against the *Burakumin* decreased, but discrimination against the *Burakumin* continues, most notably in areas of marriage and employment.

Finally, because of a lack of any distinguishing features, many *Burakumin* can, and do, move freely through the majority society without those around them being aware of their minority membership. Unless one shares one's background, it is impossible to know who is and who is not *Burakumin.*

Christopher Bondy

See also Discrimination; Japan; Nikkeijin

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Bureau of Indian Affairs

The Bureau of Indian Affairs (BIA) is the U.S. federal executive agency charged with oversight of "recognized" Indian tribes and discharge of its "trust" responsibility over them. The BIA is the oldest federal agency in continuous existence. In what has been described as "the largest land trust in the world," the BIA has jurisdiction over 55.7 million acres of land ("Indian Country," i.e., lands created by statute: reservations, dependent communities, and allotments) held in trust by the United States for American Indians and Alaska Natives. (Some federally recognized tribes, however, are landless.) The Snyder Act of 1921 authorizes the BIA to "direct, supervise, and expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians throughout the United States"; for "administration of Indian affairs," including "general support and civilization"; and for "relief of distress and conservation of health." In executing its federal trust obligation to American Indians, the BIA oversees Native land and water, heritage preservation, energy and minerals, probate, Indian gaming, law and order, fish and wildlife, health and human services, housing, education, tribal economic development, trust fund management and reform, and self-determination and self-governance. Thus, the BIA exercises federal superintendence on a massive scale.

American Indians have a unique status under American law. Administrative responsibility for congressional policies affecting American Indians and Alaska Natives rests primarily with the BIA. BIA history, therefore, is closely tied to congressional policies, which have undergone dramatic shifts over the course of the BIA's existence. Indian history—and the history of the BIA as an integral part of it—may be periodized in time periods reflecting distinctive phases of American Indian policy: Removal and Relocation (1828–1887), Reservation and Allotment (1887–1934), Reorganization and Self-Government (1934–1946), Termination and Relocation (1946–1961), and the Self-Determination Era (1961–present). Consequently, the BIA has an anomalous and complex relationship with Indian nations.

Tribal recognition is a requirement for BIA services. By 1871, when Congress abolished treaty making with Indian nations, a total of 372 distinct tribes were recognized. Of these, 258 tribes were acknowledged under the Indian Reorganization Act of 1934. As of 2007, there are a total of 561 federally recognized tribal governments in the United States, which now maintains "government-to-government" relationships with these American Indian nations. BIA services do not extend to unacknowledged Native tribes, however. In theory, while BIA nonrecognition may deprive a tribe of statutory benefits, it cannot divest that tribe's vested treaty rights. Thus, the BIA panoptically "sees" only "recognized" American Indian tribes (as opposed to unacknowledged Indian "groups") and oversees these Indian nations as "wards"—while now committed to respecting their internal sovereignty and taking measures to restore to American Indian nations some measure of their precolonial independence. This is far easier said than done.

As a general rule of policy, the BIA oscillates between two polar opposites: Native American sovereignty and tribal dependence. Despite colonial recognition of Native American sovereignty, Native tribes constitute, under U.S. law, "domestic, dependent

nations"—thus precluding domestic and international political recognition yet theoretically ensuring them self-government. "Domestic, dependent nations" are powerful federal Indian law words that sound in U.S. Supreme Court cases and resound throughout the entire body of federal Indian law and corresponding BIA regulations.

The BIA was created by Congress as part of the War Department in 1834. (In 1824, the War Department had created an Office of Indian Affairs, but without congressional authorization.) The BIA's enabling legislation couched malign policies in benign objectives. In theory, the BIA's mission was to assist Native Americans and Native Alaskans in managing their affairs under a trust relationship with the federal government. In reality, this was a subsistence dependency of the conquered on their conqueror. In past practice, the BIA became an instrument of subjugation, land appropriation, forced assimilation, and, in some cases, annihilation. On September 8, 2000, Assistant Secretary of the Interior Kevin Gover (Pawnee), speaking on behalf of the BIA, offered a historic apology for the agency's policies and actions over its 175-year history, particularly for the BIA's devastating impact on American Indian nations—whether federally recognized, unrecognized, or extinct—through policies that in their most extreme forms ranged from extermination (physical genocide) to assimilation (cultural genocide). Thus, Gover took the occasion of the BIA's 175th anniversary as an opportunity to make history by apologizing for it. Fortunately, BIA policy in the latter part of the 20th century transformed into an era of Indian "self-determination." Accordingly, BIA history can best be seen within a framework of five distinct phases of congressional policy shifts in Indian affairs.

Removal and Relocation (1828–1887)

Originally part of the War Department, the BIA was transferred to the Department of the Interior (DOI) in 1849. But the war metaphor persisted, and there were more "Indian wars" to be fought. A series of subsequent massacres of American Indians cast a pall over U.S. history: Blue Water Creek (1854), Bear River (1863), Sand Creek (1864), Washita River (1868), Sappa Creek (1875), Camp Robinson (1878), Wounded Knee (1890), and over forty others. There were also settlers pushing westward, and so it was deemed necessary to remove Native tribes that impeded the "manifest destiny" of the United States to occupy the entire continent. Yet long before Columbus, American Indians had governed their own territories as sovereigns. Thus, they had original title (under concepts of stewardship) to their own lands. One may then ask, Why does the United States now own these lands, and how is it that the BIA oversees Indian Country? Under what has been described as "conquest by law," the discovery of America dispossessed Indigenous Peoples of their lands. The "Discovery Doctrine" ripened into law under the landmark Supreme Court case *Johnson v. M'Intosh* (1823). Chief Justice John Marshall ruled that the "discovering" European nations (and later the United States) held fee title to Indian Aboriginal lands, in that "that discovery gave exclusive title to those who made it"—subject to the Indians' right of occupancy and use. *Cherokee Nation v. Georgia* (1831) established the Trust Doctrine. Facing the prospect of forced removal, the Cherokee fought on legal grounds all the way to the Supreme Court. Justice Marshall declared that American Indians "may, more correctly, perhaps, be denominated domestic dependent nations" whose members were "wards" within the United States. Under existing peace treaties, the Cherokee were entitled to retain possessory interests (rights to occupy without owning land) and to exercise reserved rights.

Worcester v. Georgia (1832) finally procured a favorable ruling for the Cherokees. But President Andrew Jackson ignored the Supreme Court. Jackson reportedly remarked, "Marshall has made his decision; let him enforce it now" (as reported by *New York Tribune* editor Horace Greely). The nonenforcement of the Court's decision led to the infamous Cherokee "Trail of Tears" (1838–1839). The Indian Removal Act of 1830 extinguished Indian land rights east of the Mississippi River, forcing displacement of the Five Civilized Tribes west to Oklahoma territory ("Indian Country"). The BIA's "first mission," Gover stated in his historic apology, "was to execute the removal of the southeastern tribal nations." By 1840, the BIA and the U.S. military had relocated more than thirty tribes to territory west of the Mississippi. Congress then enacted the Indian Appropriation Act (1851), the Homestead Act (1862), and the Railroads Act (1862), which established the legal basis for creating American Indian "reservations" and enforcing relocation of Indian tribes from traditional homelands onto Indian reservations.

Treaty making is the one mechanism that the Constitution clearly provides with which the federal government may interact with sovereigns other than

the states. During this period, however, treaties were made with American Indian nations to "treat away" Indian lands and to extinguish their claims to them. While many treaties ceded lands, some contained provisions for tribes to retain hunting, fishing, and gathering rights on the ceded lands. In theory, these treaty rights were preserved in perpetuity and, from a legal standpoint, were to be respected. From 1853 to 1856, however, the United States acquired 174 million acres of Native American lands through 52 treaties, all of which were subsequently broken. Unmoored from Supreme Court precedents, treaty making with American Indians was abolished. In 1871, Congress, by dint of its plenary power, decreed "that hereafter 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" (Indian Appropriations Act of March 3, 1871, ch. 120, § 1). The emergence of the Plenary Power Doctrine (allowing Congress to override treaties) in Indian affairs in the 19th century has been a cornerstone of federal Indian law administered through the BIA.

Reservation and Allotment (1887–1934)

Private allotment of reservation land was one of the primary tools of assimilation policy. It called for the dissolution of tribal land tenure through allotment of collectively held tribal land, to be divided into individual parcels deeded to tribal members (160 acres to each family head, 80 acres to each single person over 18 years old and to each orphan under 18). Between 1887 and 1932, this parceling of tribal lands through individual allotments to tribal members—administered through the BIA—resulted in a drastic reduction of the aggregate tribal land base, with "surplus" land either ceded to the government or sold to White settlers. In 1887, Native Americans held 138 million acres of reservation lands. By 1934, when the Dawes Act was repealed, Native landholdings were reduced to only 52 million acres. Privatizing Native land seriously eroded tribalism, increased welfare dependency, and paved the way for forced assimilation.

Forced assimilation through Indian boarding schools was a policy also administered by the BIA. In 1892, Captain Richard Henry Pratt, founder of the Carlisle Industrial Indian School, articulated the theory that became the justification for forced assimilation. Pratt argued that society had a duty to "civilize" Indians by eliminating their Indian identity; the school's goal was to "kill the Indian to save the man." Forced assimilation was a form of social engineering. In what has been termed *natal alienation*—removal from homeland and severance of cultural ties, a concept originating in Harvard sociologist Orlando Patterson's *Slavery and Social Death* (1982)—Native American children, under BIA auspices, were removed from their parents and reservations at an early age. In a practice that lasted as late as 1968, the BIA granted churches land patents to run mission (boarding) schools and gave them control of Indians' treaty rations. Native children were placed in boarding schools where Native languages and religions were suppressed. Many children were subjected to beatings, whippings, and sexual abuse well into the 20th century. Denial of parental visitation advanced the process of assimilation. Here, the BIA was the effective instrument of cultural patrimony occasioned by the alienation and indoctrination of indigenous children.

In 1924, Congress passed the Indian Citizenship Act, granting citizenship to all American Indians born in the United States. In 1928, the Institute for Government Research conducted a 2-year survey of Indian affairs and published "The Problem of Indian Administration" (known as "the Meriam Commission report"), which issued a stinging indictment of federal Indian policy and called for sweeping changes, recommending that the goal of Indian policy should be the development of all that is good in Indian culture "rather than to crush out all that is Indian." This highly influential finding paved the way for policy reform known as the "Indian New Deal."

Reorganization and Self-Government (1934–1946)

The Wheeler-Howard Act, known as the Indian Reorganization Act (IRA) of 1934, promoted tribal reorganization and self-government. The IRA halted land allotments, ordered the return of Indian lands, provided reservation economic development capital, and authorized tribes to adopt constitutions (based on boilerplate constitutions) subject to approval by tribal membership and the secretary of the interior. This otherwise benign policy had a negative impact, however. While the IRA conferred the power of self-government, the BIA effectively forced majority rule ("IRA governments") on tribes, thereby usurping existing tribal social and political leadership through abandoning

traditional tribal organization (systems of kinship, clan, and community) and traditional, consensus-based approaches to decision making.

To finally resolve all residual tribal claims, the Indian Land Claims Commission Act (1946) established the Indian Claims Commission, to hear suits brought by Indian tribes against the United States. The act set August 31, 1951, as its deadline, foreclosing any claims that arose between 1776 and 1946. Some 852 petitions were filed by tribes, establishing 370 cases. But these cases were not heard until 1974. This tribal renaissance was short-lived, however.

Termination and Relocation (1946–1961)

In 1953, Congress adopted House Concurrent Resolution 108 (popularly known as the "termination policy"). In order "to end [Indians'] status as wards of the United States," this resolution sought to extinguish the political status of tribes and their trust relationship with the United States. Between 1953 and 1968, more than 100 American Indian tribes were legally "terminated"—thus severing federal trust obligations—and more than 1,360,000 acres of tribal land were transferred to the public domain, privatized, and sold. To make matters worse, the BIA, through its Direct Employment Program (better known as the "relocation program"), induced American Indians to move from rural to urban areas, where employment prospects were thought to be better. Between 1953 and 1970, "relocation centers" in Los Angeles, San Francisco, Denver, Minneapolis, and Chicago drew more than 90,000 American Indians away from their reservations. In effect, termination was the ultimate assimilation policy.

The Self-Determination Era (1961–Present)

The current BIA policy of "self-determination" has its origins in President Nixon's "Special Message to the Congress on Indian Affairs" (July 8, 1970). Passage of the Indian Self-Determination and Education Assistance Act (ISDEAA) in 1975 permitted tribes to operate federally funded educational programs. On the formal request of an Indian tribe, the ISDEAA directs the secretary of the interior and the secretary of health and human services to turn over to that tribe the direct operation of its federal Indian programs. The secretary and the tribe then enter into a "self-determination contract" that must incorporate provisions of a model contract included in the ISDEAA. In further legislation enacted in 1988, the Tribally Controlled Schools Act directed the BIA to make grants to tribes operating BIA-funded schools. This policy has empowered many tribes to gain a de facto sovereignty by exercising power to direct their own tribal development. The BIA operates school systems on sixty-three reservations in twenty-three states and provides adult education for some 30,000 adult Native American students at twenty-five BIA-funded, tribally controlled community colleges and universities—with an additional 1,600 Native American adults at two colleges operated by the BIA.

Tribal justice is an integral aspect of self-government. In 1968, Congress imposed limits on tribal criminal jurisdiction under the Indian Civil Rights Act by limiting tribal powers to define and punish offenses. It also imposed upon tribal governments the provisions of Article III and the First, Fourth, Fifth, Sixth, Seventh, Eighth, and Fourteenth Amendments of the Constitution. However, the BIA is precluded from imposing federal standards on tribal courts. The BIA also funds courts commonly called "Code of Federal Regulations (CFR) Courts," which are considered agencies of both the federal government and tribal courts. The BIA also administers twenty-two Courts of Indian Offenses. Through its Office of Law Enforcement Services (OLES), the BIA implements the Indian Law Enforcement Reform Act (1990). Trust management, education, energy, law enforcement, and self-determination were highlighted in President George W. Bush's proposed $2.2 billion budget for the BIA for fiscal year 2007. Of these, ongoing trust reform and fiscal discipline of the Bureau's trust management system remains a top priority, as it has been since a class action lawsuit in 1999 scandalized the BIA and led to pressure for trust reform.

Pursuant to federal statutes, the BIA manages certain funds on behalf of individual American Indians and tribes. Despite its trust obligations, however, the BIA has breached its common law fiduciary obligations in its gross mismanagement of over $500 million in 300,000 Individual Indian Money (IIM) accounts. In *Cobell v. Babbitt* (1999), a class action lawsuit that dominated the actions of the BIA for several years, a federal court found that the real purpose of the trust doctrine was to effectively "deprive [Indians] of their native lands and rid the nation of their tribal identity" and to avail tribal lands and resources to non-Indians. At one point in the litigation, district court judge Royce Lamberth

declared, "I have never seen more egregious misconduct by the federal government." Subsequent trust reform has led to major BIA reorganization.

Indian self-determination entails self-governance, actuated by a gradual transfer from the BIA to tribes, of programs previously administered by the BIA, as well as funding to run them. In 1994, Congress established the Self-Governance Program under Title II of the Indian Self-Determination and Education Assistance Act amendments. In the DOI, the Office of Self-Governance (OSG) administers tribal self-governance as it relates to BIA programs. Up to fifty tribes (or consortia of tribes) annually can participate in the program. Self-governance tribes must negotiate a self-governance "compact" that applies to all bureaus within the DOI, not just the BIA. Each tribe also concludes an Annual Funding Agreement with the BIA that specifies those programs that are transferred to the tribe and those retained by the BIA.

In October 1994, President Bill Clinton signed the Indian Self-Determination Contract Reform Act. In 1994, the Self-Governance Permanent Authorization Act was passed, in which Congress expressed its satisfaction with the BIA Self-Governance Demonstration Project and established self-governance as a permanent program within the DOI. On April 30, 2004, on express recommendations by the National Indian Education Association (NIEA), President George W. Bush signed Executive Order 13336 on American Indian and Alaska Native Education, declaring support for tribal sovereignty, tribal traditions, languages, and cultures. "Self-determination" and "sovereignty" are policy markers that are here to stay. The future of federal Indian policy therefore depends on how tensions between greater tribal self-governance and continuation of the federal trust responsibility are best resolved.

Christopher George Buck

See Appendix B

See also Canada, First Nations; Identity Politics; Internalized Racism; Kennewick Man; Marginalization; Minority/Majority; Native American Health Care; Nativism; Pluralism; Prejudice; Race, Social Construction of; Racialization; Religion, Minority; Social Capital; Sovereignty, Native American; Water Rights

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BURMESE AMERICANS

See MYANMARESE AMERICANS