admission into statehood, Hawaii incorporated the act into state

law, and trusteeship of the lands passed to the state.<sup>67</sup> The act is now implemented primarily through state legal mechanisms, with some federal oversight through the Secretary of the Interior.

### *Lands of Alaska Native Corporations*

Although the lands of most Alaska Natives are no longer “Indian country” as defined under 18 U.S.C. §1151, they have always been—and undoubtedly remain—Native homelands. Throughout Alaska, Native peoples continue their traditional subsistence practices in their ancestral lands and waters. The Alaska Native Claims Settlement Act (ANCSA) of 1971 changed the title status and ownership of Alaska Native lands, but it did not sever the long relationship of Alaska Natives to their lands.

ANCSA established Alaska Native Corporations (ANCs) as the legal owners of most Native lands in Alaska. As compensation for the loss of their reservations and title to aboriginal territory, totaling some 365 million acres, Alaska Natives received \$962.5 million and the right to select 44 million acres of land to be held in fee simple by ANCs.<sup>68</sup> The act established approximately 200 village corporations and 12 geographic regional corporations, chartered under state law. Alaska Natives are shareholders in these corporations. The village corporations received 22 million acres of the surface estate, while the 12 geographic regional corporations received 22 million acres of subsurface estate (e.g., rights to minerals, oil, gas, gravel) in those same lands. Additionally, six of the 12 geographic regional corporations were designated to select another 16 million acres of land. Lands left over after these selections have been used for a variety of purposes, including allocation to regional corporations.<sup>69</sup>

Later amendments to ANCSA exempted all corporate lands that are not developed, leased, or sold to third parties from (a) adverse possession and similar legal claims; (b) real property taxes by any governmental entity; and (c) use as a payment or penalty incurred in certain legal judgments.<sup>70</sup>

### *State-recognized American Indian reservations*

Many tribes throughout the United States are recognized under state law rather than under federal law. As of spring 2023, the Center for Indian Country Development has documented 14 states with state-recognized tribes. The reasons these tribes lack federal recognition vary depending upon each tribe’s unique historical circumstances. For example, a tribe may have chosen not to sign a treaty it understood as unfavorable. Other treaties were never approved by Congress. During the removal era, some tribes were splintered geographically and politically, creating tribal communities that would later be state-recognized. The meaning and scope of state recognition varies among states, but generally qualifies the recognized tribes for state grants and other benefits. In some states, state-recognized tribes maintain certain powers of self-government.<sup>71</sup> Some of these tribes own land in fee simple, just as any other private landowner. Some states recognize certain areas as reservations for these tribes, and state law determines the legal characteristics of these reservations including property tax treatment.

### *Native statistical areas*

Most federal agencies rely on the statutory definition of “Indian country” at 18 U.S.C. §1151 in their work with Native peoples.<sup>72</sup> Many federal statutes also combine differing categories of Indian country in defining the scope of a particular program.<sup>73</sup> Some federal agencies have developed their own administrative categories of Indian country. The U.S. Census Bureau, for example, developed “tribal statistical geographies” as a tool to facilitate the collection of information concerning Native peoples living in areas that do not fall into standard Indian country categories, such as Alaska Native village areas, certain Oklahoma tribal areas,<sup>74</sup> state-recognized tribes without a reservation, and federally recognized tribes without a reservation or trust lands.<sup>75</sup> These statistical areas are a vital tool for data collection and for implementation of certain programs.



## Conclusion

The term “Indian C/country” takes on different meanings in various legal, policy, and cultural contexts. It includes distinct categories of Native lands with specific legal contours. It also applies to administrative categories such as Native statistical geographies. Given the term’s breadth, “Indian C/country” requires definitional precision in research and policy publications. While the statutory definition of “Indian country” at 18 U.S.C. §1151 suffices for certain research and policy work concerning federally recognized tribes, “Indian Country” encompasses much more. Ultimately, for many in Indian Country, it means homeland—where Native communities exist and thrive.

### CONTACT THE AUTHOR

Andrew Huff: [andrew.huff@mpls.frb.org](mailto:andrew.huff@mpls.frb.org)

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- <sup>1</sup> This paper provides an overview of major Indian land categories and is not meant to be an exhaustive compilation of all related concepts. The views expressed herein are those of the author and not necessarily those of the Federal Reserve Bank of Minneapolis or the Federal Reserve System. This paper is not meant to provide legal counsel of any kind.
- <sup>2</sup> For example, see Robert Lee Hotz, “Mexican Cave Find Hints That People Lived in North America 30,000 Years Ago,” *The Wall Street Journal*, July 22, 2020, <https://www.wsj.com/articles/mexican-cave-find-hints-that-people-lived-in-north-america-30-000-years-ago-11595430002>. See also, Jake Page, *In the Hands of the Great Spirit: The 20,000-Year History of American Indians* (New York: Free Press, 2003); and Charles C. Mann, *1491: New Revelations of the Americas Before Columbus* (New York: Vintage, 2006).
- <sup>3</sup> See Page, *In the Hands of the Great Spirit*, and Mann, *1491: New Revelations of the Americas Before Columbus*.
- <sup>4</sup> 21 U.S. 543.
- <sup>5</sup> 21 U.S. at 574–84.
- <sup>6</sup> 21 U.S. at 574; see also *Worcester v. Georgia*, 31 U.S. 515, 559–60 (1832).
- <sup>7</sup> 21 U.S. at 573.
- <sup>8</sup> 21 U.S. at 574.
- <sup>9</sup> For example, see Robert A. Williams, Jr., *The American Indian in Western Legal Thought: The Discourses of Conquest* (New York: Oxford University Press, 1990), 325–328.
- <sup>10</sup> United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295, pmbll., art. 28 (Sept. 13, 2017).
- <sup>11</sup> Joint Statement of the Dicasteries for Culture and Education and for Promoting Integral Human Development on the “Doctrine of Discovery,” March 30, 2023, available at <https://press.vatican.va>.
- <sup>12</sup> For example, see Blake Watson, “The Doctrine of Discovery and the Elusive Definition of Indian Title,” *The Future of International Law in Indigenous Affairs: The Doctrine of Discovery, the United Nations, and the Organization of American States* [Symposium], *Lewis & Clark Law Review* 15 (2011): 995–1024.
- <sup>13</sup> See Watson, “Doctrine of Discovery and the Elusive Definition of Indian Title,” at 1014–1023.
- <sup>14</sup> For example, see *Native Land Law: General Principles of Law Relating to Native Lands and Natural Resources*, ed. Robert Coulter (St. Paul: Thomson West, 2012), 29–39.
- <sup>15</sup> For example, see *Worcester v. Georgia*, 31 U.S. 515, 544, 559 (1832) (“The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial, with the single exception of that imposed by irresistible power, which excluded them from intercourse with any other European potentate than the first discoverer of the coast of the particular region claimed: and this was a restriction which those European potentates imposed on themselves, as well as on the Indians.”); *Oneida Indian Nation v. County of Oneida*, 414 U.S. 661, 667 (1974); *Oneida Indian Nation of New York v. State of New York*, 691 F.2d 1070, 1075 (2d Cir. 1982) (“Until Indian title is extinguished by sovereign act, any holder of the fee title or right of preemption, either through discovery or a grant from or succession to the discovering sovereign, remains ‘subject ... to the Indian right of occupancy,’ and the Indians may not be ejected.”).
- <sup>16</sup> But see *Pueblo of Jemez v. United States*, 63 F.4th 881 (10th Cir. 2023) (holding that the Jemez Pueblo continues to hold Banco Bonito as aboriginal title land).
- <sup>17</sup> 21 U.S. at 584.
- <sup>18</sup> 21 U.S. at 584.
- <sup>19</sup> For example, see Maine Indian Claims Settlement Act of 1980, 25 U.S.C. §§1721–1735; Seneca Nation Land Claims Settlement Act of 1990, 25 U.S.C. §1774–1774h; Connecticut Indian Land Claims Settlement Act of 1983, 25 U.S.C. §§1751–1760; Florida Indian Land Claims Settlement Act of 1987, 25 U.S.C. §1772–1772g.
- <sup>20</sup> 25 U.S.C. §§1751–1760.
- <sup>21</sup> Alaska Native Claims Settlement Act, Pub. L. No. 92-203, 85 Stat. 688 (1971); 43 U.S.C. §1601, et seq.
- <sup>22</sup> See *Tee-Hit-Ton Indians v. United States*, 348 U.S. 272, 275 (1955); Robert T. Anderson, “Alaska Native Rights, Statehood, and Unfinished Business,” *Tulsa Law Review*, 43, no. 1, (2007): 18–26.

- <sup>23</sup> For example, see Anderson, “Unfinished Business,” at 29.
- <sup>24</sup> Pub. L. No. 92-203, 85 Stat. 688 (1971); 43 U.S.C. §1601, et seq.
- <sup>25</sup> U.S. Const., art. I, §8, cl. 3; Trade and Intercourse Act of 1790, ch. 33, 1 Stat. 137.
- <sup>26</sup> For example, see Francis Paul Prucha, *The Great Father: The United States Government and the American Indians*, (Lincoln: University of Nebraska Press, 1984), 446–500; Indian Appropriation Act of Mar. 3, 1871, 16 Stat. 544, 25 U.S.C. §71.
- <sup>27</sup> For example, see *Worcester v. Georgia*, 31 U.S. 515 (1832) (holding, “The Cherokee nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the law of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokee themselves, or in conformity with treaties, and with the acts of congress. The whole intercourse between the United States and this nation, is, by our constitution and laws, vested in the government of the United States.”); *United States v. Winans*, 198 U.S. 371 (1905) (“[T]he treaty was not a grant of rights to the Indians, but a grant of rights from them—a reservation of those not granted.”). Reservations have also been created through an exchange of aboriginal title or former reservation lands for other lands over which the United States claims some right of possession or title, or through the purchase or setting aside of lands on behalf of a tribe. See Felix S. Cohen, *Handbook of Federal Indian Law* (Washington, D.C.: United States Government Printing Office, 1942), 294–295.
- <sup>28</sup> For example, see *Confederated Band of Ute Indians v. United States*, 330 U.S. 169, 176 (1947).
- <sup>29</sup> For example, see *Tee-Hit-Ton Indians v. United States*, 348 U.S. 272 (1955).
- <sup>30</sup> For example, see *Solem v. Bartlett*, 465 U.S. 463, 470 (1984); *Nebraska v. Parker*, 577 U.S. 481, 488 (2016).
- <sup>31</sup> 465 U.S. 463, 470.
- <sup>32</sup> 140 S. Ct. 2452 (2020).
- <sup>33</sup> 140 S. Ct. at 2482.
- <sup>34</sup> 140 S. Ct. at 2482.
- <sup>35</sup> Kirke Kickingbird, *The Jurisdictional Landscape of Indian Country After the McGirt and Castro-Huerta Decisions*, American Bar Association, July 26, 2023, available at [www.americanbar.org](http://www.americanbar.org).
- <sup>36</sup> Act for Allotment of Lands to Indians, 24 Stat. 388 (1887).
- <sup>37</sup> 25 U.S.C. §348.
- <sup>38</sup> For example, see *United States v. Mitchell*, 445 U.S. 535, 544 (1980); 25 U.S.C. §202, 348.
- <sup>39</sup> 25 U.S.C. §348.
- <sup>40</sup> 25 U.S.C. §348.
- <sup>41</sup> For example, see D. Faith Orlowski & Robbie Emery Burke, *Oklahoma Indian Titles*, Tulsa L.J., 29 (1993): 361, 363–369.
- <sup>42</sup> For example, see Orlowski & Burke, *Oklahoma Indian Titles*, at 363–69.
- <sup>43</sup> For example, see *Carlo v. Gustafson*, 512 F. Supp. 833, 837–38 (D. Alaska 1981).
- <sup>44</sup> For example, see Prucha, *The Great Father*, 621–626.
- <sup>45</sup> John Collier, Memorandum, The Purposes and Operation of the Wheeler-Howard Indian Rights Bill, Hearings on H.R. 7902 Before the Senate and House Committees on Indian Affairs, 73d Cong. 2d Sess., 15–18 (1934).
- <sup>46</sup> Indian Reorganization Act of June 18, 1934, 48 Stat. 984; see also *United States v. Mitchell*, 445 U.S. 535 (1980).
- <sup>47</sup> For example, see “What is Fractionation?”, U.S. Department of the Interior, accessed March 13, 2023, <https://www.bia.gov/bia/ots/dtlc/fractionation>. See also 25 U.S.C. §2212.
- <sup>48</sup> For example, see *Cobell v. Salazar*, 573 F.3d 808 (D.C. Dir. 2009).
- <sup>49</sup> Lewis Meriam, Institute for Government Research, Chapter 10, in *The Problem of Indian Administration* (Baltimore: John Hopkins Press, 1928).
- <sup>50</sup> For example, see Jessica A. Shoemaker, “Emulsified Property,” *Pepperdine Law Review* 43 (2016): 945, 956; see also *Cherokee Nation v. Georgia*, 30 U.S. 1, 17 (1831).
- <sup>51</sup> Meriam, Chapter 10, in *The Problem of Indian Administration*.

<sup>52</sup> 25 U.S.C. §5108.

<sup>53</sup> For example, see Federal Recognition of the Little Shell Tribe of Chippewas Indians of Montana, P.L. 116-92, §2870.

<sup>54</sup> *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1988).

<sup>55</sup> 522 U.S. at 528–29.

<sup>56</sup> 522 U.S. at 532.

<sup>57</sup> 231 U.S. 28, 48 (1913).

<sup>58</sup> 302 U.S. 535 (1938).

<sup>59</sup> For example, see *Oklahoma Tax Commission v. Sac and Fox Nation*, 508 U.S. 114 (1993); *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207 n. 5 (1987); *DeCoteau v. District County Court*, 420 U.S. 425, 427 n. 2 (1975).

<sup>60</sup> 18 U.S.C. §1151.

<sup>61</sup> *Sac & Fox*, 508 U.S. at 125.

<sup>62</sup> For example, see Lane Kaiwi Opulauoho, “Trust Lands for the Native Hawaiian Nation: Lessons from Federal Indian Law Precedents,” *American Indian Law Review* 43, no. 1 (2018): 75–127; see also Joint Resolution to Acknowledge the 100th Anniversary of the January 17, 1893 Overthrow of the Kingdom of Hawaii, Pub. L. No. 103-150, 107 Stat. 1510 (1993).

<sup>63</sup> Joint Resolution, Pub. L. No. 103-150, 107 Stat. 1510 (1993).

<sup>64</sup> Joint Resolution, Pub. L. No. 103-150, 107 Stat. 1510 (1993).

<sup>65</sup> Hawaiian Homes Commission Act, 42 Stat. 108, ch. 42 (1921).

<sup>66</sup> See 42 Stat. 108, ch. 42 (1921).

<sup>67</sup> Admission Act of 1959, Pub. L. No. 86–3, 4, 5(f), 73 Stat. 4, 5–6 (1959).

<sup>68</sup> See David Getches, Charles Wilkinson, and Robert Williams, *Cases and Materials on Federal Indian Law*, 4th ed. (St. Paul, MN: West Group, 1998): 909.

<sup>69</sup> Getches, et al., *Cases and Materials*, at 908.

<sup>70</sup> Pub. L. 100–241, February 3, 1988, 10 Stat. 1808.

<sup>71</sup> For example, the laws of Connecticut recognize state-recognized tribes’ authority to determine their form of government, determine membership, and regulate commerce.

<sup>72</sup> For example, see “Definition of Indian Country,” U.S. Environmental Protection Agency, updated April 14, 2022, <https://www.epa.gov/pesticide-applicator-certification-indian-country/definition-indian-country>; “What is Indian Country,” Internal Revenue Service, accessed March 15, 2023, at [www.irs.gov](http://www.irs.gov); “American Indians and Alaska Natives—Indian Country and Reservations,” U.S. Department of Health and Human Services, accessed March 15, 2023, <https://www.acf.hhs.gov/ana/fact-sheet/american-indians-and-alaska-natives-indian-country-and-reservations>.

<sup>73</sup> For example, see Native American Business Development, Trade Promotion, and Tourism, 25 U.S.C. §4302.

<sup>74</sup> This category will need to be updated in the wake of *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020).

<sup>75</sup> See “My Tribal Area,” U.S. Census Bureau, accessed March 15, 2023, [www.census.gov/tribal/application/](http://www.census.gov/tribal/application/).