A Second Century of Dishonor: Federal Inequities and California Tribes

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We dedicate this report to the memory of
Wallace T. Cleave.
A friend, father, colleague, scholar and leader among the Tongva people.
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Federal Inequities and California Tribes

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I. EXECUTIVE SUMMARY

REPORT TO ADVISORY COUNCIL ON CALIFORNIA INDIAN POLICY

For over 100 years, studies conducted by federal, state, and private agencies have reached the same conclusion: California Indians are not receiving a fair share from federal Indian programs; and because they have received less support from the federal government, California Indians have suffered in social-economic well-being relative to other Indian groups in other states.

The well-documented reports reaching this unanimous conclusion have come from both Republican and Democratic administrations, as well as from non-profit organizations. In the 1920s, for example, the Commonwealth Club of San Francisco used Indian Bureau figures to show that annual expenditures were $29.00 per capita for California Indians, and $40.00 or $66.00 (depending on who was included) for all other Indians. In the 1970s, studies by the state of California and reports commissioned by the BIA likewise demonstrated that per capita spending for California Indians was below that in other areas. For example, in 1975, per capita spending for California Indians was $309.97 of the total Bureau allotment, while spending in the Minneapolis Area was $859 per person and spending in Portland averaged $1,576 per person.

Inequity toward California Indians appears in Bureau of Indian Affairs allocations per capita even, as above, when we employ the Bureau's own service population data. The degree of inequity is understated, however, if the Bureau systematically undercounts California Indians. In view of the wide disparity between the Bureau's California service population count for 1989 -- 28,815 -- and the 1990 census count for California Indians -- 236,078 -- there is indeed reason to doubt the Bureau's criteria for counting service population as applied to this state.

The history of federal policy toward California Indians affords insight into the weaknesses of the Bureau's service population criteria. In particular, the failure of the federal government to ratify the 1852 treaties it negotiated with California Indians and to establish a suitable reservation land base for them means that the general criteria limiting service population to Indians "on or near reservations" should not be applied to Indians in Oklahoma and Alaska. Even the limitation of service population to members of recognized tribes is suspect in the context of California history. In California, individuals who participated in claims awards based on past deprivation of land can prove that the federal government views them as Indians, even though the Bureau refuses to recognize their tribal groups. These individuals deserve to be included in the service population.

Agencies of the federal government other than the Bureau of Indian Affairs have
began to modify their eligibility criteria for benefits, and hence their definition of the service population, to include off-reservation California Indians and members of unacknowledged tribes. Illustrations include the Indian Health Service (administering broadly inclusive language from the 1986 amendments to the Indian Health Care Improvement Act) and the Department of Education's Indian Controlled Schools Enrichment Program, authorized by recent amendments to the Indian Education Act that exempt California, Oklahoma, and Alaska Indians from geographic criteria.

If more appropriate service population criteria were applied to California Indians, the service population would at least double. For example, the 1930 census figure for Indians living in rural parts of California counties containing Indian reservations is slightly more than double the 1989 Bureau service population figure for California. Similarly, the 1991 Indian Health Service service population figure for California is slightly less than double the 1993 Bureau service population figure for the state. Accordingly, in presenting data that document current inequities in federal allocations for California Indians, we calculate per capita expenditures using not only actual Bureau service population statistics, but also the more appropriate figures that are twice those employed by the Bureau.

Since we argue that California Indians are undercounted by a factor of 100 percent, the funding inequity for California Indians is doubled. We calculate that in 1994 “real” per capita funding for Sacramento was $350.15 compared with $1,310.51 for all other reservation Indians. For the 1990-1994 years, California Indians were funded at a rate of 1/4th of all other Indians. Restoring the California Indians to funding levels comparable to BIA-served Indians in other states will require at least a two-fold increase in Sacramento’s Operation of Indians Program funding. Many programs such as tribal courts and BIA education programs are grossly underfunded and may need increases in California funding as high as seven times 1995 allocation rates in order to gain parity with other areas and Indian tribes. Such increased funding will restore equality in funding but will do little to rectify past years of systematic underfunding and undercounting.

Our own analysis of budget data from the 1980s and 1990s confirms that these inequities have persisted. Using the most comprehensive funding category, Operation of Indian Programs, and the BIA’s official service population figures over the past five years (1990-94), California Indians are receiving only one-third to one-half the funding received by all other Indians. In 1994, for example, Sacramento’s per capita funding was $700.30 while the rest of the BIA-served Indian population enjoyed per capita funding of $1,370.51. Similarly funding from the Indian Health Service for California Indians is about 30-40 percent less than the national average over 1986 through 1995. Housing and Urban Development Indian Housing programs also show a systematic underfunding over the last decade.

The BIA underserves the Sacramento area in administrative attention compared to other BIA areas. The area office serving California Indians has the smallest square
footage of office space and one of the lowest shares of BIA personnel.

Two case studies of particular federal programs demonstrate the historic neglect of California tribes, and the adverse consequences of that neglect which persist to this day. In the case of general assistance welfare, federal officials have consistently abdicated responsibility to an inadequate state system of general assistance. Public Law 280, the 1953 law that gave criminal and civil jurisdiction to the state of California, has been invoked, improperly, as an excuse for such abdication. As a result, California Indians long were entirely excluded from a federal program that distributed over $50,000,000 to Indians in 1990 alone. Only in the last year or two have funds begun to trickle into California, largely because an enterprising Bureau official pointed out inadequacies in most counties' general assistance programs. Even so, currently less than 1 percent of all federal general assistance funds is going to support California Indians, who comprise approximately 12 percent of all Indians nationwide.

In the areas of law enforcement and tribal courts, California Indians have also been largely excluded from Bureau support. During the first 100 years of federal responsibility for California Indians, funding for such activities was never robust, leaving Indians in the state vulnerable to trespass, theft, and criminal elements. After the enactment of Public Law 280, however, Bureau funding disappeared almost entirely, as California tribes were abandoned to state criminal and civil justice systems. While the Bureau has been pumping more than $60,000,000 into these program areas nationwide, California tribes have never seen more than $500,000 in any one year — and most of that money has been diverted from urgently needed education programs in the state. Not surprisingly, tribal courts and police forces are exceedingly rare among the more than 100 California tribes, even as these institutions have taken root and flourished on reservations elsewhere in the country.

None of the Bureau's justifications for excluding California from law enforcement and tribal courts funding can withstand scrutiny. The Bureau's first justification — that tribes lack concurrent jurisdiction because of Public Law 280 — has been rejected by courts and attorneys general at the federal and state levels. The second proffered justification — that California's tribes are not "historic" tribes with inherent jurisdiction — has been recently repudiated by the Congress. The third justification — that tribes are adequately served by state law enforcement and courts as a result of Public Law 280 — is belied by gaps in the coverage of Public Law 280 as well as the documented failings of state jurisdiction as applied on reservations. To use the state's jurisdiction as a justification for not funding California tribes overlooks the treatment of tribes in other Public Law 280 states, the absence of state jurisdiction over important matters of public safety and community welfare, and the inadequacies of state jurisdiction even where it exists.

The dearth of federal funding for these and other programs in California has diminished the social and economic welfare of California Indians relative to Indians elsewhere in the country. When compared to non-California reservation Indians,
California Indians have higher rates of poverty, lower household income, slightly less education, less post-secondary education, and higher rates of unemployment. Only in household characteristics do California reservation Indians do better than non-California reservation Indians. These combined indices of adverse socioeconomic conditions puts California reservation Indians among the lowest socioeconomic groups in Indian country. Since Indians are already among the lowest socioeconomic groups in the country, California Indians are among the most economically deprived groups in the nation. The past and present history of administrative neglect and underfunding most likely has contributed to the adverse socioeconomic position endured by California reservation Indians.

THE COMMUNITY SERVICE/GOVERNANCE/CENSUS TASK FORCE REPORT’S RECOMMENDATIONS TO ACCIP

1. In determining the total Indian service population for California, the Bureau of Indian Affairs should eliminate its strict adherence to the "on or near reservation" requirement, and should count all members of unrecognized tribes who meet eligibility standards under the 1985 amendments to the Indian Health Care Improvement Act. Recommended alternatives to the current method for counting California service population are (1) include all Indians counted by the census as residing in counties in which reservations are located, adjusting census figures to accommodate population changes between census counts, or (2) rely upon the service population figures produced by the Indian Health Service. Using either of these methods, the current service population for California should increase from 100 percent to 200 percent.

2. In allocating budget funds for programs of individual benefits (e.g., scholarships, welfare), Congress and the Bureau of Indian Affairs should increase amounts directed to the Sacramento Area Office to insure that per capita spending for California at least equals the national average per capita spending. Per capita spending for California should be calculated taking into account the new method for determining service population, recommended above.

3. Congress and the Bureau of Indian Affairs should allocate all necessary funds to determine the number of Indians in California who are eligible for the Bureau's general assistance welfare benefits under the Snyder Act. All such eligible individuals should be provided with these benefits in the next budget cycle.

4. Congress and the Bureau of Indian Affairs should allocate adequate funds for the planning, establishment, and ongoing operation of tribal law enforcement and justice systems in California, where tribes request such assistance. Such systems may take the form of individual tribal institutions, consortia, special-purpose entities, or contracts with state or local agencies. Particular attention should be given to support for tribal initiatives in the area of child welfare, environmental control, housing and evictions,
and drug law enforcement. There should be no requirement that these systems resemble non-Indian law enforcement or judicial institutions, so long as they comply with applicable federal law. Once such tribal systems are established, they should receive Bureau of Indian Affairs funding support at per capita levels that are comparable to average per capita funding for tribal law enforcement and justice systems outside California. Per capita spending for California should be calculated taking into account the new method for determining service population, recommended above.

5. Congress should allocate new funds so that Bureau of Indian Affairs funding for California under the Johnson-O'Malley program can be approximately tripled, enabling the full number of eligible children to be served.

6. The Bureau of Indian Affairs should revise its eligibility criteria for higher education scholarships so that all California Indians who qualify for benefits under the 1938 amendments to the Indian Health Care Improvement Act are also eligible for higher education scholarships. These eligibility criteria should also be revised to clarify that California Indians need not reside "on or near" a reservation in order to qualify for such scholarships. Once these eligibility criteria are changed, Congress and the Bureau of Indian Affairs should increase funding for scholarships for California Indians so that per capita spending for California approximates national per capita expenditures. Per capita spending for California should be calculated taking into account the new method for determining service population, recommended above.

7. Congress and the Bureau of Indian Affairs should undertake a major initiative to establish day schools and boarding schools in California under contract with California tribes and serving California Indian children. Consortia of tribes or individual tribes should be solicited to participate. Bureau funding for such schools in California should be increased so that per capita spending for California approximates national per capita expenditures. Per capita spending for California should be calculated taking into account the new method for determining service population, recommended above.

8. Congress and the Bureau of Indian Affairs should allocate planning grants for at least two new tribally controlled community colleges in California. As new colleges are established, Bureau funding for tribally controlled community colleges in California should be increased so that per capita spending for California approximates national per capita expenditures. Per capita spending for California should be calculated taking into account the new method for determining service population, recommended above.

9. The Department of Education should undertake a study to determine whether the total amount spent on Impact Aid funding for California is appropriate given the actual size of the population living and working on California Indian lands.
10. Congress should pass legislation authorizing each California tribe to initiate retrocession of Public Law 280 jurisdiction from the state of California back to the federal government, either in whole or in part. This legislation should also establish a federal commitment to fund and provide technical support for development of law enforcement and justice systems in California as described in Recommendation 4, supra. Furthermore, Congress should clarify that tribal civil and criminal jurisdiction are concurrent with state jurisdiction where Public Law 280 is in effect.

11. Congress should pass legislation for a comprehensive restoration of land to California Indian tribes. Congress should allocate funds to purchase and/or allocate public land to augment the California Indian tribal land base to a total of 3,241,000 acres, including the present 463,000 acres. Such a land allocation will make California Indian land holdings on a per capita basis near the average for all Indian land holdings, which is 59.2 acres per person. Congress should return all unused federal lands in the state of California back to the control of California Indians. The Bureau of Indian Affairs should be instructed to recognize the historical and disproportionate loss of land to California Indians, and special provisions should be made to equitably compensate California Indians in any federal or BIA funding distribution formulas that depend heavily on land base size. Newly restored tribes that who were previously terminated and newly recognized tribes should be granted land bases of at least 60 acres per tribal member. Special allocations of land should be set aside in anticipation of future recognition of many currently nonrecognized California tribes. Congress should make sure that the new lands reclaimed by California Indians have access to water and roads, and that the lands are useful for general economic development.

12. Congress should pass legislation that ensures that the Bureau of Indian Affairs, the Indian Health Service, Housing and Urban Development administration, and all other federal agencies are funding California Indian tribes at levels comparable to national averages for Indians. Per capita spending for California should be calculated taking into account the new method for determining service population, recommended above. Congress should make special allocations for BIA programs, IHS services, and to HUD that specifically benefit California Indians as a means to compensate California Indians for decades of disproportionate underfunding. These funds should be used to build tribal administrative infrastructure, develop and fund program consortia for small tribes, and should be aimed at alleviating the chronic poverty, housing, unemployment, and health service inequities suffered by California Indians. Target compensatory funding levels might be indicated by adding shortfalls from the national average over recent historical time periods. For the past decade when compared to national averages, HUD shortfalls total between $11.5 million, when considering a 100 percent undercount, and $33 Million, when considering a 200 percent undercount of California Indians. Since the early 1980s, when compared with national funding averages, BIA shortfalls for California Indians total between $50 million, when considering a 100 percent undercount, and $180 million for a 200 percent undercount. IHS shortfalls total at least $150 million for the past dozen years. Shortfalls for other...
federal agencies should also be investigated and appropriate compensations made.

13. Congress should pass legislation and appropriate funds in order to build schools for California Indian communities, and provide tribal governments with adequate administrative buildings and facilities. California school and administrative space should be brought up to national averages for all Indians. Congress should increase administrative and school building space to 75 times current levels from 18,160 square feet to 1,362,000 square feet. Since 85 percent of all BIA buildings are used for educational purposes, about 1,171,320 square feet of the new space should be targeted for school buildings. All new building facilities should be earmarked for tribal governments and local reservation and rancheria communities in order to assist them in developing tribal infrastructures and enhance greater self-government. Adequate funds for maintenance should be allocated on an annual basis.

14. Congress should formally recognize that California Indians are economically disadvantaged within U. S. society and pass special legislation and program initiatives to alleviate the high rates of poverty, unemployment, low income, and low rates of completing post-secondary education found disproportionately among California Indians compared with other Indians and with all other groups within the United States.

15. For small California tribes Congress should guarantee base funding at levels of at least $200,000 for tribal government programs and administrative programs.

16. Congress should pass legislation and appropriate funds, and the BIA should negotiate adequate base funding levels for California Indian tribes for such needed programs as Indian child welfare services, Aid to Tribal Government, small tribes funds, schools, Housing Improvement Program (HIP), community fire protection, tribal courts, higher education, adult education, tribal rights protection, land acquisition, road building and maintenance, water rights, legal services, and realty services and for provision of more technical services. Furthermore, federal agencies should negotiate and provide adequate base funding for needed and highly-valued programs such as USDA Commodity Programs, Title VI Administration for Aging Programs, Headstart, Administration for American Indians, Department of Health and Human Services Programs. Funding should be made more directly to tribal governments, with fewer layers of BIA or federal administrative bureaucracy, and technical assistance should be provided when asked for by tribes.

17. Congress should pass legislation authorizing significantly increased funding to enable California Indian tribes to revise their constitutions and legal codes in order to enhance self-governance and address changing economic, legal, and political conditions. A program should be created to provide funds and technical assistance to all tribes that believe they must revise their constitutions and legal codes.
Recommendation for the State of California

18. The state of California should give greater funding attention to California tribes and pass legislation and funding for programs in education, juvenile justice, antitrust abuse, and real estate services to help with land acquisition according to HUD guidelines. The state of California should create an office of California Indian affairs, which would advocate for California Indian issues and legislation within California state government, and provide a regular liaison between the state of California and the California Indian tribes.
II. Studies that Document Funding Inequities Affecting California Tribes

The refrain keeps repeating, but no one seems to hear. Anyone reviewing the last century of federal policy toward California Indians will be struck by the conclusions reached over and over in government and private studies: California Indians are not receiving a fair share from federal Indian programs. The convergence of opinion is remarkable, especially since the authors of these studies take pains to document their claims. Agencies operating under both Republican and Democratic administrations, at both the federal and state level, have joined this particular chorus.

In chronological order, here are the salient statements from these reports that document the plight of California Indians and compare federal treatment of California tribes with the treatment of tribal groups elsewhere.

1883: Report on the Condition and Needs of the Mission Indians of California, Made by Special Agents Helen Jackson and Abbot Kinney to the Commissioner of Indian Affairs

From tract after tract of [their aboriginal] lands they have been driven out, year by year, by the white settlers of the country, until they can retreat no farther....The responsibility for this wrong rests, perhaps, equally divided between the United States Government, which permitted lands thus occupied by peaceful agricultural communities to be put "in market," and the white men....The Government cannot justify this neglect on the plea of ignorance.

We recommend the establishment of more schools. At least two more are immediately needed....There should always be provided for the Mission Indians’ agency a small fund for the purchase of food and clothing for the very old and sick in times of especial destitution....In seasons of drought or when their little crops have, for any cause, failed, there is sometimes great distress in the villages.

1906: Report of Special Agent C.E. Kellogg to the Commissioner of Indian Affairs

The responsibility of the National Government for the present condition of the non-reservation Indians of California seems clear. Had the Government given these Indians the same treatment as it did other Indians in the United States, their condition today would be very different....It should be
remembered that the Government still owes these people considerable
sums of money, morally at least, but the Government owes more than
money. No amount of money can repay these Indians for the years of
misery, despair, and death which the Governmental policy has inflicted upon
them. No reason suggests itself to your special agent why these Indians
should not be placed in the same situation as all other Indians in the United
States....

1926: Transactions of the Commonwealth Club of California

The executive has always in fact admitted a much more definite obligation
toward Indians whose right to land, assistance and protection, was
specifically safeguarded by treaty, than to those unfortunate Indians, like
those of California, who have never been able to point to a definite promise
on the part of the United States measuring the ineducable minimum of
protection to which they were entitled.¹

[The Indians of California] are the nearest of their race, and yet they receive,
in educational and health services, and in more direct aid, far less per capita
than the average throughout the country.²

1937: Report of the Secretary of the Interior on Senate Bill 1651 and Senate Bill 1779,
to Amend the California Indian Jurisdictional Act of May 18, 1928

The total of land now held in trust for California Indians, much of it of poor
quality, is approximately 368,000 acres. But there has been no adequate
assistance in matters of credit or agricultural organization; and it must be
said that an expenditure of not less than $20,000,000 of Federal funds,
across 50 years of time, has left the great majority of the California Indians in
a state of acute poverty.

Superintendent of the Sacramento Agency to the Commissioner of Indian
Affairs

With little land, with no other resources, with not even adequate credit
facilities available, the thought is inescapable that the restrictive control
exercised by the Federal Government over these Indians is a handicap
rather than an assistance.... We need to take stock of ourselves and
recognize how woefully inadequate our Welfare Service is.¹
1969: Final Report to the Governor and the Legislature by the State Advisory Commission on Indian Affairs

[We recommend that California Indians be declared eligible to participate in all federally funded programs for Indians on the same basis as Indians in other states (SJR 32).]¹

Senate Joint Resolution No. 32, California Legislature, August 21, 1969:

Whereas, The Indians of California are virtually excluded from participation in various federal programs and services that are available to other Indians of the United States; ... therefore, be it

Resolved by the Senate and Assembly of the State of California, Jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to establish a policy that insures that California Indians are included to the fullest extent in various federal programs and services that are available to other Indians of the United States.

1969: Report of United States Senate Special Subcommittee on Indian Education of the Committee on Labor and Public Welfare

While the Federal Government has been devising new programs to assist the Indian and while Congressional expenditures for Indian education have increased significantly since World War II, these benefits have not accrued to California Indians. The withdrawal in the late 1940's and early 1950's of the already minimal Federal assistance which California Indians then received has been well documented. Although the Federal program [for Indian health care] in California was never large, even that was phased out by the Public Health Service [after it assumed responsibility in 1955]....The Federal government discontinued its minimal welfare assistance to California Indians in 1952....

1972: Statement of Senator John Tunney before the United States Senate—Discrimination against California Indians

In conclusion,...California is not now receiving a fair share of BIA and IHS funds and all California Indians are morally and legally entitled to participate on an equal basis in BIA and IHS programs in the fields of education, health, housing, and economic development.
1973: Indian Eligibility for Bureau Services — A Look at Tribal Recognition and Individual Rights to Services*

[Historically, California Indians have received much less consideration than Indians of other states....The 1973 BIA budget allocated $5,117,000 to spend for California Indians. To bring the allocated funds in accordance with the true eligible service population, the federal government should appropriate approximately $11,172,000....]

1976: Study by the Department of Housing and Community Development, State of California

Examination of the Bureau of Indian Affairs (BIA) Budget data since 1969 reveals that California has not been receiving its fair share of BIA allocations based on its service population or on its needs and that action is required to rectify the present inequitable funding levels.

California Indians who comprise almost 7% of the BIA's service population have received only 1 - 2% of the Bureau's total budget since 1969....[Long term underfunding of the Bureau's Sacramento Area Office (encompassing the State of California) has caused economic hardship for the Indians of California.]

1977: A Report to the Commissioner of the B.I.A. Regarding Funding of Bureau Programs in the Sacramento Area*

[A chart for FY 1975] shows the percentage of the total [B.I.A.] allotment for each area, i.e. Sacramento received 1.32% of the total funds available with a population of 36,255 or 6.68% of the population. Based on population, Sacramento has a low $309.97 of the total allotments made for Fiscal Year 1975....Minneapolis's net allotment is $859 per person....[The average for Billings is $570 per person]....[The average for Portland is $1,576 per person]....

1984: Report of the California Indian Task Force*

Administratively, the Sacramento Area in Fiscal Year 1984 had an assigned budget...representing 1.7 percent of the overall Bureau budget and approximately 173 positions (FTE) compared to a Bureau-wide total of $14,690 or 1.2 percent.

[For California Indians] there are large areas of unmet needs in terms of
housing, educational levels and in nearly all areas of Bureau programs that are normally provided elsewhere....

In summary, funding levels determining the base allocation for the Sacramento Area are based upon incorrect numbers. Few programs, availability of some State programs and a service concept based upon trust property management and individual service has kept funding levels low. Moreover, because of the long period involved in termination matters here in the State of California, general programs to meet the needs of the Indians of California, whether they be members of tribal or other groups or not, have been inadequate."

1989: Bureau of Indian Affairs, Resource Allocation Effectiveness Study

[After working through formulas for allocating Bureau funds on the basis of population, land base, and other criteria.] Sacramento does well for all weight sets... (Using the recommended formula, Sacramento Area is among the Areas that are “winners” in the sense that they would receive additional funds.)
1. Reprinted as Appendix XV in Helen Hunt Jackson, A Century of Dishonor (1885).
2. Id. at 453.
3. This report was commissioned by act of the U.S. Congress. 33 Stat. 1058 (1905).
5. Id. at 106.
6. C. Goodrich, "The Legal Status of the California Indian," 14 California Law Review 83, 97 (1926). Chauncey Goodrich was a member of the Indian Section of the Commonwealth Club and conducted his research for this article under the auspices of the club. Goodrich relied on Indian Bureau figures in official reports to calculate that annual expenditures for fiscal year 1923–24 were $29.00 per capita for California Indians and $40.00 per capita for all other Indians. If one excluded from the latter statistic the fee-simple allotted Indians who had been "so largely released from federal guardianship," the $40.00 figure increased to $66.00 per capita for Indians outside of California. Id. at n.55.
10. Report to the BIA, Ernest Stevens and John Jollie, co-chairs.
11. Prepared by William D. Oliver, former Administrative Officer to the Sacramento Area, at the request of the Sacramento Area Indian Advisory Board.
12. In making these calculations, the author compared only expenditures for programs that existed at Sacramento as well as the other B.I.A. areas offices.
13. This task force was appointed by Secretary of Interior William Clark during the Ronald Reagan administration.
III. Service Population: Undercounting and Inequity in California

When the Bureau of Indian Affairs and other federal agencies allocate scarce program dollars among different tribes and geographic areas, they often base these allocations on numbers of individuals eligible to be served by these programs. Particularly where programs are designed to serve individual needs—such as welfare, education, housing, health care, and many other Indian programs— the number of persons eligible for service is an appropriate criterion for distributing funds. Not surprisingly, then, studies of funding equity for California tribes typically compare federal dollars allocated per person for different area offices of the Bureau of Indian Affairs or for comparable divisions of other federal agencies. Significantly, these comparisons rarely question the population figures put forward for each Area Office or other division by the relevant agency. Thus, for example, the 1976 study by the California Department of Housing and Community Development, the 1977 Report to the Commissioner of the BIA Regarding Funding of Bureau Programs in the Sacramento Area, and the 1989 BIA Resource Allocation Effectiveness Study all take as a given the Bureau’s own service population figures in determining whether California Indians were unfairly denied federal program support. The analyses that we provide later in this report, based on federal data, follow the same methodology.

Using the official service population figures, all of these studies conclude that California Indians have been denied their fair share of federal program dollars. Our own analyses reach the same conclusion. Such reports will understare the true extent of the inequity, however, if the Bureau’s population figures systematically undercount California Indians. Hence, it is critical to determine whether California Indians are counted in an appropriate way by the Bureau. If either the eligibility criteria themselves are biased against California Indians, or these criteria are applied in a way that leaves California Indians undercounted, the equity problem is even greater than the previously published studies and the analyses in this report suggest.

In fact, the eligibility criteria and population figures used by the Bureau of Indian Affairs for California are difficult to defend, especially insofar as the Bureau places geographic limits on eligibility. Even the limitation of benefits to members of recognized tribes is suspect in the California context, where individuals who can prove that the federal government views them as Indians nonetheless have been denied recognition. We recommend that both of these limits on the service population count be relaxed. To understand how these Indians came to be excluded and why the practice should be changed, it is necessary to review the history of Bureau eligibility policy and its application in California.

In the earliest years of federal Indian policy in California, there were no treaties and no
reservations. Every member of an indigenous California group was treated as a federal responsibility, regardless of place of residence or formal federal recognition.* During the first seventy years after California statehood, as small areas of land were set aside for tribes throughout the state, Congress periodically appropriated funds for the benefit of California Indians, again without specifying eligibility criteria related to residence or recognition.

In 1921, Congress regularized appropriations for Indian benefits nationwide by adopting the Snyder Act, which gave general authorization for such expenditures. The Snyder Act likewise had no geographic restrictions on eligibility, stating that it was for "the benefit, care, and assistance of the Indians throughout the United States." Since most Indian programs funded through the Bureau rest on the authority of the Snyder Act, debate has ensued over whether the Bureau may introduce geographic restrictions, such as requirements that beneficiaries live on reservations or "near" reservations. There have also been challenges, focused largely in California, on the limitation of benefits to members of recognized tribes.

Geographic Restrictions. Although Bureau practices have not always confined benefits authorized by the Snyder Act to reservation Indians,* Bureau pronouncements have sometimes articulated an "on reservation" requirement. For example, in 1970, Assistant Secretary of the Interior Hanson Loesch wrote to the Commissioner of the Bureau of Indian Affairs, "It is a long-standing general policy of the Bureau of Indian Affairs and the Congress that the Bureau's special Federal services are to be provided only to the reservation Indians." Where such limitations found their way into BIA manuals, tribal members who were living near reservations and functioning as part of tribal communities brought lawsuits challenging denial of benefits. In one of these cases, Morton v. Ruiz, the Supreme Court declared that the federal trust responsibility to Indian tribes required clear articulation and justification for any policy that excluded groups of Indians from benefits under the Snyder Act.

The upshot of Morton v. Ruiz was that the Bureau formalized and expanded its eligibility and priority criteria to include Indians living "near" reservations as well as those living within reservation boundaries. In addition, the Bureau established procedures for officially designating particular areas as "near" reservations, including application of specified criteria and requirements of consultation with the relevant tribe and publication in the Federal Register. Consequently, when the Bureau does its biennial determinations of service population and labor force, it directs tribes to identify the "Total Resident Indian Population" by adding together the Indians "within the reservation" and those "adjacent to the reservation."

Oklahoma Indians and (more recently) Alaska Natives have received special treatment under these Bureau policies regarding geographic eligibility. In each case, the special treatment responds to a distinctive history of legal actions affecting the existence of reservations in that state. For example, the Bureau has taken account of the fact that Oklahoma reservations (but not tribes) were abolished near the turn of this century, by
defining "reservations" to include "former reservations in Oklahoma." Furthermore, the Bureau has accommodated the fact that Congress in 1974 established a regime of regions and Native villages in Alaska in lieu of reservations, by defining the term "reservations" to include "Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act." As a consequence of such special treatment, there is a close approximation between the census statistics for Indian population in those states and the Bureau's figures for service population.

In California, by contrast, the BIA service population statistics and the census figures for all Indians in the state diverge widely. For 1990, the census shows 236,078 Indians living in California. For 1989 (service population is compiled in odd years only), the Bureau's service population is only 12 percent of that figure, or 28,815. This discrepancy has existed for many decades. Thus, while the census counted 91,018 Indians in California in 1970, approximately 45,000 of them native California Indians, the Bureau's 1971 service population was only 6,100, or 7 percent of the census figure. Why have so many Indians in California been excluded from the Bureau's service population?

One hypothesis is that the Bureau's counting methods are seriously biased toward members of local tribes, leading to understatement of the total number of Indians. The standard protocol is for the Bureau to circulate forms to individual tribes, asking tribal leaders to identify the resident Indian population on and adjacent to the reservation. Tribal leaders may indeed find it easier to identify tribal members than non-member Indians. While these non-member Indians may be eligible for federal services, they may simply not be counted for service population purposes because the tribal counters don't know who they are. The difficulty with this hypothesis is that a count of California Indians from the 1990 census still produces a figure that is more than double the 1990 Bureau service population count, or 59,011. Thus, even counting only California tribal members, the service population numbers should be considerably higher than they are. One significant reason why the Bureau's service population figures do not include even all tribal members is that tribes lack staff and resources to undertake their population surveys. If resources were provided and tribes were given incentives to count all Indians, the numbers would doubtless rise even higher.

Another hypothesis that might explain the disparity between service population and census figures in California is that large numbers of California's Indians do not live "on or near" a reservation. In fact, the census allows us to determine the number of Indians who live in rural parts of counties in which reservations are located, an approximation of the "on or near" reservation category. For 1990, that figure is 70,860, or approximately two and one half times the 28,815 service population for 1990. Thus, even accepting the Bureau's definition of service population areas, there is a serious undercount in California. This undercount means, in turn, that California Indians are denied their appropriate share of federal benefits, at least when such benefits are allocated on the basis of population numbers.
Even a figure that is two-and-one-half times the service population count in California would not necessarily provide the most appropriate tally of Indians for purposes of assessing funding equity, however. There is good reason to question whether the "on or near" limitation ought to be applied at all to members of indigenous California groups. And if that limitation were relaxed, the number of Indians moves closer to the 236,078 figure for statewide Indians in the census or, if one excluded the 54,440 Indians in Los Angeles, San Francisco, and Alameda (Oakland) counties, 181,638. Excluding these large cities makes some sense if the focus is on indigenous California Indian groups, because masses of Indians from tribes outside of California were relocated to the Los Angeles and San Francisco Bay areas during the 1950s. It is also true, however, that members of indigenous California groups live in these cities as well.*

Should the "on or near" limitation be applied to California Indians? As discussed above, such a criterion was not in force in the early years of federal responsibility for California Indians. Indeed, in 1973, a Bureau official filed a sworn affidavit in the course of litigation, in which he stated, "There has been no instance where a California Indian, otherwise eligible, was denied available federal boarding school or scholarship assistance by the Sacramento Area Office for failure to meet the "on or near" criteria in the regulations."** In the post-Snyder Act period, however, the Bureau has in fact invoked the "on or near" limitation to restrict service population counts and eligibility for California Indians. As a consequence, many federal officials and Indian advocates have argued that special treatment is warranted for California Indians, just as it has been instituted for Oklahoma Indians and Alaska Natives. This special treatment could be provided either by an expansive interpretation of the terms "on or near" (for example, to include all counties in the state where trust lands are located, or even to include the entire state), or by dropping the requirement of "on or near" altogether.

The case for such special treatment rests on the distinctive and tragic history of loss of California Indian lands. California Indians left their traditional homelands between 1851 and 1853 and moved to eighteen large areas, comprising over 8 million acres, promised as reservations in treaties that tribal representatives and federal agents had signed. The Senate refused to ratify the treaties, however; and non-Indians soon laid claim both to the traditional Indian homelands and to the lands promised the Indians in the unratified treaties. Courts then failed to protect the Indians who sought to remain on or return to their historic lands. Thus the tribes were left homeless, dispersed, and starving. Between 1870 and 1930 the federal government created approximately one hundred small reservations and established numerous public domain allotments as homelands for the native California population. But these areas were too small, too remote, too arid, and too unsuitable for occupation or habitation to accommodate the entire native population. As Senator Henry Jackson stated in 1971,

[B]ecause of the events of history, California Indians are dispersed
throughout rural areas of the State rather than being concentrated on several clearly defined reservations. Those historical circumstances also limited the number of acres of trust land available to the Indian people. Thus, only a small percentage actually live on trust land, and [thousands of other] Indians whose socioeconomic problems are no less severe, do not relate to a trust land base.  

Federal officials have advanced the view that the situation in California thus closely parallels the situation in Oklahoma, where "former reservations" are counted as territory "on or near" reservations. Maps prepared in 1971 by an Assistant to the Commissioner of Indian Affairs, depicting Indian reservations in California, territories promised in the unratified treaties, and areas of Indian community concentration, demonstrated three things: (1) that "the extent of Indian trust land and public domain allotments is very limited, emphasizing the notorious landless status of California Indians"; (2) the areas of Indian community concentration "are generally near to and in many instances overlap" the territories promised in the unratified treaties, "a situation comparable to that found in Oklahoma [with the "former reservations"]"; and (3) in addition to those Indians in areas of community concentration, "there are significant numbers of California Indians now residing throughout the State, also comparable to the Oklahoma situation." The Assistant concluded, "Just as in Oklahoma...communities of descendants of the original Indians continue to live within or near the reservation boundaries originally delimited but, in California, never established by treaty."

If use of the "on or near" limitation is unfair in California, the question remains how best to count California Indians. Several distinct but conceptually related remedies have been proposed by federal officials and Indian advocates.

In 1970, for example, the Sacramento Area Director recommended that eligibility be extended to "all Indians (outside of those residing in the San Francisco Bay Region and the Los Angeles Area) presently resident in the State of California who are descendants of Indians residing in the State on June 1, 1852."  

In 1972, Senator John Tunney of California testified before the Subcommittee on Interior of the Committee on Appropriations that the Interior Department should serve all California Indians, regardless of residence. "At the very minimum," he said, "California rural off-reservation Indians should immediately be declared eligible for services by the Bureau of Indian Affairs."  

A 1973 Interior Department Task Force concluded that all native California Indians were eligible for BIA services, but were being served on a budget that was designed to reach a target population consisting of reservation Indians only — one-sixth of the statewide native California
Indian population. According to this report, "it is obvious that the true target population [of all native California Indians] must be formally recognized and the appropriations allocated to permit services on a realistic level."

A 1984 directive from the Assistant Secretary, Indian Affairs to the Sacramento Area Director charged the Area Director with conducting "a total reassessment of the California BIA Indian service population estimates assuring use of the "on or near reservation' concept," and declared the Assistant Secretary's belief that "in most instances the 'near reservation' population in California could well be defined as that located within the county in which the reservation or rancheria is located."

All of these proposals would move the Bureau in the direction of counting, for budget allocation purposes, a broader set of Indians than those satisfying the technical requirements for "on or near" a reservation. Viewed as a group, these proposals typically sweep into the service population net either all Indians in rural parts of the state, or all native California Indians regardless of location within the state. Remarkably, several federal agencies besides the BIA as well as the Congress have proceeded to institute such broad geographic criteria for California Indians, while the BIA has done nothing. Some illustrations follow:

The Indian Health Service of the Department of Health and Human Services (IHS), has promulgated expansive criteria for California Indians in order to implement 1988 amendments to the Indian Health Care Improvement Act of 1990. In those amendments, Congress defined eligible "California Indians" to include members of federally recognized tribes, holders of trust allotments, and distributees under the California Indian land settlement and their descendants, regardless of their geographic residence within the state. Not surprisingly, the service population calculated by the IHS is significantly larger than the BIA-calculated service population. In 1991, for example, when the IHS service population in California was 88,675, the BIA's was only 36,511. By 1994, the IHS's figure for California had risen to 113,465, while the BIA's 1993 service population number was only 45,565. This wide discrepancy even predates the 1988 amendments to the Indian Health Care Improvement Act, largely because the IHS has been authorized to designate states, counties, and towns as "Health Service Delivery Areas (HSDA's)," rather than reservations, where reservations are nonexistent or so small and scattered and the eligible Indian population so widely dispersed that it is inappropriate to use reservations as the basis for defining the HSDA. IHS estimates are made by counting those Indians (as identified during the Census) who reside in the geographic areas in which IHS has responsibilities, including "on or near reservations" and HSDA's. Thus, in 1985, the IHS counted 73,893 Indians in its service
population for California, and the BIA’s comparable figure was only 25,263. While the IHS does not distribute funds solely on the basis of service population, it is evident that the figures it takes into account are quite different from and much higher than the Bureau’s.

The Department of Health and Human Services also provides expansive coverage of California Indians in its recent regulations for block grants for child care services. According to these regulations, in determining whether a tribe has 50 or more children (the amount needed to qualify for a block grant), the agency will include children who live on or near a reservation, with the exception of Tribes in Alaska, California, and Oklahoma.

In the Department of Education, the Office of Educational Research and Improvement administers the Direct Grant Programs for Indian Tribes and Hawaiian Natives, which operate under the Library Services and Construction Act. According to the statute, “The provisions of this title requiring that services be provided on or near Indian reservations, or to only those Indians who live on or near Indian reservations, shall not apply in the case of Indian tribes and Indians in California, Oklahoma, and Alaska.” Thus California Indians, like those in Oklahoma and Alaska, are included regardless of where they reside within the state.

Also in the Department of Education, the Indian Controlled Schools Enrichment Program, authorized by the Indian Education Act, provides funding to schools serving Indian children. Ordinarily, these schools must be located “on or near” a reservation. In 1988, Congress amended the Indian Education Act to exempt schools serving Indian children in California, Oklahoma, and Alaska from that geographic constraint.

It is apparent from this history and from the practice in other federal agencies that the BIA has been too slow to recognize and rectify the problems of program eligibility and service population undercount in California. The most modest adjustment — including all Indians identified by the 1990 census as residing in rural parts of counties in which reservations are located — would result in more than doubling the 1969 service population. Some adjustments have been made in the past six years — the 1993 BIA service population figure for California is 45,568 — but the current figure would still have to be increased by 55 percent to reach the 1990 figure for rural California Indians in counties with reservations. Were all such Indians to be counted, California Indians would constitute at least 6 percent of the BIA’s national service population, rather than 3.8 percent using the Bureau’s 1993 service population figures. Adopting the most expansive definition used in the Indian Education Act — all Indians in the state — would result in multiplying the service population by many more times, and making California Indians 20 percent of the Bureau’s total service population. Several intermediate possibilities exist as well. For example, matching
the 1991 IHS service population would almost triple the BIA's numbers for that same year. Comparing the IHS and Bureau figures for 1994 and 1993, respectively, would also lead to multiplying the BIA figures by almost three times. Alternatively, if the BIA were to include all Indians in California from the 1990 census outside the Los Angeles and San Francisco Bay areas, it would still need to multiply the 1989 service population count by almost six times, or the 1993 figure by nearly four times. Whichever measure is used, the Bureau will have to revise its formulas for allocating funds to the state and to clarify or restate its program eligibility criteria. The consequence of such readjustments will be more equitable treatment for California Indians.

<table>
<thead>
<tr>
<th>Year</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1993 BIA Service Population for CA</td>
<td>25,815</td>
<td>3.0</td>
</tr>
<tr>
<td>1993 BIA Service Population for CA</td>
<td>45,568</td>
<td>3.8</td>
</tr>
<tr>
<td>1990 Census Indians in CA from CA tribes</td>
<td>59,011</td>
<td>6.0</td>
</tr>
<tr>
<td>1990 Census Indians in rural parts of CA counties</td>
<td>70,860</td>
<td>7.2</td>
</tr>
<tr>
<td>1991 IHS Service Population for CA</td>
<td>88,675</td>
<td>8.3</td>
</tr>
<tr>
<td>1994 IHS Service Population for CA</td>
<td>113,465</td>
<td>9.0</td>
</tr>
<tr>
<td>1990 Census Indians in CA outside LA &amp; SF Bay Area</td>
<td>161,638</td>
<td>16.5</td>
</tr>
<tr>
<td>1990 Census Indians in CA</td>
<td>236,078</td>
<td>20.4</td>
</tr>
</tbody>
</table>

* % refers to percentage of total BIA service population for the closest approximate year, adjusted to reflect the additional numbers from California.

Tribal Recognition as a Limit. Wholly apart from geographic limitations, BIA service population is determined by who is counted as "Indian." As a general rule, the BIA has used membership in a federally recognized tribe as the criterion for determining who is "Indian." Occasionally, the Bureau has used "blood quantum" as an alternative or additional criterion, with the usual requirement being one-quarter degree "Indian blood." Over the past two decades, the courts and Congress have begun to reject the "blood quantum" standards in favor of sole reliance on membership in recognized tribes. This development disproportionately disadvantages California, which has the largest percentage of Indians from unacknowledged tribes in the nation.

What makes the situation of these unacknowledged California Indians particularly compelling is that most of them are on, or descended from individuals who were on, the judgment rolls for land claims cases involving the 1852 unratified treaties with California tribes. Indeed, some of these Indians also have public domain allotments or other forms of trust allotments, which strongly suggests a federal responsibility. Thus, although these individuals have one or more forms of federal certification of their status as Indians, they are not eligible for BIA benefits under contemporary agency standards because their tribal groups are not acknowledged. Accordingly, they are not counted for purposes of BIA service population statistics. The history of federal treatment of California Indians, described above, suggests that this is not a just result.
Judicial and Congressional authority supports the view that the BIA should move toward including certain California Indians from unacknowledged tribes. In *Malone v. Bureau of Indian Affairs*, decided in 1994, the United States Court of Appeals for the Ninth Circuit held that the BIA had not properly promulgated regulations for higher education grants and loans that limited eligibility to members of federally recognized tribes. A member of an unacknowledged California tribe who had been denied a grant asked the court to enjoin the BIA from conditioning eligibility for grants on membership in a federally recognized tribe. Although the court refused to issue such an injunction, claiming that it lacked authority to promulgate eligibility criteria, it did offer some guidance to the Bureau as it attempted to establish valid regulations. In particular, the court admonished the agency to "adopt criteria consistent with the broad language of the Snyder Act, and we encourage the BIA to look to eligibility criteria used in other Snyder Act programs, such as those set forth in the 1986 Amendments to the IHCA [Indian Health Care Improvement Act]." As noted above, those amendments include among eligible recipients California Indians from unacknowledged tribes. In particular, the provision includes,

Any descendant of an Indian who was residing in California on June 1, 1852, but only if such descendant is living in California, is a member of the Indian community served by a local program of the [Indian Health] Service, and is regarded as an Indian by the community in which such descendant lives.

Any Indian who holds trust interests in public domain, national forest, or Indian reservation allotments in California.

Any Indian in California who is listed on the plans for distribution of the assets of California rancherias and reservations under the Act of August 18, 1958... [the statute that attempted to terminate numerous California rancherias], and any descendant of such an Indian.

As the Ninth Circuit suggested, a similar definition should be adopted by the BIA for eligibility for its services. Such an expanded definition of eligibility would justify a larger service population count, such as one that followed census figures, described above, or the IHS service population figure. Census figures are useful for this purpose because the individuals counted by the census as Indians are individuals who self-identify. That group would include individuals who believe themselves to be Indian but who may not be members of federally acknowledged tribes. The IHS figure is also relevant because it follows from the broad eligibility criteria approved by the *Malone* court.

Conclusion

23
In establishing what is equitable funding for California tribes, service population figures are a crucial variable. Undercounting eligible Indians leads to an underestimation of potential equity problems. The way the BIA determines eligibility in California has been rejected by other federal agencies and in some instances by the federal courts. Census data as well as data from other parts of the Executive Branch suggest there is an undercount of at least 55 percent. Larger estimates that are still conservatively based on Indian Health Service numbers suggest that the Bureau's service population count for 1993 should be nearly tripled.
Funds for some federal Indian programs, such as programs for forestry management and land conservation, should not be distributed on the basis of population. Rather, distribution should depend on the presence or absence of resources as to which the federal government has a trust obligation. See infra.

Since California comprises an entire area of the BIA, it is possible to juxtapose the federal dollars that reach California Indians with the federal dollars that reach Indians in other parts of the country.

For references to and discussion of these reports, see Section II of this report.

Report of the Commissioner of Indian Affairs for 1866 at 94.


Loesch ascribed this policy to treaty provisions and to the inability of states to raise funds for benefit programs by taxing reservation lands. In fact, few Indian treaties prescribe the range of benefits provided under the Snyder Act. Furthermore, many Indians who live on reservations, such as members of California tribes, have no ratified treaties with the federal government.


See, e.g., 25 C.F.R. secs. 20.20(a)(3) (social services programs); 26.5 (employment assistance services); 31.1 (enrollment in BIA boarding schools). The Bureau's choice of "on or near" the reservation echoes legislation that Congress passed in 1956 regarding vocational training programs for Indians. The purpose of this statute, 25 U.S.C. sec. 309, is "to help adult Indians who reside on or near reservations to obtain reasonable and satisfactory employment." See 25 C.F.R. sec. 27.5 for the implementing eligibility criterion.

The criteria set forth are as follows:

1. Number of Indian people native to the reservation residing in the area,
2. A written designation by the tribal governing body that members of their tribe and family members who are Indian residing in the area are socially, culturally, and economically affiliated with their tribe and reservation,
3. Geographical proximity of the area to the reservation, and
4. Administrative feasibility of providing an adequate level of services to the area.

See 20 C.F.R. sec. 20.11(r).

Form 5-2119, Department of Interior, Bureau of Indian Affairs, December 1993.

See, e.g., 25 C.F.R. sec. 20.1(v). Many of the tribal members in Oklahoma had been given allotments of land, carved out of the reservation land base and placed in trust for a period of years, late in the nineteenth century. Although large numbers of these allotments found their way into non-Indiag ownership through fraud and tax sales, some continued in trust status even after the reservations were abolished.
13 Id.
14 The 1989 BIA service population for Oklahoma was 231,052, and the 1990 Census population for Oklahoma was 552,039.
15 This number was arrived at by compiling the number of Indians who identified themselves as belonging to an indigenous California tribe (49,254), and then adding to that number an appropriate fraction of all Indians from California who failed to report or specify their tribal affiliation (a total of 39,035). The fraction used was 25 percent, because 25 percent of all Indians in California who did identify their tribal affiliation indicated an indigenous California tribe. Adding 25 percent of 39,035 (9,758) to 49,254 yielded the figure of 59,011.
16 Since the Bureau began formally designating areas as "near" a reservation, no areas in California have secured that status. In counting service population, however, the Bureau does not seem to differentiate between "adjacent" areas that have been formally designated and those that have not.
17 To compile the service population data in California, the Bureau relies on forms filled out by the tribes themselves. Many of these tribes lack the staffing and expertise to conduct a thorough survey.
18 The Gabrielleo/Tongva tribe, for example, is an unrecognized group that is indigenous to the Los Angeles basin.
19 This affidavit was introduced into the Congressional Record by Senator Alan Cranston in 1971. Congressional Record S21328 (December 11, 1971).
20 Congressional Record S21327 (December 11, 1971).
21 Memorandum from Roderick H. Riley, Assistant to the Commissioner, to the Commissioner of Indian Affairs, May 13, 1971.
22 Memorandum from BIA Sacramento Area Director William Finale to the Commissioner of Indian Affairs, August 14, 1970.
24 1973 Interior Department Task Force, Ernest Stevens and John Jollie co-chairs at 33.
25 Memorandum from the Assistant Secretary, Indian Affairs to the Sacramento Area Director, January 31, 1984.
27 42 C.F.R. sec. 36.15(c).
28 Letter from Michael H. Trujillo, Director IHS to Carol Goldberg-Ambrose, November 18, 1995. Trujillo goes on to explain that service populations between census years are estimated by a smoothing or averaging technique in order to show a gradual transition between the two periods.
29 See IHS Circular 92–5.
30 56 Federal Register 26194 (June 6, 1991), codified at 45 C.F.R. sec. 98.80(9).
"The words "at least" are used because the 70,860 figure is from the 1990 census, and there may well have been some population growth or decline between 1990 and 1993.


**See, e.g.,** 25 C.F.R. sec. 40.1 (regarding eligibility for higher education grants and loans).

**See, e.g., Zarr v. Barlow,** 800 F.2d 1484 (9th Cir. 1986) (striking down the one-quarter degree blood quantum requirement for higher education grants and loans as applied to members of federally recognized tribes).

**See Section XIV of this report, infra.**

**35 F.3d 433 (9th Cir. 1994).**

**25 U.S.C. sec. 1679(b).**
IV. Land inequities

Since the treaties of the 1850s were not ratified by the Senate, the status of California Indian land was not clear for many years. Even the Treaty of Guadalupe Hidalgo, while providing some formal protections to lands granted under Spanish dominion, did not serve to protect Indian title during the American period. The Rancheria Act restored some land, and other land was acquired through Indian homesteads, which are still administered by the federal government. California Indians were only rarely allowed to keep significant parts of their former territories, and only a few reservations like Round Valley date from the last century. Although there are 104 reservations and rancherias in California, according to BIA sources in 1990, the California Indian land that remains in tribal hands amounts to 405,722.11 acres, while 58,065.39 acres are under individual Indian ownership, usually in the form of public domain allotments.

The question of how much land remains in the hands of California Indians is still a significant issue since much Indian policy and distribution of funds are determined by amount of lands. For example, many California Indian reservations and rancherias are too small to qualify for significant forestry funds. Nevertheless, the unusual history of dispossession of California Indian lands accounts for the small amounts of lands remaining or granted during the twentieth century. California Indians are forced to suffer double jeopardy, having lost most of their lands through irregular methods, and now having to suffer fewer federal administrative and budget considerations for having too little land. Having less land tends to penalize the California Indians not only in government policy and administration, but also in constraints on the possibilities of economic and community development.

The following table presents American Indian land ownership by area office, tribe, and individual, and per capita acres within area office region. Most individual land holdings are allotments and are still under federal trusteeship.

<table>
<thead>
<tr>
<th>Area</th>
<th>Tribal Land</th>
<th>Individual Land</th>
<th>Total Land</th>
<th>Per Capita Acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aberdeen</td>
<td>4,755,208</td>
<td>2,791,453</td>
<td>7,546,661</td>
<td>88.14</td>
</tr>
<tr>
<td>Albuquerque</td>
<td>4,494,538</td>
<td>74,264</td>
<td>4,568,802</td>
<td>52.81</td>
</tr>
<tr>
<td>Anadarko</td>
<td>40,686</td>
<td>435,550</td>
<td>476,236</td>
<td>12.94</td>
</tr>
<tr>
<td>Billings</td>
<td>3,997,604</td>
<td>3,969,261</td>
<td>7,966,865</td>
<td>248.78</td>
</tr>
<tr>
<td>Muskogee</td>
<td>68,324</td>
<td>589,783</td>
<td>658,107</td>
<td>3.32</td>
</tr>
<tr>
<td>Navajo</td>
<td>14,753,252</td>
<td>717,077</td>
<td>15,470,329</td>
<td>83.33</td>
</tr>
<tr>
<td>Eastern</td>
<td>516,881</td>
<td>0</td>
<td>516,881</td>
<td>15.79</td>
</tr>
<tr>
<td>Minneapolis</td>
<td>1,135,196</td>
<td>139,959</td>
<td>1,275,155</td>
<td>23.45</td>
</tr>
<tr>
<td>Phoenix</td>
<td>12,296,598</td>
<td>273,010</td>
<td>12,569,608</td>
<td>146.81</td>
</tr>
<tr>
<td>Portland</td>
<td>3,787,256</td>
<td>930,138</td>
<td>4,717,394</td>
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</tr>
<tr>
<td>Sacramento</td>
<td>405,172</td>
<td>58,065</td>
<td>463,237</td>
<td>17.30 (8.65)</td>
</tr>
<tr>
<td>Juneau</td>
<td>86,773</td>
<td>84,100</td>
<td>170,873</td>
<td>10.83</td>
</tr>
</tbody>
</table>

28
The total per capita acres is calculated by adding tribal land and individual land and dividing by the 1989 BIA Indian Service Population and Labor Force Estimates. Here only the estimated service populations for each area office are used. The total individual land ownership in 1990 was 9,862,661 acres, while 46,327,469 acres were in tribal hands. The total BIA service population for 1990 was 949,075 with individual and tribal land totaling 56,190,130, which figures yield a national per capita Indian land holding of 59.2 acres.

The Area Comparison of Indian Land Holdings table indicates several points. Californian Indians, within the Sacramento area office, with 463,237 acres of tribal and allotted land, have the smallest land base within the BIA system. Anadarko is second with 476,236 acres. In terms of per capita acres, California Indians have 17.30 acres. Juneau with 70.83, Anadarko with 12.94, Eastern with 15.79, and Muskogee with 3.32 all have fewer per capita acres for Indians than Californiabut, as was argued above in the analysis of service populations, California Indians have been systematically undercounted in the BIA service population estimates by one-half the more likely number. If we use this estimate, dividing the Californian Indian per capita acres by two, a better estimate of California per capita acres is 6.85 acres, which is far below the national average of 59.2 acres. If the latter figure is accepted as most likely accurate, then only the Muskogee area has fewer per capita acres for Indians than California.

The Muskogee figures are somewhat misleading because the state of Oklahoma has two area offices, Anadarko and Muskogee. Furthermore, both Anadarko and Muskogee area offices serve Indians outside of the state of Oklahoma. If the total per capita acreage for the Indians in the state of Oklahoma is calculated, then a comparison can be made with California Indians. In Oklahoma, the Muskogee area office administers 68,325 tribal acres and 589,005 individual acres, while serving 194,136 Indian. Also in Oklahoma, Anadarko area office administers 20,514 tribal acres, and 411,160 individual acres, while serving 33,816 Indians. Combining both Anadarko and Muskogee figures for the state of Oklahoma, the BIA administers 95,839 tribal acres and 1,000,165 individual acres, while serving 231,952 Oklahoma Indians. Using the latter figures for Oklahoma yields 4.73 acres per Oklahoma Indian.

Thus Oklahoma has the lowest number of acres of land per Indian person within the BIA system. California has estimated per capita land holdings about twice as much as Oklahoma. In a comparison of Oklahoma with Sacramento area office per capita funding for Operation of Indian Programs, the per capita funding rates for California Indians were $522.14 (1991), $749.40 (1992) and $700.30 (1994). Since we estimate that only half of California Indians are included in the BIA Service Population counts, "real" California per capita funding rates are $261.07 (1991), $374.70 (1992) and $350.15 (1994). Anadarko area has a higher per capita funding distribution: $308.03 (1991), $915.28 (1992), and $698.43 (1994). However, Muskogee area has lower per capita funding rates than California. The rates for Muskogee area are $175.50 (1991), $109.27 (1992), and $59.88 (1994). California Indians have one of the smallest per capita funding rates of all BIA areas, except for Muskogee, which has a very large service population of 222,956 in 1991 and 236,197 in 1993. At the same time, Indians in the Muskogee area have very little land, only an average of 3.32 acres per person.
Both California Indians and Muskogee area Indians are underfunded and have the smallest land bases of all BIA areas.

Eastern Oklahoma is the location were many Indian nations from east of the Mississippi River were forced to migrate under the 1830 Indian Removal Act. Between 1830 and 1877, many Indian communities and tribes were resettled in eastern Oklahoma, and at one time there was discussion of creating and admitting an Indian state to the Union. A very large amount of Indian land in eastern Oklahoma was allotted under the General Allotment Act of 1887, the Curtis Act of 1898, and various acts affecting tribal lands in Oklahoma. Most of the land was allotted to individuals, and many Indians subsequently lost their allotments to fraud, failure to pay taxes, or mortgage foreclosure. This process is described in Angie Debo's book *And Still the Water Run: The Betrayal of the Five Civilized Tribes* (1940). As a result, eastern Oklahoma has a large Indian population and relatively little land in trust status.

The ways and the extent to which Indians lost land in California differs greatly from the allotment process and statehood forged in Oklahoma. Unlike Oklahoma, where land was granted by treaty and later distributed by allotment, California Indian land treaties were not recognized, and only after considerable dispersal and population decline were small amounts of land granted to some California Indians. California Indians also suffered disproportionately from the Termination policy, in which forty-two reservations and rancherias were terminated from the early 1950s to as late as the early 1970s. So far 29 reservations and rancherias have been restored, but some are without land, and most others have only small parcels of land restored. Many other California Indian communities are yet to gain federal recognition and therefore do not have federally recognized trust land. The history of California over the past 150 years is full of efforts to deny California Indians land and community identity. As a consequence, California Indians have retained relatively little land, which inhibits community economic development and puts California Indians at a disadvantage in BIA distribution formulas. California Indians are suffering economic and federal aid losses owing to their historical dispossession of land, which is one of the worst in the nation.

Furthermore, the California land figures do not take into account the value of the land. Most California reservations and rancherias are very small. The few large reservations like Tule River with 55,536 acres of tribal land and Round Valley with 24,925 tribal acres and 5,612 acres of public domain allotments, in general, have very marginal land for agriculture or economic development purposes. In fact much of the land on Round Valley Reservation and Tule River Reservation is comprised of mountain tops and is very isolated from commerce and effective roadways. The largest land-based California reservations and rancherias are Tule River, Round Valley, Hoopa with 87,000 acres, Agua Caliente with 23,173 acres, Chemehuevi with 30,654 acres, Fort Mohave with 12,633 acres, Los Coyotes with 25,049 acres, La Jolla with 8,641 acres, Pala with 11,892 acres, Rincon with 4,275 acres, Santa Ysabel with 15,500 acres, Soboba with 5,915 acres, Fort Bidwell with 3,334, and Colorado River with 42,900 acres. The fourteen largest reservations and rancherias hold 354,939 acres or 76.6 percent of California Indian trust land. The remaining 90 reservations
and rancherias hold very small amounts of tribal land. For example, in the Central California Agency, 40 of 52 federally recognized tribes hold 200 or fewer acres of land. Most California Indian reservations and rancherias are very small, and are often located in marginal economic areas and with little access to commerce and regular traffic.

The reasons for the divergence in land retention between the Indians of various states can be explained only by the historical circumstances and actions taking place over the past two centuries. It is not our purpose to take up this issue here. However, Muskogee area and California both have histories of large-scale land dispossession, and both areas have the smallest per capita funding levels.

Summary
According to BIA figures, California Indians have one of the smallest per capita land bases and BIA funding levels of any BIA service area in the nation. Only Muskogee area Indians have less land and less funding per capita than California Indians. The historical dispossession of California Indian lands has caused considerable disruption and economic loss among California Indians. The severe history of California Indian land dispossession, however, is aggravated by one of the lowest per capita funding levels within the BIA system. In the case of the California and Muskogee area Indians, the two BIA service areas with the least land left in federal trust are also the two areas with the lowest per capita distribution of BIA funds.

California Indian land holdings are far below the national per capita average of 9.2 acres. Real California land holdings are estimated at 8.65 acres per person. In order to gain parity with other Indians, the California Indian land base needs augmentation of about seven times beyond the present level of 462,000 acres to 3,241,000 acres.
V. The Underfunding of California Indians by Federal Agencies

In our analysis of service population, we are conservatively estimating that the California Indian Service population is undercounted by at least 100 percent or is only half the "real" number. As we can see in 1973 the California Indian self-report was more than six times the BIA service population figure. Both numbers were reported in the BIA's Service Population and Labor Forces Statistics Report for 1973. Since we argue that California Indians have been systematically undercounted, we created an additional per capita statistic labeled "Real" Sacramento Per Capita. This statistic is in the column on the far right of all four BIA appropriations tables.

Funding data from the BIA were not available in directly comparable formats over the 1969-95 period, so we present four tables with internally comparable funding sources over the 1969-to-present period. The table V-2, "Sacramento BIA Allocations vs. National BIA Allocations," covers the 1969 to 1976 period. Here we calculated the per capita funding for the Sacramento area office compared with the per capita funding received by all other Indians living on or near a reservation, or in other words, the BIA reported service population. The table for the 1969-76 period suggests an erratic pattern with the California service population starting with 5,598 in 1969 and then declining and then rising to 6,230 by 1973. This erratic population figure for California is compounded by California self-reports that give much higher self-population numbers for California Indians over the 1969-73 years. Such service population self-reports range from 5,192 in 1970, compared to 2,053 used by the BIA, to 36,255 in 1973, compared to 6,230 used by the BIA. The 1973 self-reported California Indian population is six times the figures used by the BIA (see table V-1).

Table V-1
California Service Population Figures

<table>
<thead>
<tr>
<th>Year</th>
<th>Official BIA Count</th>
<th>Reported California Indian Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>1973</td>
<td>6,230</td>
<td>36,255</td>
</tr>
<tr>
<td>1972</td>
<td>3,344</td>
<td>42,847</td>
</tr>
<tr>
<td>1971</td>
<td>5,354</td>
<td>7,306</td>
</tr>
<tr>
<td>1969</td>
<td>5,598</td>
<td>5,874</td>
</tr>
<tr>
<td>1968</td>
<td>5,077</td>
<td></td>
</tr>
</tbody>
</table>

Source: BIA Indian Service Population and Labor Force Estimate

If we use BIA figures, then during the 1969-73 period, the service population is erratically reported, and in some years California Indians have significantly higher per capita shares of BIA funds. This occurs during 1970, 1972 and 1973. The "real" Sacramento per capita figures show that California Indians were systematically underfunded each year during the 1969-73 period.
# Table V-2

<table>
<thead>
<tr>
<th></th>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1969</td>
<td>$263,094,000</td>
<td>$2,005,000</td>
<td>.9% 456,520 5,598</td>
<td>$583,46</td>
<td>$358.16</td>
<td>$179.03</td>
<td>$1,204.09</td>
<td>$602.04</td>
</tr>
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<td>1970</td>
<td>$302,745,000</td>
<td>$2,472,000</td>
<td>.8% 477,458 2,053</td>
<td>$641.05</td>
<td>$735.52</td>
<td>$367.76</td>
<td>$1,737.44</td>
<td>$868.72</td>
</tr>
<tr>
<td>1971</td>
<td>$364,508,000</td>
<td>$3,928,000</td>
<td>1.1% 488,083 5,354</td>
<td>$758.16</td>
<td>$758.16</td>
<td>$367.76</td>
<td>$1,737.44</td>
<td>$868.72</td>
</tr>
<tr>
<td>1972</td>
<td>$439,685,000</td>
<td>$5,810,000</td>
<td>1.3% 533,744 3,344</td>
<td>$895.68</td>
<td>$758.16</td>
<td>$367.76</td>
<td>$1,737.44</td>
<td>$868.72</td>
</tr>
<tr>
<td>1973</td>
<td>$514,866,000</td>
<td>$9,924,000</td>
<td>1.9% 542,897 6,230</td>
<td>$1,016.23</td>
<td>$1,592.94</td>
<td>$794.47</td>
<td>$1,592.94</td>
<td>$794.47</td>
</tr>
<tr>
<td>1974</td>
<td>$583,838,000</td>
<td>$9,413,000</td>
<td>1.6%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1975</td>
<td>$691,317,000</td>
<td>$10,949,000</td>
<td>1.6%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1976</td>
<td>$867,601,000</td>
<td>$11,166,000</td>
<td>1.3%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---

1 Prepared by Mr. William D. Oliver, former Administrative Officer to the Sacramento Area, at the request of the Sacramento Area Indian Advisory Board. (Includes allocations to Central Office.)

2 All other Indian service population = National service population - Sacramento service population. All other Indian per capita gives the B.I.A. funding level for all non California Indians living on or near reservations.

32X reported Sacramento service population.
Table V-3, "Area Direct Operations & Tribal Priority Allocations," provides data on many of the years during the 1980s and 1995. This category of funding, representing only about one-third to one-half of BIA funding for tribal programs, shows that official BIA figures indicate that California Indians received about the same or somewhat better per capita funds. However, the "real" Sacramento per capita column shows that California Indians are underfunded by about one-third to one-half the funding level of all other BIA served Indians.

Table V-4, "Operation of Indian Programs," contains the most comprehensive budget information and is probably the best indication of relative distribution of BIA funds. This table provides data for the 1991, 1992, and 1994, and indicates that California Indians received less per capita funding than all other Indians, except in 1994. However, by proceeding with our calculation that California Indians are undercounted by a factor of 100 percent, then the "real" Sacramento per capita funding level is about one-quarter to one-half the funding level of all other Indians served by the BIA. California Indians are greatly disadvantaged by the present distribution of BIA funds. These data indicate that California Indian funding would have to be at least double the present funding levels in order to approach parity funding with all other Indians.

Table V-5, "BIA, Total Obligations for Funds 31000-39009," since 1993 contains programs such as annual recurring programs, education, other recurring programs, annual non-recurring programs, central office operations, area office operations, special programs, and tribal priority allocations. Data are supplied for 1992-1995, and only those funds allocated to the area offices are considered in the table. Funds allocated to central office administration are not present in the table. This table shows California Indians doing relatively well with per capita funding rates above that of all other Indians in the years '92, 1994, and 1995. Nevertheless, when taking into consideration the chronic undercount of California Indians, then the "real" per capita distribution of 31000-39009 funds is about 45 percent below those of other Indians served by the BIA.

Although all four BIA budget tables are not quite comparable owing to changing BIA budget reporting methods, the data show a clear pattern of chronic underfunding of California Indian programs and area office support. The BIA has underfunded California Indians since the 1970s. The four tables indicate that California Indians are underfunded by the BIA at rates of 45 percent or higher. The underfunding of California Indian programs is hidden by the undercount of the California Indian service population. Correcting this undercount yields the "real" Sacramento per capita and more correctly displays the chronic underfunding of California Indians. California Indians suffer BIA funding inequities that will require increases in overall funding of about 90 percent.

Selected BIA Programs

A look at the funding levels of several BIA programs and a comparison of Sacramento area's share will provide more information about funding patterns for California
### Table V-3

**Area Direct Operations & Tribal Priority Allocations**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1982</td>
<td>$355,620,500</td>
<td>$12,980,000</td>
<td>3.6%</td>
<td>786,019</td>
<td>25,263</td>
<td>$333.83</td>
<td>$401.24</td>
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<tr>
<td>1985</td>
<td>$272,530,900</td>
<td>$10,136,690</td>
<td>3.7%</td>
<td>786,019</td>
<td>25,263</td>
<td>$307.90</td>
<td>$351.36</td>
</tr>
<tr>
<td>1986</td>
<td>$250,893,900</td>
<td>$8,876,900</td>
<td>3.5%</td>
<td>861,570</td>
<td>27,823</td>
<td>$341.02</td>
<td>$350.06</td>
</tr>
<tr>
<td>1987</td>
<td>$303,549,900</td>
<td>$9,739,700</td>
<td>3.2%</td>
<td>861,570</td>
<td>27,823</td>
<td>$331.43</td>
<td>$341.23</td>
</tr>
<tr>
<td>1988</td>
<td>$297,664,800</td>
<td>$12,117,300</td>
<td>4.1%</td>
<td>949,075</td>
<td>28,15</td>
<td>$312.66</td>
<td>$341.23</td>
</tr>
<tr>
<td>1989</td>
<td>$287,732,800</td>
<td>$9,832,600</td>
<td>3.4%</td>
<td>1,183,967</td>
<td>45,568</td>
<td>$356.08</td>
<td>$350.59</td>
</tr>
<tr>
<td>1995</td>
<td>$405,359,600</td>
<td>$15,975,700</td>
<td>3.9%</td>
<td>1,183,967</td>
<td>45,568</td>
<td>$356.08</td>
<td>$350.59</td>
</tr>
</tbody>
</table>

---

4 B.I.A. Budget Documents.

1 All other Indian service population = National service population - Sacramento service population. All other Indian per capita gives the B.I.A. funding level for all non California Indians living on or near reservations.

2X reported Sacramento service population.

3 Tentative figure.

4 Tentative figure.

5 1993 National and Sacramento service population statistics.
## Table V-4

### Operation of Indian Programs

<table>
<thead>
<tr>
<th>Year</th>
<th>Area Office Direct</th>
<th>Sac. Alloc.</th>
<th>Sac. % of Alloc.</th>
<th>Nat. Serv. Pop.</th>
<th>Sac. Service Pop.</th>
<th>All Other Indians Per Capita</th>
<th>Sac. Per Capita</th>
<th>&quot;Real&quot; Sac. Per Capita</th>
</tr>
</thead>
<tbody>
<tr>
<td>1991</td>
<td>$1,122,356,059</td>
<td>$19,063,943</td>
<td>1.7%</td>
<td>1,001,441</td>
<td>36,511</td>
<td>$1,143.30</td>
<td>$722.14</td>
<td>$261.07</td>
</tr>
<tr>
<td>1992</td>
<td>$1,069,489,237</td>
<td>$27,301,163</td>
<td>2.6%</td>
<td>1,001,441</td>
<td>36,511</td>
<td>$1,068.62</td>
<td>$749.40</td>
<td>$374.70</td>
</tr>
<tr>
<td>1993</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1994</td>
<td>$ 804,933,411</td>
<td>$31,511,221</td>
<td>3.96%</td>
<td>1,183,967</td>
<td>45,568</td>
<td>$ 679.04</td>
<td>$700.30</td>
<td>$350.15</td>
</tr>
</tbody>
</table>

Source: BIA Central Office and Sacramento Area Office

*The Area Office Direct allocation includes Operation of Indians Programs less Central Office and Central Schools Allocations.*
### Table V-5

**BIA Division of Accounting Management**

<table>
<thead>
<tr>
<th>Year</th>
<th>Area Office Direct</th>
<th>Service Pop.</th>
<th>Nat. Pop.</th>
<th>% of Alloc.</th>
<th>Service Afl.</th>
<th>% of Service Afl.</th>
<th>Service Afl. Per Capita</th>
<th>Nat. Afl.</th>
<th>Nat. Afl. Per Capita</th>
<th>All Ind. Afl. Per Capita</th>
<th>&quot;Past&quot; Service Afl. Per Capita</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992</td>
<td>$16,987,818</td>
<td>1,007,906</td>
<td>1,007,906</td>
<td>4.2%</td>
<td>$6,387,479</td>
<td>4.2%</td>
<td>$6,387,479</td>
<td>$6,387,479</td>
<td>4.2%</td>
<td>$6,387,479</td>
<td>$6,387,479</td>
</tr>
<tr>
<td>1993</td>
<td>$36,170,369</td>
<td>1,007,906</td>
<td>1,007,906</td>
<td>4.2%</td>
<td>$15,366,369</td>
<td>4.2%</td>
<td>$15,366,369</td>
<td>$15,366,369</td>
<td>4.2%</td>
<td>$15,366,369</td>
<td>$15,366,369</td>
</tr>
<tr>
<td>1994</td>
<td>$31,806,666</td>
<td>1,007,906</td>
<td>1,007,906</td>
<td>4.2%</td>
<td>$13,806,666</td>
<td>4.2%</td>
<td>$13,806,666</td>
<td>$13,806,666</td>
<td>4.2%</td>
<td>$13,806,666</td>
<td>$13,806,666</td>
</tr>
<tr>
<td>1995</td>
<td>$272,257,969</td>
<td>1,007,906</td>
<td>1,007,906</td>
<td>4.2%</td>
<td>$111,806,666</td>
<td>4.2%</td>
<td>$111,806,666</td>
<td>$111,806,666</td>
<td>4.2%</td>
<td>$111,806,666</td>
<td>$111,806,666</td>
</tr>
</tbody>
</table>

**Source:** BIA Central Office

The Area Office Direct allocation includes all 3100-39009 funds obligated to area offices.
Indians. The attached tables present multi-year funding data for adult vocational training and adult education both of which confirm the pattern of underfunding for California Indians. Each of the latter programs are critical to the future of California Indians and to their ability to preserve law and order and self-government. For funding inequities in law enforcement and tribal courts, general welfare, education, and administration, see sections VIII, VII, IX, and VI of this report.

Table V-6, "Adult Vocational Allocations," shows funding for adult education programs over the 1985-89 and 1991 years. Official BIA figures indicate that California Indians have been receiving adult vocational funding at a rate of nearly twice the national BIA adult vocational average. This shows that the BIA has probably targeted California as one area where adult vocational education is in significant need, and therefore intends to support California Indian adult education with above average funding levels. However, if the undercount of 100 percent is factored into the table, the "real" Sacramento per capita adult vocational funding level is smaller than the national average in every year for which we have data, except 1986, when Sacramento's per capita allocation was $22.28, while the national average was $19.69 per person. In 1991, the national average was $16.71 per person, while the "real" Sacramento average was $12.04 per year. Although in the middle 1980s, California Indian adult vocational allocations were slightly better than the national average allocations, by the 1990s those same allocations dropped to about 25 percent below the national average allocation. California Indians, while most likely a target for higher levels of BIA funding, have suffered somewhat less funding than other Indians, when taking into account the California Indian service population undercount. Based on the last available funding figures, California Indians need an increase in funding of about 25 percent to match the BIA average per capita distribution in adult vocational training program funding.

Table V-7, "Adult Education Allocations," bears out a mixed funding pattern. Official BIA funding levels indicate that California Indians have been singled out by the BIA for special above-average funding levels in adult education programs. For the years 1985-1989 and 1991, official BIA figures show that California Indians received higher per capita funding for adult education programs than other BIA served Indians. California Indian allocations are two to three times larger than the average adult education allocation for other areas. When we calculate in the systematic California Indian undercount, than the "real" Sacramento adult education allocations are greater than the national average in 1985, 87, 88, and 89, but less in 1985 and 1991. The last year with data indicates that in 1991 the BIA gave less emphasis to adult education programs in California, since the "real" Sacramento adult education allocation was $2.72 per person and the national average was $3.28 per person. Although more data for the 1992-95 period would be helpful at this point, the early 1990s were a period when California Indians were given less emphasis for adult education programs. The BIA may have decided to give California Indians last favored funding status in adult education programs. However, since the California Indians are undercounted, the decision to provide California with less, but still favored, funding resulted in 1961 in the underfunding of California Indian adult education programs by about 15 percent.

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### Table V-6

Sacramento Adult Vocational Training Allocations

VS.

National B.I.A. Adult Vocational Allocations

<table>
<thead>
<tr>
<th>Year</th>
<th>Nat. A.V. Alloc</th>
<th>Sac. A.V. Alloc</th>
<th>Nat. Serv Pop</th>
<th>Sac. Serv Pop</th>
<th>% of Nat. Alloc</th>
<th>Nat. Per Cap</th>
<th>Sac. Per Cap</th>
<th>&quot;Red&quot; Sac. Per Cap</th>
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</thead>
<tbody>
<tr>
<td>1981</td>
<td>$15,548,500</td>
<td>$1,285,000</td>
<td></td>
<td></td>
<td>8.3%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1982</td>
<td>$16,595,800</td>
<td>$1,220,700</td>
<td></td>
<td></td>
<td>7.4%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1983</td>
<td>$15,551,600</td>
<td>$1,179,100</td>
<td></td>
<td></td>
<td>7.6%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1984</td>
<td>$20,189,600</td>
<td>$1,183,800</td>
<td></td>
<td></td>
<td>5.9%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1985</td>
<td>$15,474,800</td>
<td>$1,125,800</td>
<td>786,019</td>
<td>25,263</td>
<td>7.3%</td>
<td>$19.69</td>
<td>$44.56</td>
<td>$22.28</td>
</tr>
<tr>
<td>1986</td>
<td>$18,211,000</td>
<td>$1,039,200</td>
<td>786,019</td>
<td>25,263</td>
<td>5.7%</td>
<td>$23.17</td>
<td>$41.14</td>
<td>$20.57</td>
</tr>
<tr>
<td>1987</td>
<td>$17,021,900</td>
<td>$1,038,100</td>
<td>861,570</td>
<td>27,823</td>
<td>6.1%</td>
<td>$19.76</td>
<td>$37.31</td>
<td>$18.65</td>
</tr>
<tr>
<td>1988</td>
<td>$18,367,600</td>
<td>$990,500</td>
<td>861,570</td>
<td>27,823</td>
<td>5.4%</td>
<td>$21.32</td>
<td>$35.60</td>
<td>$17.80</td>
</tr>
<tr>
<td>1989</td>
<td>$17,853,600</td>
<td>$1,079,100</td>
<td>949,075</td>
<td>28,815</td>
<td>6.0%</td>
<td>$18.81</td>
<td>$37.45</td>
<td>$18.72</td>
</tr>
<tr>
<td>1990</td>
<td>$17,422,000</td>
<td>$938,000</td>
<td>949,075</td>
<td>28,815</td>
<td>5.4%</td>
<td>$18.36</td>
<td>$32.55</td>
<td>$16.28</td>
</tr>
<tr>
<td>1991</td>
<td>$16,732,200</td>
<td>$878,900</td>
<td>1,001,441</td>
<td>36,511</td>
<td>5.3%</td>
<td>$16.71</td>
<td>$24.07</td>
<td>$12.04</td>
</tr>
<tr>
<td>1992</td>
<td>$18,060,000</td>
<td>$858,000</td>
<td>1,001,441</td>
<td>36,511</td>
<td>5.3%</td>
<td>$18.03</td>
<td>$23.50</td>
<td>$11.75</td>
</tr>
<tr>
<td>1993</td>
<td>$16,796,000</td>
<td>$854,000</td>
<td>1,183,967</td>
<td>45,568</td>
<td>5.1%</td>
<td>$14.17</td>
<td>$18.74</td>
<td>$9.37</td>
</tr>
<tr>
<td>1994</td>
<td>$15,547,000</td>
<td>$834,000</td>
<td>1,183,967</td>
<td>45,568</td>
<td>5.4%</td>
<td>$13.13</td>
<td>$18.30</td>
<td>$9.15</td>
</tr>
<tr>
<td>1995</td>
<td>$15,597,000</td>
<td>$869,000</td>
<td>1,183,967</td>
<td>45,568</td>
<td>5.6%</td>
<td>$13.17</td>
<td>$19.07</td>
<td>$9.54</td>
</tr>
</tbody>
</table>

Source = Documents from Bureau of Indian Affairs Central Office.
### Table V-7

<table>
<thead>
<tr>
<th>Year</th>
<th>Nat. A.F. Alloc</th>
<th>Sac. A.F. Alloc</th>
<th>Nat. Serv Pop</th>
<th>Sac. Serv Pop</th>
<th>% of Nat. Alloc</th>
<th>Nat. Per Cap</th>
<th>Sac. Per Cap</th>
<th>&quot;Real&quot; Sac. Per Cap</th>
</tr>
</thead>
<tbody>
<tr>
<td>1981</td>
<td>$4,784,800</td>
<td>$557,500</td>
<td>786,019</td>
<td>25,263</td>
<td>11.7%</td>
<td>$3.29</td>
<td>$5.45</td>
<td>$2.72</td>
</tr>
<tr>
<td>1982</td>
<td>$4,382,700</td>
<td>$512,800</td>
<td>786,019</td>
<td>25,263</td>
<td>11.7%</td>
<td>$3.29</td>
<td>$4.45</td>
<td>$6.67</td>
</tr>
<tr>
<td>1983</td>
<td>$3,392,700</td>
<td>$241,300</td>
<td>861,570</td>
<td>27,823</td>
<td>7.1%</td>
<td>$3.77</td>
<td>$8.97</td>
<td>$4.49</td>
</tr>
<tr>
<td>1984</td>
<td>$3,416,600</td>
<td>$284,700</td>
<td>861,570</td>
<td>27,823</td>
<td>8.3%</td>
<td>$3.54</td>
<td>$9.57</td>
<td>$4.79</td>
</tr>
<tr>
<td>1985</td>
<td>$2,588,600</td>
<td>$137,600</td>
<td>940,075</td>
<td>28,815</td>
<td>9.6%</td>
<td>$3.34</td>
<td>$8.84</td>
<td>$4.42</td>
</tr>
<tr>
<td>1986</td>
<td>$3,501,000</td>
<td>$336,800</td>
<td>1,001,441</td>
<td>36,511</td>
<td>6.0%</td>
<td>$3.28</td>
<td>$5.45</td>
<td>$2.72</td>
</tr>
<tr>
<td>1987</td>
<td>$3,248,500</td>
<td>$249,600</td>
<td>861,570</td>
<td>27,823</td>
<td>7.7%</td>
<td>$3.77</td>
<td>$8.97</td>
<td>$4.49</td>
</tr>
<tr>
<td>1988</td>
<td>$3,046,400</td>
<td>$266,300</td>
<td>861,570</td>
<td>27,823</td>
<td>8.7%</td>
<td>$3.54</td>
<td>$9.57</td>
<td>$4.79</td>
</tr>
<tr>
<td>1989</td>
<td>$3,171,700</td>
<td>$254,800</td>
<td>940,075</td>
<td>28,815</td>
<td>8.0%</td>
<td>$3.34</td>
<td>$8.84</td>
<td>$4.42</td>
</tr>
<tr>
<td>1991</td>
<td>$3,288,000</td>
<td>$199,000</td>
<td>1,001,441</td>
<td>36,511</td>
<td>6.0%</td>
<td>$3.28</td>
<td>$5.45</td>
<td>$2.72</td>
</tr>
</tbody>
</table>

Source: Documents from Bureau of Indian Affairs Central Office.
The Indian Health Service in California

Compared with the BIA, the IHS has adopted a more inclusive definition of Indian eligibility for its programs. In fact, the IHS service population numbers approximate the "real" Sacramento area service population, since it is about double the official BIA service population figures. The 1994 and 1995 IHS service population figures, however, are significantly higher than double the latest available 1993 BIA service population estimates, again indicating that California Indians suffer significant undercounts compared to the IHS method of determining eligibility for services.

IHS has a history of underserving California Indians. In behalf of California Indians, members of Rincon Reservation sued the IHS for neglecting to provide funding levels comparable to other service areas within IHS-Department of Health & Human Services. The Rincon plaintiffs won their case and California Indians were to have a more equitable share of the IHS budget. Table V-8 shows IHS budget obligations to all areas for 1983 to 1995. For purposes of comparing area direct funding, budget obligations for the IHS headquarters, Albuquerque headquarters, and regional offices were withdrawn from the Distribution to Areas column. The IHS figures in Table V-8 represent a wide range of health services including federal health administration, tribal health administration, clinical services, contract care, preventive health, urban health, reimbursements, and Medicare collections. Clinical services include programs such as hospitals and clinics, dental services, mental health, alcoholism programs, and funds for maintenance and repair of clinical services facilities. Preventive health funding provides for programs in sanitation, public health nursing, health education, community health representatives, and immunization. The IHS also funds programs in urban health, Indian health manpower, tribal management, and funds for direct operations. Table V-8 indicates that California Indians continued to suffer systematic and chronic underfunding of health services. California Indians suffer underfunding in the range of 30-45 percent for most years. The best year for California Indians is 1995, but during that year the California IHS budget was swelled by special grants totaling $12,277,280. IHS headquarters east awarded the Hoopa Valley Compact $4,699,013, while the Southern Indian Health Council received $1,708,286, and other California tribes were awarded $5,879,181 in health care grants. Health care compacts are not part of the base funding for California tribes and are granted on an annual basis, so the base IHS funding for California is $78,509,019, instead of $90,786,299. Using the base figures, then, California Indian IHS per capita funding equals $678.96. This figure falls 29 percent short of the national IHS per capita distribution.

Despite Rincon's legal efforts to induce the IHS to distribute health funds more equitably to California Indians, the IHS continues to significantly underfund health services in California. California Indians need overall funding increases of 50 percent, or more in order to gain parity with the average funding levels enjoyed by the IHS Indian service population.
<table>
<thead>
<tr>
<th></th>
<th>Distribution to Areas</th>
<th>CA Obligations</th>
<th>National Serv. Pop.</th>
<th>CA Serv. Pop</th>
<th>Nat. Per Cap.</th>
<th>CA Per Cap.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1988</td>
<td>934,111,838</td>
<td>37,401,527</td>
<td>1,036,121</td>
<td>80,595</td>
<td>899.81</td>
<td>464.06</td>
</tr>
<tr>
<td>1989</td>
<td>1,014,622,581</td>
<td>40,953,447</td>
<td>1,073,886</td>
<td>83,128</td>
<td>944.81</td>
<td>492.66</td>
</tr>
<tr>
<td>1990</td>
<td>1,160,940,435</td>
<td>51,319,454</td>
<td>1,102,001</td>
<td>85,818</td>
<td>1,053.48</td>
<td>598.00</td>
</tr>
<tr>
<td>1991</td>
<td>1,368,743,131</td>
<td>62,984,674</td>
<td>1,131,013</td>
<td>88,657</td>
<td>1,210.19</td>
<td>710.43</td>
</tr>
<tr>
<td>1992</td>
<td>1,411,481,820</td>
<td>65,695,862</td>
<td>1,160,896</td>
<td>91,652</td>
<td>1,215.86</td>
<td>716.80</td>
</tr>
<tr>
<td>1993</td>
<td>1,180,208,540</td>
<td>66,245,775</td>
<td>1,160,896</td>
<td>91,652</td>
<td>1,016.64</td>
<td>722.80</td>
</tr>
<tr>
<td>1994</td>
<td>1,577,603,767</td>
<td>77,975,612</td>
<td>1,339,678</td>
<td>113,465</td>
<td>1,177.60</td>
<td>687.22</td>
</tr>
<tr>
<td>1995</td>
<td>1,313,355,569</td>
<td>90,786,299</td>
<td>1,376,415</td>
<td>115,632</td>
<td>954.19</td>
<td>785.13</td>
</tr>
</tbody>
</table>

Source: Indian Health Service, Department of Health & Human Services, Rockville, MD.

1 The figures in this column represent the total IHS obligations to all areas less budget obligations to Headquarters, Albuquerque Headquarters and regional offices.

* California obligations for 1990 include $2,152,077 in grants and cooperative agreements awarded to CA Indian tribes.

* California obligations for 1992 include $1,455,809 in grants and cooperative agreements awarded to CA Indian tribes.

* California obligations for 1993 include $3,676,184 in grants and cooperative agreements awarded to CA Indian tribes.

* California obligations for 1994 include $1,455,809 in grants and cooperative agreements awarded to CA Indian tribes.

* National IHS service population figures for 1993 were unavailable and so the figures for 1993 are used in the table.

* California IHS service population figures for 1993 were unavailable and so the figures for 1993 are used in the table.

* California IHS obligations for 1993 include $12,277,280 in grants and cooperative agreements awarded to CA Indian tribes.
HUD provided funding and housing unit data on Indian housing programs for a six-year period from 1980 through 1995. During this period, HUD approved a total of 42,133 housing units, and 1,909 units were in California. At this rate, California Indian tribes gained approval to build 119.3 houses per year, an average that is far below the stated need of California Indians, most of whom believe that significant portions of their communities suffer from chronically substandard housing. Starting in 1982 through 1995, HUD Indian housing programs spent $33,423,346,445 nationwide; California’s share was $202,243,285. California Indian HUD programs averaged total funding of $12,646,830.31 per year. On average, California Indian housing programs were granted $106,008.64 per approved housing unit.

Table V-9 presents HUD Indian program funding levels for 1980 through 1995. HUD uses the BIA service population figures; according to these figures California Indian housing programs have done better than the national per capita funding rate in 15 of 16 years. The apparent overfunding of California Indian housing programs, according to official BIA figures, indicates that HUD Indian housing program officials supported a concerted effort to provide California Indians with a relatively disproportionate advantage in housing funds. This effort might reflect the knowledge and understanding that HUD officials had about the housing needs of California Indians. By shifting funds toward California, HUD officials tried to alleviate the distressful housing conditions of many California Indians living near or on reservations or rancherias.

When considering that BIA service population figures contain an undercount bias of at least 100 percent (see section III), then “real” California per capita HUD funding shares fall below national rates 11 out of 16 years. Nevertheless, in the five years that California HUD Indian housing program funding is greater than the national per capita rate, California Indian housing funding levels are often significantly larger. California Indian HUD programs were funded at greater rates than the national levels in 1990, 1992, 1993, 1995, and 1991. Thus the concentration of higher California Indian housing funds came in the early 1990s, while “real” California per capita funding has exceeded the national average only once in the last ten years. According to “real” California per capita figures, California Indians over the past decade have been systematically underfunded in Indian housing programs.

Summary

Over the past decade, the BIA, IHS, and HUD chronically and significantly underfunded California Indian programs, when compared with Indian programs elsewhere. Although funding levels and inequities vary from year to year, restoring California Indian programs to funding levels comparable to Indians in other states will require significant funding increases. Increased BIA, IHS, and HUD funding, however, while helping to restore funding equity, will do little to rectify past years of chronic under-service. California Indians should be compensated for past years of underfunding.
<table>
<thead>
<tr>
<th>Year</th>
<th>HUD Total Reserved Funds</th>
<th>CA Reserved Funds</th>
<th>BIA Serv. Pop.¹</th>
<th>CA Serv. Pop.</th>
<th>HUD Per Capita</th>
<th>CA Per Capita</th>
<th>&quot;Real&quot; CA Per Capita</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980</td>
<td>372,622,027</td>
<td>13,407,251</td>
<td>648,683²</td>
<td>10,121</td>
<td>574.43</td>
<td>1,324.70</td>
<td>662.35</td>
</tr>
<tr>
<td>1981</td>
<td>216,004,681</td>
<td>6,536,249</td>
<td>648,683</td>
<td>10,121</td>
<td>332.99</td>
<td>645.81</td>
<td>322.41</td>
</tr>
<tr>
<td>1982</td>
<td>213,011,516</td>
<td>13,641,770</td>
<td>648,683</td>
<td>10,121</td>
<td>328.38</td>
<td>1,347.87</td>
<td>673.93</td>
</tr>
<tr>
<td>1983</td>
<td>147,396,911</td>
<td>10,193,830</td>
<td>648,683</td>
<td>10,121</td>
<td>227.22</td>
<td>1,007.20</td>
<td>503.60</td>
</tr>
<tr>
<td>1984</td>
<td>156,500,639</td>
<td>2,529,201</td>
<td>648,683</td>
<td>10,121</td>
<td>241.26</td>
<td>249.90</td>
<td>124.90</td>
</tr>
<tr>
<td>1985</td>
<td>118,611,385</td>
<td>11,980,423</td>
<td>786,019</td>
<td>25,263</td>
<td>150.90</td>
<td>474.23</td>
<td>237.12</td>
</tr>
<tr>
<td>1986</td>
<td>129,362,983</td>
<td>8,050,493</td>
<td>786,019</td>
<td>25,263</td>
<td>164.58</td>
<td>318.67</td>
<td>159.33</td>
</tr>
<tr>
<td>1987</td>
<td>268,155,362</td>
<td>15,741,327</td>
<td>861,570</td>
<td>27,823</td>
<td>311.24</td>
<td>565.77</td>
<td>282.88</td>
</tr>
<tr>
<td>1988</td>
<td>232,935,363</td>
<td>10,609,247</td>
<td>861,570</td>
<td>27,823</td>
<td>270.36</td>
<td>381.31</td>
<td>190.66</td>
</tr>
<tr>
<td>1989</td>
<td>126,489,299</td>
<td>6,187,364</td>
<td>949,075</td>
<td>28,815</td>
<td>133.28</td>
<td>214.73</td>
<td>107.36</td>
</tr>
<tr>
<td>1990</td>
<td>246,969,802</td>
<td>9,329,780</td>
<td>949,075</td>
<td>28,815</td>
<td>259.93</td>
<td>325.78</td>
<td>161.89</td>
</tr>
<tr>
<td>1991</td>
<td>235,668,221</td>
<td>32,858,902</td>
<td>1,001,441</td>
<td>36,511</td>
<td>235.33</td>
<td>899.97</td>
<td>449.99</td>
</tr>
<tr>
<td>1992</td>
<td>254,862,020</td>
<td>11,768,554</td>
<td>1,001,441</td>
<td>36,511</td>
<td>254.44</td>
<td>322.88</td>
<td>161.44</td>
</tr>
<tr>
<td>1993</td>
<td>253,756,255</td>
<td>6,566,317</td>
<td>1,183,967</td>
<td>45,568</td>
<td>214.32</td>
<td>187.99</td>
<td>93.99</td>
</tr>
<tr>
<td>1995</td>
<td>270,100,371</td>
<td>19,621,864</td>
<td>1,183,967</td>
<td>45,568</td>
<td>228.21</td>
<td>430.60</td>
<td>215.33</td>
</tr>
</tbody>
</table>


¹ HUD uses BIA service population figures for administering its Indian Housing programs.

² The BIA service population figures for 1980-84 are not available. The figures used in the column for 1980-1984 are the most recently available 1977 figures.

³ At the time of writing this report, BIA service population figures for 1995 were not available.
VI. The Unequal Administrative Attention Given To California Indians by the BIA

Over the last two decades the BIA has been downsizing. The number of administrative personnel has declined from about 16,000 to between 10,000 and 11,000 in recent years. The BIA has experienced cutbacks in funding in real terms, as outlays of funding have not kept pace with inflation. Furthermore, the BIA, under the policy of self-determination, has been shifting some personnel positions to agencies and tribal governments. Nevertheless, recent statistics for 1992 show that California Indians are served by one of the lowest per capita BIA employee ratios and the lowest administrative square footage of any area office.

BIA Personnel Distribution by Area

BIA personnel are distinguished between education and non-education personnel. Most areas have many personnel working in education, and most are teachers or education support staff. Forty-six percent of BIA staff are involved in education, although some areas such as Juneau, Billings, Minneapolis, Muskogee, and Eastern report very few education personnel. The distribution of BIA personnel by area office is given below for the year 1992. In order to calculate the 1992 per capita distribution of BIA employees, the 1991 BIA Indian service population figures were used. The BIA calculates the service population every other year on the odd years.

<table>
<thead>
<tr>
<th>BIA Employees</th>
<th>Per Capita BIA Employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aberdeen</td>
<td>1,794</td>
</tr>
<tr>
<td>Albuquerque</td>
<td>1,052</td>
</tr>
<tr>
<td>Anadarko</td>
<td>432</td>
</tr>
<tr>
<td>Eastern</td>
<td>152</td>
</tr>
<tr>
<td>Juneau</td>
<td>232</td>
</tr>
<tr>
<td>Billings</td>
<td>1,069</td>
</tr>
<tr>
<td>Phoenix</td>
<td>2,017</td>
</tr>
<tr>
<td>Minneapolis</td>
<td>295</td>
</tr>
<tr>
<td>Muskogee</td>
<td>225</td>
</tr>
<tr>
<td>Navajo</td>
<td>4,226</td>
</tr>
<tr>
<td>Portland</td>
<td>1,207</td>
</tr>
<tr>
<td>Sacramento</td>
<td>255</td>
</tr>
</tbody>
</table>

The areas with the smallest per capita BIA employees are Eastern, Juneau, Minneapolis, Muskogee, and Sacramento. Sacramento has .007 BIA employees per person, but since we estimate that California Indians are undercounted by at least one-half, California's rate is better estimated as .0035. Aberdeen, Albuquerque, Anadarko, Billings, Phoenix, Navajo and Portland all have significantly higher per capita BIA employees than the other areas. After accounting for population

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differences, BIA employee distribution among the area offices is very uneven, with the favored areas getting more than four to six times the rate of BIA employees than the smaller group. Sacramento is among the under-served areas, and only Muskogee and Juneau have per capita BIA ratios less than California Indians.

Administrative Space By Area

An indirect measure of administrative attention and capability is the amount of square footage of office space maintained by an organization, or in this case by the BIA. The BIA maintains living quarters, schools, and non-education buildings to carry out its mission. For the year 1992, we have square footage data for BIA education and non-education purposes. After excluding quarters and non-maintained buildings, the BIA areas collectively maintained 18,490,736 square feet of building space. Education buildings comprised 86 percent of the total building space maintained by the BIA areas. The Sacramento area maintained no space in education buildings. Juneau was the only other BIA area that did not maintain education buildings. Of all the areas, Sacramento had the smallest amount of building space, and the least per capita square footage serving its Indian population.

<table>
<thead>
<tr>
<th>1992 Area</th>
<th>Square Footage</th>
<th>Per Capita Square Footage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aberdeen</td>
<td>4,018,880</td>
<td>45</td>
</tr>
<tr>
<td>Anadarko</td>
<td>264,788</td>
<td>7</td>
</tr>
<tr>
<td>Billings</td>
<td>611,491</td>
<td>16</td>
</tr>
<tr>
<td>Juneau</td>
<td>99,403</td>
<td>1</td>
</tr>
<tr>
<td>Minneapolis</td>
<td>561,316</td>
<td>10</td>
</tr>
<tr>
<td>Muskogee</td>
<td>375,799</td>
<td>2</td>
</tr>
<tr>
<td>Phoenix</td>
<td>2,088,666</td>
<td>23</td>
</tr>
<tr>
<td>Sacramento</td>
<td>18,160</td>
<td>0.5 (0.25)</td>
</tr>
<tr>
<td>Albuquerque</td>
<td>1,381,436</td>
<td>28</td>
</tr>
<tr>
<td>Navajo</td>
<td>7,069,317</td>
<td>43</td>
</tr>
<tr>
<td>Portland</td>
<td>1,014,293</td>
<td>12</td>
</tr>
<tr>
<td>Eastern</td>
<td>987,187</td>
<td>24</td>
</tr>
<tr>
<td>Total</td>
<td>18,490,736</td>
<td>Average 18.5</td>
</tr>
</tbody>
</table>

Sacramento area has the lowest BIA administrative square footage and the lowest per capita square footage of all BIA areas. Sacramento has one-half square foot of building per California Indian, but taking into account the undercount of California Indians by 100 percent, then Sacramento area square footage drops to 0.25 per person. BIA administrative space for California Indians is only 1/74th of the national average for all areas. Only Juneau and Muskogee, both of which have small administrative space, come near the California figure. The absence of administrative space is one indirect measure of the attention that the BIA has given to working out the problems and issues of the California Indians. These data indicate that California
Indians are the least administratively served Indians within the BIA.

Summary

California Indians suffer one of the lowest ratios of BIA employees to Indian service population, and Sacramento area has the smallest administrative building space of all BIA areas. With relatively few BIA personnel and little administrative space, California Indians are among the least served, if not the least served, Indian groups in the nation. Low levels of personnel and inadequate space most likely inhibit BIA officials and tribal leaders from effectively addressing the administrative, social, and economic issues that confront all California Indian communities.
Introduction

Before Congress enacted the Snyder Act of 1921, the federal government appropriated funds to Bureau of Indian Affairs agency superintendents on an ad hoc basis to supply basic needs of Indians under their purview. Sometimes these payments for food, clothing, and supplies fulfilled treaty obligations; sometimes they simply addressed pressing human needs. California Indians were among the beneficiaries of these allocations, although every year the demand for funds for care of the old, destitute, sick, and helpless Indians in the state exceeded the allowance. Sometimes California counties were willing to take up the burden of care for local Indians; more often, they declined, especially if the Indians resided on trust land. The state and counties felt little or no responsibility for the federal "wards."

The Snyder Act ushered in an era of more regularized federal appropriations, provided under the terms of that statute for the benefit, care, and assistance of Indians throughout the United States and for "relief of distress and conservation of health." In fact, the Snyder Act was designed to provide general authorization for such appropriations. For the next 23 years, however, amounts appropriated for California Indians continued to be unsystematic and inadequate. Moreover, by BIA fiat, off-reservation Indians were excluded from benefits, leaving the largely landless California tribes bereft of help.

In 1944, the Bureau began to grant cash payments, using Snyder Act funds, as part of a general assistance program. The program was known as "general assistance" to distinguish it from "categorical assistance," which is available through joint federal-state programs only to people who fit into carefully defined categories such as the elderly, the disabled, and families with dependent children.

For its first thirty years, this Bureau general assistance program was administered without formal regulations. Only an unpublished BIA manual set forth the eligibility requirements. According to these manual provisions, the program was residual in nature — only when other federal, state, or tribal programs failed to provide benefits would Bureau general assistance become available. Other important limitations on Bureau assistance were the requirement that recipients live on reservations (a large obstacle for California Indians), and the use of state formulas to establish benefit
levels. In 1974, the Supreme Court decided *Morton v. Ruiz*, a case that challenged the restriction of benefits to Indians living on reservations. The plaintiffs’ claim was that if the Snyder Act authorized benefits for Indians without regard to their place of residence, the Bureau’s policy must be equally inclusive. In ruling against the Bureau, the Court refused to go that far; instead, it focused on the absence of regulations promulgated in accordance with appropriate procedural formalities, and sent the matter back to the agency.

In the late 1970s, not long after the Court’s decision in *Morton v. Ruiz*, the current regulations governing Bureau general assistance were instituted. While widening the eligible group to Indians living “on or near” reservations, it retained the concept of residual benefits. Benefits were to be denied if the state has “a general assistance program available to meet the needs of eligible citizens, including the needs of Indians.” And a state general assistance program was deemed “available” if payments could be extended to reservation Indians throughout the state; the state either appropriated necessary funds or mandated counties to appropriate such funds taking into account their resources; and payments were directed to meeting “monthly minimum essential needs on a continuing basis.” Benefit levels were to be determined in accordance with the standard for Aid to Families with Dependent Children (one of the categorical programs) in the recipient’s state.

**General Assistance Welfare and California Indians**

For the last 42 of its 50 years of existence, the Snyder Act general assistance program has not benefited a single California Indian. The 1995 fiscal year was the first to see even a trickle of such money into the state. Given that over $50,000,000 in general assistance was distributed in 1990 alone, and this amount has risen to $105,000,000 in FY 1995, the significance of excluding California Indians is tremendous. The saga of how this came about is instructive.

At the time the Snyder Act general assistance program was inaugurated, non-Indians concerned with the plight of California tribes were advocating decreased federal administration of benefits. To take the place of federally administered benefits, they supported increased federal support for state-administered programs. This movement found justification in high federal overhead expenses that seemed to duplicate state bureaucracies; the relative prosperity of California as compared with many other states; the high percentage of landless, off-reservation California Indians; and (related to the preceding point) the extent of assimilation already “achieved” by Indians in the state. Federal “wartime” was viewed not only as an obstacle to Indians’ progress, but also as a cruel hoax in view of the meager assistance offered by the federal “guardian.” An organization founded by non-Indians and Indians in Southern California, called the Mission Indian Federation, actively espoused these same positions.
By 1940, California had begun assuming responsibility for many of the social services previously provided by the Bureau, and the number of Bureau staff positions had been stripped down to almost nothing. Over the next decade, the two agencies of the Bureau in Southern California were abolished, and a subcommittee on the Interior Department of the House Appropriations Committee even voted to delete from the appropriations bill to the Interior Department the sum of $2,647.87, the total necessary for operations of the Bureau in California for fiscal year 1950–51. Indians and non-Indians alike seemed to be orienting themselves toward a future in which tribes would be terminated or at the very least the state would assume civil and criminal jurisdiction on reservations. In that environment, the Bureau ended all welfare payments to Indigent California Indians in 1962.

The promise of state jurisdiction was realized in 1953, when Congress passed Public Law 280. Although the new law did not abolish the federal trust status of tribal lands, federal recognition of tribal governments, or the federal trust responsibility toward Indian people, federal and state practice effectively denied these ongoing federal duties, including duties to provide income maintenance and social services. This consequence was felt with particular force in California, even though Public law 280 identified four other states that would also assume civil and criminal authority. Two factors likely contributed to the stronger effect of Public Law 280 in California. First, of all the states named in the Act, California was the only one that constituted an entire subdivision of the Bureau. In contrast, other states named in Public Law 280 were part of Bureau subdivisions that encompassed several states, some of which were not covered by Public Law 280. Thus, it was easier for Bureau officials in California to reshape their concepts and practices radically in the wake of Public Law 280. For example, the Sacramento Area Office of the Bureau could be allocated no general assistance money at all, whereas the area office in Portland (serving Oregon, a state named in Public Law 280 and Washington, a state that was not named) would be allocated some general assistance funds regardless of the passage of Public Law 280. Second, Public Law 280 was originally fashioned as a bill for California alone. Only as the bill made its way through the legislative process did members of Congress determine that it ought to be more comprehensive. Since California was the model and motivator for Public Law 280, Bureau officials naturally would seek to achieve the law’s objectives most fully in that state.

Thus, although Public Law 280 did not require that general assistance to California Indians be denied, it came to be used (improperly) as an explanation for the absence of such benefits. Simultaneously, Public Law 280 negated some excuses that the state and its counties had offered for refusing to provide services to tribal members. In the case of general assistance, which is a state–mandated but county–supported program, Public Law 280 countered an argument that some counties had been advancing to justify refusing aid. San Diego County, for example, had argued that local reservation–based Indians did not qualify for general assistance because they were not “residents” of the county, by virtue of their status as federal “wards.” San Diego’s argument rested in part on the claim that the federal government’s authority
over reservation Indians custed state and local jurisdiction over activities within the tribal territory. The passage of Public Law 280 drained all force from this argument, by conferring civil and criminal jurisdiction on the state; and in 1954, a California appellate court decided Acosta v. San Diego County, which ordered the county to include reservation–based tribal members within its general assistance program. The fact that Public Law 280 figured into this decision reinforced the erroneous view that Public Law 280 had nullified federal obligations to provide welfare benefits. In fact, all that the court had done was to make county benefits available. Federal benefits were displaced only if the availability of county benefits satisfied federal requirements.

For decades following the Acosta decision, federal and state officials assumed that the existence of California’s county general assistance program meant that California’s Indians had “available” to them general assistance to meet their needs, within the meaning of the federal regulations. Thus, presumably, California Indians were not eligible for federal general assistance. Two federal court decisions of the 1980s, however, signaled that state and local general assistance programs would be scrutinized carefully to determine whether their eligibility standards were in fact “comparable” to the requirements for B.I.A. general assistance. If an Indian eligible for federal assistance could not meet the standards for county assistance, then county assistance would not be deemed “available” to such an individual. In one such case, for example, county general assistance was available to pregnant women and to the disabled, but not to “employables.” Because B.I.A. assistance was available to “employables” so long as they were actively seeking employment, the court ruled that the Bureau must extend its welfare benefits to such individuals.

Soon thereafter, California tribes began pressing for B.I.A. general assistance funding. The Southern Indian Health Council, as well as several individual tribes, passed resolutions in 1991 requesting the B.I.A. to allocate general assistance money for California. In response, the social services officer for the Bureau’s Sacramento Area Office decided to canvas the county general assistance programs operating in those California counties with reservations, to determine whether the programs actually were “comparable” to the Bureau program. What he learned was surprising: All but one of the counties required that the recipients of county general assistance repay the benefits, at least if they were not participating in a county work relief program (i.e., working for the county in exchange for their benefits). The Bureau official in Sacramento transmitted these findings to the central office in Washington, D.C. In October, 1993, at the request of the Bureau’s central office, the Solicitor for the Department of the Interior issued a memorandum confirming that county general assistance in California was not “comparable” to federal assistance, at least for unemployables, because of the repayment provisions. Thus, for at least some indigent Indians in California, there is no state assistance equivalent to the federal welfare that is “available” to California Indians; and thus federal general assistance ought to be directed to California Indians. Finally, for fiscal year 1995, an initial allocation of $510,000 was made for California. This amount was allocated for direct...
service only and did not include funds for administration. The Sacramento Area Office had to reprogram funds for administration to hire agency social workers, who were eventually hired in March, 1995.

The current allocation of Bureau general assistance to California is tentative and uncertain. No one knows how many eligible Indians there are. Yet since general assistance benefits are tied to the state’s AFDC payment levels, and California pays one of the nation’s highest AFDC benefits, it is reasonable to expect that BIA general assistance payment levels in California will be relatively high for each eligible Indian. A major objective in the first year or two will be to determine needs and eligibility, so funds have been allocated to support social workers and secretaries. Because of these high overhead costs, at present only $80,000 is available for each of the three California agencies to distribute to needy Indians, and this money has been reprogrammed from other vital tribal needs. Although Bureau officers have represented that the program will grow, currently less than 1 percent of all general assistance funds is going to support California Indians, who comprise approximately 12 percent of all Indians nationwide. Efforts to develop more equitable formulas for distributing the funds, centered in the Bureau’s general assistance work group, have been thwarted within the BIA. Moreover, initiatives underway within the Bureau to shift general assistance funds from the “other recurring programs” category to the tribal priority budgeting system appear to be operating to the disadvantage of California tribes, because they freeze allocation levels at a time when the needs of California tribes are still undetermined.

5 Fifty-first Annual Report of Board of Indian Commissioners 59 (c. 1920).


7 "Wolf, "Needed: A System of Income Maintenance for Indians," 10 Arizona Law Review 597, 607 (1968). The general assistance program is part of the larger BIA social services program, which also includes burial and disaster assistance as well as payments to reservation-based foster parents. Like general assistance, these other programs are residual to other federal or state benefits. Overall, general assistance forms by far the largest portion of the BIA social services program.


9 Id.


15 J. Young, D. Moristo, and G. Tenenbaum, An Inventory of the Pala Indian Agency Records 5 (UCLA American Indian Studies Center, 1976).

16 California Joint Assembly Resolution No. 11, Statutes and Amendments to the Code of California, 1950 First Extraordinary Session 575 (1950). The subcommittee took this action after hearing supportive testimony from the Mission Indian Federation, which had falsely represented that it spoke on behalf of the Southern California tribes. After receiving a memo from the California legislature protesting this action, the full Appropriations Committee refused to approve the recommendation.


18 Conversation with Kevin Sanders.


Memorandum from Michael J. Anderson, Associate Solicitor, Division of Indian Affairs, Office of the Solicitor, Department of the Interior to Carol Bacon, Director, Office of Tribal Services, Bureau of Indian Affairs, October 20, 1993. This memorandum analyzes the significance of the work relief requirement for employable recipients, pointing out that individuals who engage in work relief are exempted from the repayment obligation. Therefore, the memorandum concludes, only "unemployable" individuals or individuals "unable to work" are precluded from access to "comparable" county general assistance. Accordingly, only individuals with those characteristics should be eligible for federal assistance. Bureau officials have questioned whether it is feasible to determine whether individuals are truly "unemployable" or "unable to work," and have suggested that the Bureau requirement of actively seeking employment should be the only one applied. Furthermore, in some counties, such as San Diego, welfare officials have excluded individuals in remote parts of the county from work relief, leading tribal members to argue that they should be eligible for BIA assistance because they are unable to work off their county obligations. Resolution by Southern California Indian Tribes, April 7, 1994.

VIII. Case Study in Funding Inequity

Law Enforcement and Tribal Courts

"The Law and Order situation is critical...it is obvious to every careful observer...that our present procedure is utterly inadequate and that, if anything, it increases rather than decreases crime."

History of Federal Involvement in Tribal Law Enforcement and Dispute Resolution in California

Beginning in 1870, civilian reservations established by federal statute and Executive Order replaced the five military reservations first set aside for California Indians. Maintenance of law and order and resolution of disputes on these new civilian reservations was, in keeping with standard principles of federal Indian law, a federal and tribal — not a state — responsibility. The tribes, however, were poorly positioned to discharge that responsibility through the early decades of the twentieth century. Years of population loss and dislocation had disrupted tribal social and political organization. To make matters worse, the Indian Service undermined traditional or popularly elected leaders by appointing more compliant individuals to speak for the tribes and to serve as links for the distribution of meager federal benefits. Just as new socio-economic conditions engendered new types of conflicts, both among tribal members and with outsiders, tribal institutions were less able to respond. Writing in 1917 in the case of Anderson v. Mathews, the California Supreme Court described a group of Indians residing in Central California as having

no tribal laws or regulations, and no organization or means of enforcing any such laws or regulations. The only sort of communal organization of semblance of political autonomy it has consists of the fact that one of them has the title of "Captain," and is treated as their leader or spokesman and receives some deference and respect on that account. But he has no authority. Disputes are sometimes submitted to him for settlement, but his decisions are considered wholly advisory. Each party accepts or rejects them as he chooses, and there is neither enforcement nor means of enforcement thereof.

This account doubtless suffers from an ethnocentric conception of government as entailing specific forms of state coercion. In pre-contact times, tribal political-legal institutions often functioned effectively without the use of incarceration or execution of judgments through levies on members' property. Furthermore, traditional tribal legal processes often "went underground" in response to non-Indian hostilities, functioning outside the knowledge of state officials. Nonetheless, it is true that contact with non-Indians weakened the clan, family, and religious institutions that had supported tribal authority systems.
Under these circumstances, one might expect the federal government to step in to supply the needs for law enforcement and dispute resolution. Given the pro-assimilationist ideology of the time, federal support to revitalize tribal institutions was not a realistic alternative. In fact, the federal government neither supported tribal governments nor provided an effective legal system for tribal members.

Theoretically, Bureau of Indian Affairs Indian police and "special officers" were responsible for policing California reservations. Also, the federal government could supply criminal courts and civil dispute resolution through Courts of Indian Offenses, which were established by Interior Department regulations and enforced a code promulgated by the Department rather than by Congress. The reality was far different, however. Too few Indian and special officers were assigned to the California reservations to provide meaningful law enforcement. And Courts of Indian Offenses, which existed on reservations elsewhere in the country, could not be found in California through the middle of the twentieth century. In 1941 memorandum to California B.I.A. Superintendent John Rockwell, the Bureau's Chief Special Officer related the problems of reservation law enforcement to the absence of Courts of Indian Offenses. In his view, the absence of such courts made it impossible for officers to make legal arrests, other than for the ten major crimes enacted by Congress in 1866 and for violation of special Indian liquor laws. This limitation existed because officers were authorized by law only to make arrests for the purpose of sending wrongdoers to court. At that time, the law enforcement personnel consisted of two Special Officers and roughly eleven Indian police officers for the entire state. The Chief Special Officer pointed out that unless courts of competent jurisdiction were provided, it was futile to increase enforcement personnel. Meanwhile, the assaults, batteries, attempted rapes, and other offenses falling outside the scope of the Major Crimes Act and liquor laws continued to plague Indians who had no protection and no legal recourse.

In the area of civil dispute resolution, the federal government was of no greater service to California tribes and their members. Problems with outsiders who tramped upon Indian rights were particular acute. Non-Indians trespassed on Indian lands, cut their timber, and diverted their water with relative impunity, almost daring the United States as trustee to take action. Rarely was any federal response forthcoming. In the case of Round Valley, for example, political pressure from non-Indians caused the United States attorney to withdraw federal actions against non-Indian trespassers.

Disputes among tribal members also had no recourse before the federal government. Indeed, it was a dispute over land rights on the Hoopa Reservation in California that led to the homicide prosecuted by the federal government in the landmark Indian law case of U.S. v. Kagama. Kagama and Lyouse were Klamath Indians who had been relocated onto the Hoopa Reservation. Kagama wanted to build a house on the reservation, but Lyouse laid claim to the same site. Kagama requested clarification from the reservation Indian agent, who in turn directed the request to Washington. The Bureau did not respond, and the dispute between the two Klamaths escalated into homicide. Lack of federal assistance in this case was fatal.
Toward the end of the second decade of the twentieth century, members of several Southern California tribes concluded that the federal government would never offer adequate services in the areas of law enforcement and dispute resolution. So they formed the Mission Indian Federation, an association of tribal members and non-Indian allies that lobbied against the Bureau and organized its own police force and judiciary to challenge the Bureau’s authority.8 Until the 1950s, many Southern California reservations had two organizations: an elected spokesman and councils opposed by a Mission Indian Federation group, generally direct descendants of traditional leaders followed by traditional families. The Mission Indian Federation has a controversial legacy, because its leaders lent strong support to Public Law 280 and state jurisdiction, while forcefully opposing allotment. Tribal members perceived as friendly to the Bureau or to allotment received harsh treatment from Federal police; and some Indians found the Federation police to be as abusive as officers from the Bureau.8 Although the organization faded away in the 1950s, it offered a model of Indian self-determination in the area of dispute resolution and law enforcement that the federal government has never nurtured in California, even as it has aided tribes in other states.

Contemporary Inequities in the Federal Government’s Law Enforcement and Tribal Courts Support for California

With the enactment of Public Law 280 in 1953, California and five other states received criminal jurisdiction and civil judicial jurisdiction on reservations, subject to certain exceptions.9 Through the same legislation, the federal government relinquished its criminal jurisdiction. Federal funding for law enforcement in California, never robust, disappeared almost entirely.

While California tribes were being abandoned to the state, an altogether different development was occurring in the non-Public Law 280 states. Beginning in 1959, with the case of Williams v. Lee,10 tribal authority over civil and criminal disputes in Indian Country was increasingly recognized by the Supreme Court. Soon thereafter, a national policy of self-determination for tribes became ascendant and with it federal support for tribal governing institutions such as police and judicial systems. As of 1995, the BIA was allocating $80,440,000 per year for tribal law enforcement and another $14,102,000 for Indian judicial services.

California tribes have garnered hardly any of that money. Of the approximately $500,000 in law enforcement monies allocated per year in the early 1990s, $100,000−$300,000 had to be diverted from the affected tribes’ adult and vocational education programs.10 And this money went to the counties of San Diego and Riverside — which were given contracts to supplement law enforcement on local reservations — not to the tribes themselves. The per capita spending on law enforcement was $11.24 for California in 1995 (or $5.62, using the “real” service population figures), compared with a national per capita expenditure of $57.34 (see Table VIII–1).
Given the absence of support for tribal law enforcement, it should come as little surprise that there are scarcely any tribal courts in California. The approximately 200 reservations outside California have approximately 150 tribal courts, almost all of which receive federal assistance. In California, only two of the approximately 100 federally recognized tribes have tribal courts, and one of these two (Fort Mojave) is a tribe that straddles Arizona and California and receives its federal funding through the Bureau area office in Phoenix. The other California tribe with a tribal court (Hupa) receives federal funding through a special self-governance program, thereby avoiding the standard federal funding policies that disadvantage California tribes. Two efforts are underway to develop consortium courts serving groups of tribes — one in Southern California dealing exclusively with child welfare matters, and one in Mendocino County in Northern California. Limited federal funding has been available for these initiatives. In most years, Sacramento has received no money at all for tribal courts, compared with national per capita spending of $11.81 (see Table VIII–2).

Why have California tribes lost access to most federal funds for law enforcement and court systems? Over the years the Bureau of Indian Affairs has offered several justifications, but none withstands careful scrutiny, and some have recently been repudiated by the Congress and by other federal and state agencies.

**Justification One: Lack of tribal concurrent jurisdiction**

If Public Law 280 had the effect of extinguishing tribal criminal and civil jurisdiction on reservations, there would be ample justification for denying federal support for tribal law enforcement and judiciaries in California. In fact, however, the weight of legal authority affirms continued tribal jurisdiction concurrent with states under Public Law 280. This authority includes two federal appellate decisions, from the Eighth and Ninth circuits, an Opinion of the Solicitor of the Department of the Interior, Attorney General opinions in two Public Law 280 states other than California, and a state court opinion from Alaska. The leading treatise on federal Indian law also propounds the view that tribal jurisdiction is concurrent in Public Law 280 states. A basic principle of Indian law undergirds this widely held position — the principle that federal legislation should not be interpreted to divest tribes of sovereign authority unless it clearly reflects Congress’s intent to do so. Nothing in Public Law 280 expresses the will of Congress to eradicate concurrent tribal jurisdiction. Indeed, the legislative history indicates that Congress intended for tribes to persist as governing bodies. Of all the six Public Law 280 states, California has been the most resistant to concurrent tribal jurisdiction, in one instance arresting tribal officers who were attempting to exercise criminal jurisdiction over Indians on tribal land. California’s aberrant position on the question of concurrent jurisdiction should not justify an absence of federal support, however.

**Justification Two: California tribes are not "historic" tribes with inherent jurisdiction**

Even if concurrent tribal jurisdiction survives Public Law 280 as a general matter, there could be some circumstance that prevents particular tribes from exercising that jurisdiction. Until quite recently, the Department of Interior maintained that just such an
Table VIII-1

Sacramento B.I.A. Law Enforcement Allocations vs. National Law Enforcement Allocations

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Source: Documents from Bureau of Indian Affairs Central Office.
Table VIII-2

Sacramento B.I.A. Tribal Courts Allocations vs. National Tribal Courts Allocations

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Source = Documents from Bureau of Indian Affairs Central Office.
obstacle existed for many California tribes, although it never so informed the affected groups. Specifically, the Department adopted the view that many federally recognized groups in California were not "historic tribes," in the sense of having existed as tribes before federal recognition occurred. In the Department's opinion, only "historic tribes" possessed inherent civil and criminal jurisdiction that could function concurrently with state jurisdiction in Public Law 280 states. Having taken that position, the Department had a convenient excuse for refusing to fund tribal law enforcement and dispute resolution in California. In the fall of 1994, however, Congress rejected the Department's treatment of California tribes and insisted that they be placed on equal footing with tribes elsewhere in the nation. A more detailed account of the Department's position and Congress's response follows.

For almost sixty years the Department of Interior has been distinguishing between "historic" and "created" Indian tribes without notifying the affected tribes. A Solicitor's Opinion written soon after the Indian Reorganization Act (IRA) was adopted in 1934 interpreted section 16 of the IRA to authorize the Secretary of the Interior to categorize Indian tribes into these two groups. The Department made this distinction on the basis of whether a reservation had been established for a tribe that had been removed from their aboriginal homestead by the federal government. The Department concluded that the groups located on "rancherias" in California were "created" tribes because the rancherias were established to alleviate a homeless Indian problem in California rather than to reserve land for a particular tribe.

According to the Department's policy, only "historic" tribes were regarded as maintaining their inherent sovereign powers, including the authority to govern their lands. "Created" tribes were deemed to possess only those authorities that were expressly conferred by the Secretary of Interior. Among other things, "created" tribes were determined to lack the authority to establish judicial systems. According to Bureau of Indian Affairs officials in Washington, D.C. and Sacramento, the majority of tribes located in California had been classified as "created" tribes. Indeed, one Bureau official in Sacramento has said that the concept of "inherent powers" was taboo in California. However, neither California tribes nor Congress was aware of this distinction until the Pasqua Yaqui tribe of Arizona was denied Bureau funding on the basis of this classification and that tribe brought the situation to the attention of Congress in 1993.

Almost identical bills were introduced in both the House and the Senate to amend the IRA to prohibit the Department of Interior or any other federal agency or official from distinguishing among Indian tribes or classifying them on the basis of the IRA or any other federal law. Senator Daniel Inouye, then Chair of the Senate Committee on Indian Affairs, said that this legislation was intended to make it clear that it is and always has been federal law and policy that Indian tribes recognized by the federal government stand on an equal footing with each other and in relation to the federal government. Senator John McCain, then the ranking minority member on the committee, announced that "[a]fter careful review, I can find no basis in law or policy for the manner in which Section 15 of the IRA has been interpreted by the Department of the Interior." He pointed out further that the policy of classifying certain tribes as
"created" ignored the fundamental fact that neither Congress nor the Secretary of the Interior has the authority to create an Indian tribe. The federal government recognizes Indian tribes, but it cannot create them. He also noted that the Department's interpretation of Section 16 conflicted with the underlying principles of the IRA, which were to stabilize Indian tribal governments and to encourage self-government.

With such broad bipartisan support, the bills that repudiated the distinction between "historic" and "created" tribes were passed and signed into law in May, 1994. As a consequence, the distinction no longer serves as a justification for denying federal law enforcement and dispute resolution funds to California tribes.

**Justification Three: Availability of state law enforcement and courts as a result of Public Law 280**

Bureau funding for law enforcement and judicial services is paid out under the general terms of the Snyder Act, which authorizes expenditures for "the benefit, care, and assistance of Indians throughout the United States." When California tribes and Bureau personnel in the Sacramento Area Office have requested law enforcement and tribal courts allocations for California, however, the most common Bureau response has been that the funds are not available for tribes located in states that have assumed jurisdiction under Public Law 280 or comparable statutes. Indeed, a federal document that describes programs available for Indians states that the objective of "Indian Law Enforcement Services" is to "maintain criminal justice systems within Indian reservations, Indian country, or dependent Indian communities, where the States have not assumed such responsibilities in conjunction with Indian tribes affected." The separate program for "Indian Judicial Services" — which supports tribal court management, civil and criminal jurisdiction, training of judicial personnel, codes, and procedures and court standards — is not similarly limited to tribes in states lacking jurisdiction; as a practical matter, however, tribes without law enforcement funds may find it unfeasible to operate a court system or to support a system of alternative dispute resolution.

There are two problems with using Public Law 280 as an excuse for refusing to fund California tribes. First, tribes in Public Law 280 states other than California are receiving Bureau funds for law enforcement and tribal courts. Second, the existence of state jurisdiction does not remove the need for tribal law enforcement, courts, alternative forms of dispute resolution, some of which are rooted in tribal traditions and customs. Each of these problems will be elaborated below.

In Wisconsin, and Oregon—both Public Law 280 states—the Bureau allocates funds for law enforcement and judicial services. How does this come about? According to Lester Marsten, Chief Judge for the Grande Ronde tribe in Oregon, area offices that include a mix of Public Law 280 and non—Public Law 280 states typically have a large program item for law enforcement and judicial services for the tribes in the non—Public Law 280 states. For such area offices, it is relatively easy to have that program item increased to accommodate an additional tribal government in a non—Public Law 280 state. Thus Grande Ronde, located in a Public Law 280 state, requested a Bureau
contract to carry out judicial services, and the funds came through the area office in Portland. This Portland Area Office serves not only the Oregon tribes, but also tribes in Washington, a state that has not assumed full Public Law 280 jurisdiction. The preexisting line item for judicial services for the Washington tribes made the addition of funding for Grande Ronde relatively noncontroversial. In contrast, adding a major law enforcement or judicial services item for the Sacramento Area Office would represent a significant and controversial policy decision. Nonetheless, it is disingenuous for the Bureau to use Public Law 280 as a justification for denying funds to California tribes when it is offering funding to tribes in other Public Law 280 states.

The second problem with the Bureau’s position regarding funding and Public Law 280 is that tribes in Public Law 280 states continue to have substantial law enforcement and dispute resolution needs, even with the existence of state jurisdiction. In the more than forty years since its enactment, Public Law 280 has received four types of judicial interpretations that limit the scope of state jurisdiction:

— Under the language of the statute, only statewide laws may be enforced under Public Law 280, not county or city ordinances. Thus city rent control ordinances and county dog license ordinances have been held unenforceable in California because they are not laws of statewide application.

— Even statewide criminal laws may not be enforced under Public Law 280 if they are essentially “regulatory” rather than “prohibitory” in nature. The Supreme Court introduced this distinction in an effort to limit the corrosive effects of Public Law 280 on tribal sovereignty. Actually separating the “regulatory” from the “prohibitory” laws is a daunting challenge, however; the most one can say is that courts seem to focus on whether the state allows the activity under some controlled circumstances or whether the activity is completely outlawed. Nonetheless, it is clear that many state laws have been excluded from state jurisdiction as a consequence of efforts to apply the distinction. State bingo laws and speeding laws are only two examples of such exclusions from state jurisdiction. Furthermore, state civil laws that form part of a state regulatory regime, such as licensing laws, are not rendered applicable to tribes by virtue of Public Law 280.

Certain matters fundamental to the definition and internal workings of the tribe, such as tribal enrollment and domestic relations matters, may be outside the subject matter jurisdiction of the state, notwithstanding the enactment of Public Law 280. Although this question is as yet unresolved in the courts, it is arguable that freedom of association or inherent tribal sovereignty precludes any outside authority—federal or state—from making determinations about such matters as paternity involving tribal members. Attorneys representing tribal members in California have argued strenuously that Public Law 280 did not override such exclusive tribal jurisdiction. They have focused specifically on the
fact that Public Law 280 makes no explicit reference to limiting the tribe’s authority.*

Public Law 280 expressly denies states power to legislate concerning certain matters, particularly property held in trust by the United States and federally guaranteed hunting, trapping, and fishing rights. These exceptions to state jurisdiction were included in Public Law 280 because Congress feared that it would be abrogating treaty or statutory rights and would be responsible to compensate the tribes for the loss of these rights. Over the years, courts have interpreted these exceptions to state jurisdiction broadly. Thus state zoning laws, laws restricting outdoor advertising,* unlawful detainer or eviction laws,* among others, are unenforceable on California reservations, with the possible exception of some fee patent lands within the reservations. State fish and game laws are unenforceable against tribal members on California reservations.*

Several statutes enacted after Public Law 280 have reduced the amount of jurisdiction available to states under the 1953 law, simultaneously increasing tribal sovereignty or federal power. For example, federal environmental laws such as the Safe Drinking Water Act give tribes rather than states primary enforcement responsibility for control of contaminants in drinking water on reservations. The Indian Gaming Regulatory Act of 1988† illustrates how a subsequent federal statute can eradicate state jurisdiction under Public Law 280. Of course, to the extent that state anti-gaming laws are “regulatory” rather than “prohibitory,” they never applied to reservations under Public Law 280. But the few purely criminal state gaming laws that became applicable under Public Law 280 are now inapplicable because the 1988 Act substituted a regime of tribal and federal jurisdiction. For Class II gaming, the Act explicitly prohibits state jurisdiction. For Class III gaming, the Act allows state jurisdiction, but only pursuant to a tribal-state compact. Otherwise, the law enforcement mechanisms are all tribal and federal.

With all these exclusions from state jurisdiction under Public Law 280, it is unrealistic to expect tribes to rely entirely on state government for their law enforcement and dispute resolution needs. Indeed, without tribal law enforcement and courts, there is a near vacuum of authority over certain problem areas, sometimes leading to violent or disruptive self-help measures.*

Even where states possess jurisdiction under Public Law 280, they do not often exercise it diligently or effectively. Hence, a need for concurrent tribal jurisdiction remains. Ever since the enactment of Public Law 280, complaints have issued from states and tribes alike over the lack of state resources to fund law enforcement and judicial services on reservations. From the state perspective, the fact that Public Law 280 continued the tax-exempt status of reservation lands left them with an unfair deal.
new law enforcement responsibilities but no taxing authority to support them. While some states responded to this dilemma by returning jurisdiction to the federal government, California's response was to give low priority to reservation law enforcement needs, leaving unaddressed everything from public disturbance, juvenile delinquency, trespass, public intoxication, domestic violence, and child neglect to murder, rape, robbery, and drug dealing.

Every gathering and hearing on the subject of Public Law 280 brings forth illustrations of this problem. For example, the Washoe tribe, with lands on either side of the Nevada-California border, has a police force in Nevada which complains that it must stand aside while crimes go unattended on the other side of the reservation. A recent *Los Angeles Times* article points out that the La Jolla Reservation in San Diego County has been overrun with drugs and violence, with six young tribal members murdered during a period of several months in the late 1980s. According to a past tribal chair, when members called the Sheriff's Department to report a murder, it was usually an hour before a deputy arrived. Anything short of homicide, and the wait for a sheriff's response was at least three days. Sometimes no response came at all. Even representatives of the Sheriff's Department acknowledged that the remoteness of the reservations, the cultural differences between the police and tribal members, and the uncertainties of jurisdiction law discouraged police responsiveness. These complaints are echoed in federal reports on Public Law 280. In 1986, for example, a Senate subcommittee found that "Public Law 280...[has] resulted in a breakdown in the administration of justice to such a degree that Indians are being denied due process and equal protection of the law." The 1978 American Indian Policy Review Commission reached the same conclusion based on its own investigations. In 1990, the Bureau responded to this problem by shifting Southern California tribes' education funds over to law enforcement contracts with the counties of San Diego and Riverside. Under these contracts, the county sheriffs agreed to provide supplemental law enforcement services on the local reservations, and to instruct the deputies assigned to the reservations in relevant federal Indian law as well as tribal customs and traditions. While the local police presence on reservations increased, many tribal members took a dim view of the contracts. Indeed, a grass roots organization, Southern California Indians for Tribal Sovereignty (SCITS), was formed around opposition to these agreements. Opponents of the contracts registered several serious concerns: first, the deputies who operated on the reservations were often heavy-handed, insensitive to tribal governing structures, and ignorant of tribal customs; second, the counties should not have received payment for performing their federally mandated law enforcement duties, especially when the necessary funds had to be transferred from important tribal education programs; third, the widely articulated federal policy supporting tribal sovereignty suggests that federal money should not be used to reinforce state jurisdiction on reservations, but rather to finance tribal law enforcement. As tribal leaders who had originally backed the contracts switched their views, the agreements with San Diego and Riverside counties were terminated.

Public Law 280 cannot justify the near total lack of federal support for tribal law enforcement and dispute resolution. Large gaps in the state jurisdiction created by the law as well as failure by the state to discharge its law enforcement responsibilities
create a genuine need for tribal institutions. Indeed, the diversion of tribal education funds to county sheriffs demonstrates how desperate the need is for new sources of federal funds from the Bureau. Tribes in California have tried to be resourceful, looking to other federal agencies for money to support law enforcement and dispute resolution. The Administration for Native Americans in the Commerce Department, for example, has given planning money to some California tribes that wish to establish tribal codes and court systems. The recent Crime Bill has funding provisions for community policing that are open to all tribes; and the Department of Housing and Urban Development and the Indian Health Service may be sources of tribal funds for law enforcement problems relating to housing and child abuse, respectively. For non-California tribes, however, even many in other Public Law 280 states, these non-Bureau sources are over and above the standard Bureau funding levels for law enforcement and courts. California tribes should be placed in the same position as these other tribes.

In sum, the Bureau of Indian Affairs has not successfully defended California’s meager allocation of law enforcement and court funding. California tribes clearly possess civil and criminal jurisdiction, even following the enactment of Public Law 280. To use the state’s jurisdiction as a justification for not funding California tribes overlooks the treatment of tribes in other Public Law 280 states, the absence of state jurisdiction over important matters of public safety and community welfare, and the inadequacies of state jurisdiction even where it exists. California tribes need funds to determine whether they wish to establish their own law enforcement and justice systems, either alone or as part of consortia of tribes. Some tribes may prefer to contract with state and local governments for the delivery of such services, or to retain the status quo. But whatever they may choose, California tribes should receive federal financial support that will allow for effective law enforcement and dispute resolution on their reservations.

56
2 174 Cal. 537 (1917).
3 The absence of these Courts of Indian Offenses in California was a mixed blessing. In other parts of the country, these courts often served to suppress Indian culture and to override traditional Indian dispute resolution systems. William Hagan, *Indian Police and Judges: Experiments in Acculturation and Control* (Yale University Press, 1966).

Sometime after the passage of Public Law 280 in 1953, a Court of Indian Offenses was established on the Hoopa Reservation exclusively for the purpose of prosecuting fish and game violations.

5 In addition to the Major Crimes Act, there are federal statutes penalizing a variety of offenses when committed within "Indian Country," but only when the perpetrator is non-Indian and the victim is Indian or vice versa. See 18 U.S.C. Sec. 1152.
9 118 U.S. 375 (1886).
10 An account of this case can be found in Sidney Harring, *Crow Dog's Case: American Indian Sovereignty, Tribal Law, and United States Law in the Nineteenth Century* 144–45 (Cambridge University Press, 1994).
15 This problem is described in great detail in the text accompanying footnotes 50–52 of this section.
16 *Native Village of Venetie IRA Council v. Alaska*, 944 F.2d 548, 552 (9th Cir. 1991); *Walker v. Rushing*, 898 F.2d 672 (8th Cir. 1990).
19 *Jaquess v. Fawcett*, No. 97–887 (District Court, 6th Cir. 1998).
22 F. Cohen, Handbook of Federal Indian Law 345 (Strickland et al., eds. 1982).
Although the tribe sued in 1992 to enforce its right to exercise concurrent criminal jurisdiction over Chemehuevi lands, the tribe dropped the lawsuit before the case was heard. Under the administration of the current incumbent, Dan Lundgren, the Attorney General's office seems to be more receptive to the idea of concurrent jurisdiction but still refuses to concede that such jurisdiction exists. Conversations with Tom Gede, Special Assistant Deputy Attorney General, October, 1994 and December, 1995.
25 In a related matter, the Bureau refused to accept revisions of the constitution of the Jamul tribe which would have permitted members to be 1/4 rather than 1/2 blood, on the ground that the Jamul are not a "historic" tribe. Letter from Carol Bacon, Director, Office of Tribal Services, B.I.A., to Raymond Hunter, Chairman, Jamul Indian Village, July 1, 1993.
26 See statements by Senator Daniel Inouye, 140 Congressional Record page S. 4278 (April 14, 1994); interviews by Tim Seward with B.I.A. personnel Ray Fry and Betty Rushing, 1993.
27 The IRA created a framework for the organization of tribal governments that was available to any Indian "tribe," which was defined to include "the Indians residing on one reservation." Section 19, 48 Stat. 984 (1934).
28 Statement by Senator Daniel Inouye, 140 Congressional Record p. S.6146 (May 19, 1994).
29 See 140 Congressional Record p. E663 (April 14, 1994), comments by Representative Richardson, Chair of the Subcommittee on Native American Affairs of the Committee on Natural Resources.
31 140 Congressional Record S6147 (May 19, 1994).
32 140 Congressional Record p. S6146 (May 19, 1994).
34 California v. Cabazon Band of Mission Indians, 480 U.S. 202, 212 fn. 11 (1987) (stating that such jurisdiction was questionable, but not resolving the issue); Santa Rosa Band of Indians v. Kings County, 532 F.2d 655 (9th Cir. 1975).
36 People v. Lowry, 34 Cal.Rptr.2d 382 (Cal.Super. 1994).
39 Confederated Tribes of Colville Reservation v. Washington, 938 F.2d 146 (9th Cir.
40 See, e.g., Briefs for Appellants in County of Inyo v. Huette, Court of Appeal No. E315837, California Court of Appeal, Fourth Appellate District, Division Two, 1995.
41 Santa Rosa, note 32 supra.

58


42 U.S.C. sec 300).

25 U.S.C. secs. 2701 at seq.

See Section XI of this report, infra. In some of these instances where the state lacks jurisdiction, federal courts are open for civil dispute resolution and occasionally for criminal prosecutions. For example, evictions from tribal housing and enforcement of federal trust responsibility are actions that may be brought into federal court. Federal law also makes it a federal offense to violate tribal hunting and fishing rules on reservations. Such federal intervention is often difficult to achieve in practice, however, for reasons of cost, distance, and formality. Local tribal courts could be much more effective in resolving tribal disputes.

For example, Washington State retroceded jurisdiction over several reservations, and Nevada retroceded jurisdiction over the Ely Colony.


Tribal resolutions supported these shifts, but the tribal leaders did not always have full support of their members. See discussion infra.


Statement on Public Law 280 and Law Enforcement delivered by Southern California Indians for Tribal Sovereignty, September 11, 1991. Although many California tribes are so small that it would be inefficient for each one to form a separate police force, such tribes could either form consortia to achieve economies or they could contract with the counties for enforcement of tribal law.
IX. Case Study in Funding Inequity

Education

The uncertain [land] tenure [of the California Indians] and enforced removals has largely prevented missionary and school work among them, while race prejudice has for the most part debarred their children from the public schools (1994).³

California Indian people find themselves in a "no mans" land regarding Indian education. At the Federal level, except for a few programs, the Federal Government has taken the position that the education of California Indian people is not its responsibility. At the State level, control of educational programs is basically in the hands of the dominant society and the Indian's cultural and special needs are largely ignored (1984).³

Introduction

In 1851, eighteen treaties were negotiated with California Indians establishing reservations and promising economic aid, schoolteachers, and vocational training in return for ceded lands. Although the Indians kept their part of the bargain by vacating the ceded lands, Congress refused to ratify the treaties. The reservations never were established, and the educational benefits never provided. This denial of federal education benefits established a pattern that prevails to this day.

During the second half of the nineteenth century, the federal government set aside a few small areas of land for the occupation of California Indians. Most tribal members remained scattered about the state, living in destitution. By 1881, a small number of federal day schools had been founded, but they were too few and too far apart to serve the needs of Indian children. In their 1883 report to the Commissioner of Indian Affairs, Helen Hunt Jackson and Abbot Kinney wrote of the need to create real reservations for the California Indians, and further stated:

We recommend the establishment of more schools. As the reservations are gradually cleared, defined, and assured for the Indians' occupancy, hundreds of Indians who are now roving from place to place, without fixed homes, will undoubtedly settle down in the villages and more schools will be needed....The isolated situation of many of the smaller settlements is now an insuperable difficulty in the way of providing education for all the children....In every village that we visited we were urged to ask the Government to give them a school....In this connection we would suggest that if a boarding and industrial school, similar to those
at Hampton and Carlisle, could be established in Southern California, it would be of inestimable value..."

Between 1891 and 1935 Congress did allocate funds to create reservations for the landless California Indians. But the reservations that were established were usually tiny, arid, inaccessible, and too mountainous to cultivate. As a consequence, many California Indians chose to live elsewhere. When the federal government established day schools on those reservations, it was difficult to assemble a critical mass of school children. Accordingly, most of these day schools were closed by 1895. To implement the prevailing federal policy of assimilation, the federal government replaced many of the day schools with boarding schools in Tule River, Round Valley, Middle Town in Lake County, the Hoopa Valley Reservation, Perris, and Fort Bidwell. Another boarding school, the Sherman Institute, was set up in Riverside County in the 1890s, but for many decades it was closed to California Indians, mainly serving tribal members from Arizona and New Mexico. The first Indian from a California tribe entered Sherman in 1899.

The Meriam Report of 1928, a federally sponsored report on the status of Indian programs nationwide, was extremely critical of the boarding school system and the quality of education rendered within its schools. According to the Report, removing Indian children from their families and communities, forcing them to adopt non-Indian ways, and punishing them for practicing their cultures was damaging to Indian children. Moreover, the personnel and facilities were of distinctly inferior quality. The Report recommended that Indian students remain with their families and with their communities while being educated. To help assimilate the Indian students, the Report suggested that they be educated in public schools along with non-Indian children. A similar proposal emerged from the influential Indian Section of the Commonwealth Club of California, which urged cooperation between state and federal agencies to provide a variety of services to California tribal members. The outgrowth of these recommendations was the Johnson-O'Malley Act of 1934, which allowed the federal government to contract with states to provide public education for Indians.

From 1935 to 1953, the state of California received a substantial sum through the Johnson-O'Malley program for Indian education. Although this money went to the state largely for assimilative purposes, the federal government was simultaneously pursuing policies more focused on advancement of tribal self-determination. The Indian Reorganization Act of 1934 was the most conspicuous display of that competing federal thrust. After World War II, however, significant changes took place both in federal policy and in Indian education. The common sentiment of that time among federal legislators was that Indian children would be "better off" if they were to progress even more rapidly towards a "white man's way of life." The educational implication of that policy was simple: Prepare Indian children for full and immediate integration into non-Indian society. Eliminate as many special federal Indian programs as possible.
Two federal statutes and one B.I.A. program that effectuated this new policy had a significant impact on Indian education in California. Public Law 280, enacted in 1953, transferred federal criminal and civil jurisdiction on reservations to certain designated states, including California. Although this law did not dictate cessation of services to California Indians, the B.I.A.'s central office as well as its Sacramento Area Office took the law as a signal to decrease services drastically. Withdrawing scholarships, vocational education, Johnson-O'Malley aid, and other programs, the Sacramento Area Office cut the majority of all federal education funds for California Indians.

One year after passage of Public Law 280, Congress passed a "termination" act that purported to terminate the reservation and tribal status of forty-one California groups. Indians belonging to tribes touched by the termination statute lost their eligibility for federal programs altogether. What little was left in the way of federal support was denied them. Although most of the terminated tribes have been reinstated through litigation or special federal legislation beginning in the 1970s, the loss of organization and momentum during the period of termination has made it difficult for these groups to press for needed federal support.

The B.I.A.'s Voluntary Relocation Program, begun in the early 1950s, encouraged reservation Indians to move to urban areas, by offering them financial assistance, social services, and training. In response to these promises (many of which proved illusory), quite a few California Indians left their reservations for job training in urban areas throughout the Midwest and East, and Indians from outside California were sent to the Los Angeles and San Francisco areas. An estimated 60,000 to 70,000 Indians relocated to these two metropolitan regions by 1969, overwhelming the number of indigenous Californians living there. These non-indigenous tribal members eventually competed for federal benefits with California Indians, often prevailing over the less numerous California group.

Although some education programs have been reinstated in California since the Nixon administration, the level of federal education benefits has never caught up with the true service population. The remainder of this section will demonstrate how California Indians are treated under a variety of federal education programs, both those administered by the B.I.A. and those administered by other federal departments.

B.I.A. Programs

California Indians receive Bureau education benefits at a far lower level than Indians nationwide (see Table IX-1). In the largest Bureau funding category, ISEP, where $259,762,903 was spent in 1995, the California allocation was only $4,589,448. In per capita terms, using the Bureau's own service population counts, the national per capita expenditure was $210.40, while in California it was only $100.72. If more appropriate, yet still conservative, service population counts are employed, the disparity is even greater. The "real" per capita spending from ISEP funds in California
Table IX-1

Sacramento B.I.A. Education Allocations

VS.

National B.I.A. Education Allocations

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Source = Documents from Bureau of Indian Affairs Central Office.
for 1995 was only $50.36, or less than one-fourth the national per capita spending. This pattern repeats throughout all the areas of Bureau spending on education (see Table IX-1).

Johnson-O'Malley

California was the first state to receive funds under the Johnson-O'Malley Act of 1934. (hereafter JOM), which enabled the federal government to contract with states to provide public education for Indians. For almost twenty years, California received an annual appropriation of approximately $318,000 in JOM funds. In 1963, the federal government began to phase out California JOM programs. Support for California under that Act was eliminated altogether in 1955. Meanwhile, JOM funding for other states grew. In 1967, for example, California had an Indian population of 39,047 and received no JOM monies. Colorado, by contrast, with its 4,288 Indian people, received over $100,000.

The B.I.A. gave four reasons for its decision to end California's JOM funding: (1) under Public Law 280 and termination statutes, California Indians would soon lose all eligibility for services; (2) California was constitutionally obligated to provide equal education for its Indian citizens; (3) California Indian students were "better off" than other Indians; and (4) funds under a separate program, known as Impact Aid, would adequately replace JOM funds. For these same reasons, in 1963 the California State Advisory Commission on Indian Affairs recommended phased elimination of JOM programs over a five-year period. These four justifications for cutting JOM funding in California never matched actual developments. With respect to the first reason, termination never affected all the California tribes, and most of those that were targeted for termination have reversed the process since the 1970s. For all intents and purposes, Congress abandoned Public Law 280 as public policy in 1968, as a new era of self-determination dawned. While California's Public Law 280 jurisdiction remained in place, national efforts to strengthen tribal sovereignty had effects in California as elsewhere. Thus, Public Law 280 did not usher in the demise of California tribes. With respect to the second reason, while California does indeed possess a constitutional obligation to educate its Indian citizens, the state has never provided equal education to meet the needs of Indian students. The California Legislature has effectively conceded that this inequity existed. With respect to the third reason, that California Indians fared better than Indians elsewhere, the documentation was never sound. Once federal funds were withdrawn from California, the relative condition of its Indians deteriorated markedly, especially as massive amounts of money were directed elsewhere in the nation under Great Society programs of the 1960s. Finally, with respect to the fourth reason, Impact Aid program funds never served as an adequate substitute for JOM funds, because the funds that local school districts received under Impact Aid became part of the districts' general funds and were not earmarked for special Indian programs. Furthermore,
Impact Aid is available only where Indians live on tax-exempt federal lands. Because such a high proportion of California Indians live off reservations, the school districts where many California Indian children were educated were not entitled to Impact Aid funds.

In 1968 the B.I.A. conducted a study of the need for restoration of JOM funds for California. Although JOM funding was reinstated for California in 1969, the level of assistance was considerably below the pre-1953 level. In 1970, for example, the B.I.A. established ten programs with the JOM allocation of $90,000 for California, a far cry from the $318,000 in 1953, especially adjusting for inflation. By 1973 the funding level had grown to $248,000. But that was still only 1 percent of the total B.I.A.'s JOM budget of $24.5 million. Had the Bureau matched the proportion of total JOM funds directed to California as of 1953, California would have received $2.9 million, or 12 percent of the total.

Before 1970, the Bureau made its JOM contracts in California with the state's Department of Education. From 1970 to 1975, the Sacramento Area Office administered the funds. Since enactment of the Indian Self-Determination and Education Assistance Act of 1975, the B.I.A., in the spirit of making federal services more responsive to the needs of Indian communities, has entered into many JOM contracts with tribal organizations. Tribes use these funds to provide tutors, for cultural field trips, school supplies, and clothes for needy Indian children. So long as the funds are used for education-related purposes, the tribes have considerable discretion.

Under this new regime, the amount of program money available to California Indians on a per capita basis has not kept pace with the level of per capita funding for Indian students nationwide. Funding for the JOM program increased for California from $733,200 in 1992 to $1,057,100 in 1995. Nonetheless, the allocations pale in comparison with the amounts directed to other states. In 1995, national per capita spending for JOM was $23.15, while the "real" California per capita spending was $14.54. In 1994, while California had JOM funding of $1,029,500, Oklahoma had a budget of $5,592,400.

The explanation for this disparity between California and other states may be found in the difference between the percentage of eligible Indian children in each state who are actually served by JOM programs. In Oklahoma, for example, almost all the eligible children are served by JOM. In California, only one-third are served. According to the 1990 census, Oklahoma had 57,107 Indian children between the ages of 5 and 18 living on one reservation and in what are called "tribal jurisdiction statistical areas." These latter areas are former reservations with considerable numbers of trust allotments. Almost all the Indians in Oklahoma are counted by including these areas.

In 1994, 55,707 of the 57,107 Indian children in Oklahoma were served by JOM.

In California, the most appropriate way to count eligible Indian children is to use the service population figures provided by the Indian Health Service, which has been
mandated to serve many California Indians who live off reservations and who are not members of federally recognized tribes. That 1994 IHS service population figure for California is 113,465. Extrapolating from the Oklahoma data, an estimate would be that 27 percent of that number reflects the number of California Indian children between the ages of 5 and 19. Thus at least 30,635 California Indian children should be deemed eligible for JOM benefits. Yet only 6,700 Indian children were served by JOM programs in California in 1994, that number rising to 11,175 in 1995.

Using the IHS-based population figures, the JOM benefits for California in 1994 were $33.31 per Indian school-age child. The comparable figure for Oklahoma was $100.39 per Indian school-age child. Thus Oklahoma's JOM 1994 allocation per eligible child was almost three times the allocation for California. An allocation more in line with the sum allotted to Oklahoma would have yielded $3,060,000 to California, using the 1994 figures.

One might argue that the Indian population in California is more likely to be urban, non-Indigenous to the state, and unrecognized than Indians elsewhere. With many JOM contracts going to tribal organizations, the likelihood is that many tribal Indians living on or near reservations will be served, and funding should be greater to states with a higher proportion of such Indians. Yet JOM serves a high proportion of the Indian children in Oklahoma despite the small amount of reservation land there. Furthermore, the primary intent of the JOM program was to aid those states in which tribal life is largely broken up and in which Indians are to a considerable extent mixed with the general population. California is a prime example of such a state. Driven from ancestral lands and denied the reservation lands promised to them, many California Indians had no alternative but to merge with the general heterogeneous population of California. Although JOM contracts do not limit services to reservation Indians, the funds have been consistently elusive for many off-reservation tribal members and members of unrecognized California tribes. That is why an equitable allocation of JOM funds for California would include all Indians eligible under criteria such as those set out in the Indian Health Care Improvement Act amendments of 1989.

The future of JOM funds for California is uncertain due to a potential change in policy within the B.I.A. It is currently being proposed that JOM funds be included within the Tribal Priority Budgeting System (TPBS). If this proposal comes to pass, tribes will determine whether education is a priority in composing their budgets. JOM funds can be diverted to other areas as the tribe may see fit. A shift of JOM funds to the TPBS is opposed by most California Indian educators, because they fear that the lack of adequate funding for other tribal programs will lead tribes to "raiders" JOM funds to support basic tribal government operations.
Higher Education

The Indian Higher Education Grant Program administered by the B.I.A. was established by the Bureau in 1949 pursuant to the Snyder Act of 1921, which authorized the Bureau to "direct, supervise, and expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians of the United States...for support...including education." In 1967, the B.I.A. published regulations defining the eligible class of recipients as Indian "students of one-fourth or more degree Indian blood." Under this definition, members of unrecognized tribes who are at least one-fourth degree Indian blood were qualified to receive educational grants.

In 1989, the Bureau changed the eligibility criteria through an internal memorandum. The new criteria required membership in a federally recognized tribe or at least a one-fourth degree Indian blood quantum and descent from someone who is a member of a federally recognized tribe. Soon thereafter, Gens and Greg Malone, both S/i6 Wintur Indians (a nonrecognized tribe), brought suit against the Bureau when their applications for higher education grants were denied. In 1994, the United States Court of Appeals for the Ninth Circuit invalidated the new criteria on the basis that the agency had not followed the proper rule-making process. The Court directed the Bureau to reformulate the criteria, and strongly suggested that the agency take account of the more expansive California eligibility criteria set forth in the Indian Health Care Improvement Act Amendments of 1988. The rule-making process is still underway.

Many California Indian college students were rendered ineligible for higher education grants by the Bureau's 1989 criteria. Additional numbers of California Indians are excluded from grants by virtue of the Bureau's preference for qualified students who live on or near reservations areas. Not surprisingly, California has received a disproportionately small amount of higher education grant monies.

In 1995, for example, California received only $559,125 of more than $29,000,000 allocated nationwide for Bureau scholarships. Per capita spending nationwide on this program was $25.05, compared with California per capita spending of $12.49, or $6.24 using the "real" service population figures. Thus the California per capita allocation was only one-fifth of the allocation nationwide.

B.I.A. Day Schools and Boarding Schools

The Bureau of Indian Affairs operates or contracts to support 185 day schools and boarding schools for Indian children nationwide. While many other states have sizable education budgets to support such schools, California is funded for only two: Noli School on the Soboba Reservation and Sherman Indian High School in Riverside, California. For 1994-95, Noli received $188,000 and served 20 students.
Sherman received $4.4 million and served 445 Indian students, approximately 35 of whom were from California. This total of approximately $4.6 million for California represents 1.8 percent of the total $259,000,000 spent nationwide on Bureau schools in this year. Taking into account the percentage of California funds actually spent on Indians from California, the percentage falls to a meager 0.2 percent. In contrast, California Indians represent 4 percent of the national Indian population based on the most conservative estimates, and 6-9 percent under more appropriate (but still conservative) calculations.

If California Indian children were thriving in the public schools of the state of California, one might argue with some force that there is no need for Bureau-funded schools. Data from the 1990 census indicate, however, that Indian children in California suffer from high drop-out rates and low achievement. These recent data continue a pattern that has existed for many decades. Inadequate attention to culturally appropriate curricula and teaching methods in California public schools contributes to the problem. Inequities in funding for California under the Johnson-O'Malley program are probably also a factor in the low performance of California Indian children compared with Indian children elsewhere in the country. Funding for Sherman Indian School increased to $5.9 million for 1995, but the number of California students remained below 40.

**Tribally Controlled Community Colleges**

Tribally controlled community colleges are chartered by tribal governing bodies and funded under special Congressional authorization. Most funding is calculated on the basis of the number of student credit hours.

D–Q University, the only tribally controlled community college in California, was established in Davis in 1971. In 1995, D–Q served over 300 students and received $595,454 in funds from the Bureau, out of a total of $24,399,365 allocated nationwide. National spending of $20.57 per capita in this category contrasts with California per capita spending of $13.07, or $6.54 using the "real" service population figures. Exacerbating the disparity for California is the fact that education costs are likely higher in California than in most other areas of the country. Thus, the approximately $3,000 per student that D–Q received covered less than one-third of the $10,780 cost of educating a student at D–Q for the entire year. Of the 22 tribally controlled community colleges in the United States, D–Q is in the top five in terms of number of students graduated per year.

It is also B.I.A. policy to "assist tribes in their planning, designing, construction, operation, and maintenance of tribally controlled community colleges, consistent with all appropriate legislation." A 1984 Bureau task force recommended the allocation of three separate planning grants for tribally controlled community colleges in California. However, the Bureau has provided no planning funds or technical assistance to any
California tribe interested in founding its own reservation-based community college other than O-C University. Given California’s large Indian population, more facilities are needed to serve college age students.

Department of Education Programs

The Department of Education administers both Title IX of the 1994 Improving America’s Schools Act (amending and supplementing the Indian Education Act) and the Impact Aid program.

Indian Education Act (Title IX)

Title IX, whose purpose is to meet the special educational and culturally related academic needs of Indian students, includes a formula grant program directed at local school districts: a grant program for state, tribal, and Indian-controlled entities to improve educational opportunities for Indian children; a fellowship program for Indian students to study in graduate and professional programs in specified fields; a grant program for tribes to help them build their administrative apparatus for education services; and a grant program for the development of educational opportunities for adult Indians. By far the largest of these Title IX programs, the formula grant program, is based on the number of Indian students that a local school district can identify through certification forms filled out by their parents. If the school district does not initiate the certification process or the parents do not wish their children to participate, the amount of money available under the program will be reduced under the formula.

In 1995, California was awarded over $4 million in Title IX formula grant funds which supported 117 projects. That budget was over four times the amount of JOM funds allocated to California and reflects the fact that the Office of Education is more inclusive than the Bureau of Indian Affairs in defining its service population. Although JOM served only 11,775 Indian students in California in 1995, Title IX formula grant funds served over 33,000. Eligible students include those who are members of tribes, descendants in the first or second degree of such members, members of tribes terminated since 1940, and members of state-recognized tribes. No distinction is made between members of tribes indigenous to the state and other tribal members.

Impact Aid

Impact Aid funds are distributed to local school districts on the basis of the number of children residing on or whose parents work on “Indian lands.” The funding formula includes both Indian and non-Indian children, and the term “Indian lands” includes individual Indian trust lands, reservation trust lands, and tribal lands subject to restrictions against alienation. These funds compensate for the fact that Indian lands
are not subject to state and local property taxes, which normally serve to support public education. Districts may use Impact Aid monies for general operating expenses, and often these funds constitute a large percentage of the total operating budget of districts encompassing Indian reservations or trust lands.

Under 1978 amendments to the Impact Aid program, local school districts receiving funds must insure that Indian children participate on an equal basis in the school program with all other children in the district, and that Indian parents are afforded an opportunity to participate in the planning and development of programs supported with Impact Aid monies. The promise of these amendments has not been realized in California, however. Parents and tribal officials regularly complain that they have practically no input into the management of Impact Aid funds.

California seems to be underfunded within the Impact Aid program, despite the relatively mechanical formula for providing assistance. In fiscal year 1993, for example, California received $7,625,175 while Oklahoma received $18,858,117. Yet California has approximately 550,000 acres of Indian land compared with approximately 1,100,000 in Oklahoma. Thus with 53 percent the amount of Indian land as Oklahoma and almost the same size Indian population, California received only 40 percent as much funding.

This difference in Impact Aid funding requires some explanation. The presence of large numbers of Indians from unrecognized tribes in California cannot explain the disparity between California and Oklahoma, because the Impact Aid law does not differentiate between Indians and non-Indians, so long as the individuals live on Indian lands. Given the formula for Impact Aid funding, however, an obvious hypothesis is that fewer people (non-Indian as well as Indian) live or work on the Indian lands in California than in Oklahoma. The remoteness, inaccessibility, and aid quality of Indian lands in California make this hypothesis quite plausible. Census data cannot be used to verify it, however, because the census does not differentiate between residents of trust and non-trust lands in Oklahoma.

A second hypothesis is that California Indians are disadvantaged by eligibility requirements within the Impact Aid law that allow funding only when a local school district has at least 400 students who live on Indian lands or at least 3 percent of the total district population. Thus, if the children living on Indian lands in California are scattered among more school districts than the children living on Indian lands in Oklahoma, it may be possible that fewer California districts are eligible for Impact Aid. A careful study is required to determine whether California Indians are disadvantaged by this provision.

Conclusion

A large portion of the federal Indian budget is devoted to education. Thus if one is
trying to explain disparities in the allocation of federal funds for California tribes, differences in funding for education programs are likely to account for those disparities.

Indeed, California Indians have not received an equitable share of federal education funds for Indian education, particularly if the focus is on Bureau of Indian Affairs programs. The Johnson-O'Malley program, the Bureau's day and boarding schools systems, and the Higher Education Scholarship program are the three worst cases. Under Johnson-O'Malley, the biggest problem is an undercounting of Indians eligible for service. If the service population were properly counted, California would receive almost three times the amount of Johnson-O'Malley funding it currently receives. Interestingly, the Office of Education, which administers funds available under the Indian Education Act, serves a California Indian population approximately three times larger than the population designated by the Bureau under Johnson-O'Malley.

With respect to day schools and boarding schools, the greatest source of difficulty is the failure to locate and operate schools in areas convenient for California tribes. The Bureau has almost completely abdicated Indian education in California to the local public schools. Yet California's schools have not built a record of effective service to Indian children.

Under the Higher Education Scholarship program, restrictive eligibility definitions are the most serious obstacle to equity for California Indians. Regulations promulgated by the Department of Interior have disqualified California Indians who are members of unrecognized tribes. These regulations have been challenged in court and may be revised in the future to create more favorable eligibility standards for California Indians.
Memorial of the Northern California Indian Association, Praying that Lands Be Allotted to the Landless Indians of the Northern Part of the State of California, reprinted in R. Heizer, Federal Commissions about Conditions of California Indians 1851 to 1933: Eight Documents at 98 (Ballena Press 1979).


See Section III of this report, supra.

Final Report to the Governor and the Legislature by the [California] State Advisory Commission on Indian Affairs, 1969.

See Senate Joint Resolution No. 3 — Relative to the reinstatement of federal services for California Indians, filed with the Secretary of State of the state of California, April 2, 1968.


See Section III of this report, supra.

According to the 1990 census for all Indian areas in the United States, 42 percent of the residents are under the age of 13.

This figure of 24,500 is lower than the 43,459 figure compiled by the California State Department of Education in identifying Indian students for purposes of state programs. See California Advisory Committee, 1995. It is also lower than the 33,000 Indian students served by the Title IX Indian Education Act programs in 1995. See page 64 of this section, infra. It should be noted that the state and Indian Education Act programs do not differentiate between members of California tribes and members of out-of-state tribes.

This figure is very close to the $93/child national average for JOM expenditures in 1995.


See Section III of this report, supra.


See Section XII of this report, infra.

See Final Report to the Governor and the Legislature by the State Advisory Commission on Indian Affairs at 19–20 (Sacramento, CA, 1969).


See 20 U.S.C. sec. 238(c).
X. California Tribal Government Administration

Most California Indian tribes have small land bases and small populations, and usually receive few funds for managing tribal government administrative needs. A large number of California tribal governments are requesting based funding levels in order to provide basic administrative personnel and program management. While a few California tribal governments have done well under special BIA programs, most have been underserved and suffer from years of underfunding and administrative neglect. The rapidly changing economic and political situation among California Indian communities has presented new challenges to the old and underfunded tribal administrations. Most contemporary California tribal government constitutions or bylaws were created when Indian communities exercised little political autonomy and legal jurisdiction, and did not provide a framework for economic development, community development, or protection of political and cultural rights. Current efforts by California Indians to engage in economic development and gaming and to increase state, federal and BIA funding levels, as well as assert greater administrative and legal control over their reservations and rancherias, require new or modified constitutional, legal and administrative institutions. Tribal governments must be administratively larger and supported with greater stable funding in order to achieve the economic and social goals of California Indian communities, and to protect their remaining lands and cultural heritages.

IRA and Non-IRA California Constitutional Tribal Governments

From our survey of twenty-nine California Indian communities, twenty-three were from recognized tribes, and eleven have an IRA constitution. Among our surveyed tribes, most have reworked, or have considered reworking, their constitutions to respond to contemporary conditions. These conditions—more complex bureaucratic procedures, greater economic development, and accounting needs—were unforeseen at the time of original constitution making, and challenge contemporary tribal government administration. For example, many tribes with IRA governments updated their constitutions and by-laws to deal with business and land issues that did not exist previously. Ten tribes disclosed that their original constitutions were reworked at least once after the IRA government was established and recognized by the federal government, and one tribe indicated it had revised its constitution twice.

Since 1991 nine IRA tribes have reworked or revised their tribal constitutions. At present, 1995, four tribes are in the process of revising their tribal constitutions. Three tribes revised their constitutions in 1994 alone. Every decade, since the 1950s, at least one of the tribal community has revised its tribal constitution. In the early 1990s two tribes reworked their constitutions: one in 1992, another 1991. During the 1980s, one constitution was rewritten. Again in 1976 another tribe modified their constitution. In 1956 another IRA tribal government document was adjusted by a tribe.

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Seven tribes from our survey of twenty-nine California Indian communities are federally recognized non-IRA government tribes. Two of the seven tribes have tribal constitutions and two have tribal constitutions in development. A fifth tribe operates with articles of association and ordinances. The two remaining tribes did not indicate what system of governance they were using.

Within the last thirty-four years, six federally recognized non-IRA governments adopted constitutions and by-laws. Among our surveyed communities, no non-IRA tribe had documents that predated 1961. In 1961 the first constitution and by-laws were adopted; afterwards other constitutions were adopted during the years 1976, 1985, and 1989-90. Two constitutions and sets of by-laws were created within the past four years. One tribe indicated a constitution and by-laws were not applicable for use in their tribe.

Five IRA tribes utilized a BIA intermediary to draft their tribal constitution and/or by-laws. Four tribes used their tribal committee in the creation of their constitution and/or by-laws. Two others utilized the CLS (California Indian Legal Services) in their proposal, and two tribes used a tribal or private attorney to draft their tribal constitutions.

One tribal community created the tribal constitution and/or by-laws themselves, and other tribes currently worked on several drafts through their tribal council. These tribes indicate great satisfaction with these methods because the tribal community worked together in the formulation of constitutional and by-law changes. They also indicate they are pleased with these methods, as they prevent intrusion from BIA officials into tribal affairs.

Federally recognized non-IRA California Indian constitutions vary in the arrangement of tribal administration more than comparable original IRA tribal governments that were instituted by the BIA during the 1930s. Original IRA tribal governments were created directly by the BIA as part of the IRA policy of reestablishing to Indian self-government. Most IRA tribal constitutions and governments, however, did not utilize the traditional tribal methods of governance. The institution of the IRA self-government arrived with inherently built-in difficulties.

Four tribes suggested that they accepted an IRA government during federal reclassification from terminated to recognized tribal status. Prior to termination, they lacked IRA tribal government status, but the BIA advised each tribe to restore an IRA tribal government. These tribes were apprehensive that their recognized status might be reversed if they did not accept the IRA governmental system.

From our survey, five terminated tribes were restored to federally recognized status. Upon restoration, however, all five rejected IRA constitutions suggested by the BIA.

How or why IRA governments were introduced into many California Indian
ommunities is not well known to many California Indians. One tribal representative stated, "As far as we know, we don't know how we became an IRA government." Seven tribes gave "unknown" as the reason for how and why they had IRA tribal governments. One tribe remarked they didn't remember why they became an IRA government, but guessed they must have voted in favor of it because they were one today. The unknown origin of the implementation of IRA tribal governments by California Indian tribes creates confusion for these tribes as they attempt to understand the organization of their government and relations to federal and state administrations.

The BIA’s role in forming IRA governments is intensely disliked by many tribes. One tribe stated, "The IRA cultural model of tribal government/constitution system is culturally alien to our local culture and community; but it was the only means to gain our sovereignty." The application of a culturally alien governance system results in unfamiliar political processes for California Indian tribes and continually undermines tribal sovereignty and self-determination. Many, but not all, California Indian communities recognize elders, kineship and family, and spiritual leaders as part of the community and political decision-making process. In general, IRA governments and by-laws do not recognize the major social and political patterns of California Indian communities, and therefore create difficulties in political procedure and decision making. Newly revised constitutions and tribal governments need to reflect the social, cultural, and political patterns of California Indian communities.

Summary
Although the IRA system of tribal government is not an inherently Indian form of government, it has been accepted by eleven tribes from our survey of twenty-nine California Indian communities. Seven tribes decided not to adopt the IRA government but to rely on other solutions for tribal administration.

Many California Indian tribes realize the IRA form of tribal government has not helped solve their tribal issues and problems. Many tribes have revised their constitutional provisions to adapt to contemporary circumstances, which were not apparent nor had arisen at the time the original constitution was implemented. Therefore, many tribes are ill equipped to manage the issues that face them today. As tribes confront change in world conditions, they realize, their form of tribal administration must adapt and be reworked to maintain their self-determination.

Many tribes realize they need community support and assistance from individuals outside the tribe, such as lawyers and the BIA, to determine the direction of their tribal future. Caution should be taken to prevent over-involvement by outside parties in final determination of California Indian constitutions and ordinances.

Along with the need for technical assistance, more money is needed to assist in revising outdated tribal constitutions. Significant funding has not been forthcoming from the federal government. If money were released to tribes, they could make their tribal governments more effective.
It is essential that California Indian tribes revise IRA tribal constitutions into forms that enable greater preservation of tribal sovereignty and cultural community. Tribes need to have government institutions consistent with their perspectives, goals, and values.

Enrollment

For many California Indian tribes there is little support and/or their over-involvement by the BIA in tribal membership enrollment processes. California Indian tribal governments maintain records of enrollment as an inherent right of their tribal sovereignty. The enrollment process determines who is a member of a specific tribe and allows tribes to use their membership roles to obtain the rights of tribal membership. Only a few California tribes do not maintain enrollment records. Their inability to maintain and determine tribal membership can be attributed to lack of federal funds. If adequate funds were provided from the federal government, these tribes would maintain tribal enrollment records.

California Indian tribes say that more federal funds are needed for the upkeep and maintenance of their enrollment records. One tribe indicated that no funds existed to assist them to maintain their enrollment procedures. Yet somehow they found the personnel to support their tribal enrollment record-keeping. Other tribes realized that federal government funds are not consistently available for tribal enrollment assistance. Some tribes have turned to multi-year grants in order to maintain their tribal enrollment record system. A concern by some tribes is that BIA money is not a reliable funding resource. Grant money must be continually applied for every few years. These grants also carry the possibility of non-renewal each time the grant terminates.

More staff is needed by most California Indian tribes to keep tribal enrollment records. One tribe, on its own initiative, brought in elders to review enrollment applicants at the time of open tribal enrollment. The elders were paid a stipend for their services, but the stipend was small. This tribe felt strongly that the BIA needed to assist them with the certification of their tribal members, since new enrollees become eligible for federal benefits. The tribe perceived that they were doing the federal government's job by identifying eligible recipients for federal services. Furthermore their elders were not being compensated for work beyond tribal obligation. Nevertheless, this tribe also insisted that only tribal members should/could certify tribal memberships, and such certification should not be left to the BIA.

Most California Indian tribes are left to their own resources to provide staff for tribal enrollment. Tribal government funds are used to aid in the employment of part-time enrollment clerks. Many tribes indicate that they could use a full-time person to fulfill their enrollment services; part-time help is not enough to keep good records.
Whenever the BIA supervises tribal membership certification, Bureau staff often overstep their powers. Two problems continually reoccur with BIA-managed tribal enrollment. First, tribes indicate that their roll-books must be certified by the Bureau, a situation that allows the Bureau an excess amount of supervision, which is cause for grave concern to tribes because the sovereign right to determine tribal membership is undermined. Secondly, the BIA is excessively involved in the denial of tribal membership to out-of-state applicants. California tribes respond that they are willing to enroll out-of-state individuals as members, but are blocked by the BIA. This situation challenges their sovereign right to determine tribal membership. Their right to decide the qualifications of applicants to their tribe is effectively impairs by the BIA's over-involvement in the enrollment process.

One tribe insisted that the BIA kept a separate roll for enrollees, different from the tribal rolls. Different enrollment numbers for tribal members were created, causing problems for members. The confusion created by the BIA in maintaining a separate enrollment generated fear that services would be denied to tribal members.

Summary
California Indian tribes struggle to keep their enrollment procedures and processes up-to-date and accurate. The tribes in our survey state that they will continue their enrollment progress at this level, but would benefit greatly if more federal funds were granted to assist with the process. Most tribes need more assistance in the future to continue their enrollment operations with accuracy and precision.

California Indian tribes have few financial resources available to resolve their tribal enrollment disputes. Funds are not available to the tribes through the BIA for the support of mediation services. Federal grants are used as the most convenient method to offset the cost of enrollment appeal cases. Occasionally some tribes use tribal business income to pay for tribal enrollment procedures. This method is the exception, since most tribes do not have enough business income to effectively support tribal enrollment needs. Only one tribe in our survey received direct funding from the federal government—$40,000 from the BIA—to assist in the enrollment process. California Indian tribes need funds, staff, and technical assistance to initiate and keep tribal enrollment records on site.

Tribal Government Financial Administration
Most of our surveyed tribal governments have procedures for hiring personnel and for maintaining checks and balances for the disbursement of tribal funds. Effective administrative support and financial management are necessary in order to receive and disburse federal, state and private funds. All of our surveyed tribal governments attempt to provide the minimal administrative and financial organization required to carry out federal and state financial and administrative requirements. Overall, most California tribal governments are capable of carrying out such financial and
Tribal administrators usually are hired by a personnel committee appointed by the tribal council. The committee seeks to employ the best qualified applicant for a tribal administrative position. Applicants first must meet job description requirements before being selected for an interview. Criteria used to select tribal managers are similar to those implemented by other employers. Experience is considered first along with any equivalent job experience, such as previous tribal and/or administrative experience. Secondly, a college degree in a related field is advantageous. A preference for Indian applicants is the third consideration, along with personal sensitivity to Indian issues. Individual experience in tribal administrative is a favored employment characteristic. Experience in grant writing or management is extremely helpful and perceived as a highly valued commodity. At present some tribes are grooming tribal members for positions as future tribal administrators with specific administrative study programs. Final recommendations, based on an individual’s experience and personal interview, are made to the tribal council before a final selection is approved for a tribal administrative position.

In order for tribes to retain control and exclude interference from state and federal authorities, California Indian tribal administrators strictly implement safeguards to prevent misappropriation of tribal resources. Most California Indian tribes have accountant(s) or an accounting department responsible for the financial documentation of tribal administrative records. A few tribes do not presently use an administrative accounting system for tribal financial purposes. This condition occurs because of a deficiency of agency-issued funds from federal government sources. Funds for administrative service and support are not disbursed to tribes with small populations. As a consequence, small tribes are disadvantaged in securing administrative service and support for their people and tribal interests.

Many California Indian tribal accounting systems, however, are well maintained and supportive of the tribal community interests. Many California tribes have one tribal accountant, occasionally two, and a support staff for basic financial administration. Currently few problems have occurred, tribes accounting systems.

New computer technology and software are used in most tribal accounting systems and are effective fiscal tools for tribes. Currently almost every California tribe has gone on-line in their accounting system. However, some tribes presently do not use a computerized fiscal system, but instead rely on the traditional ledger and register system to inventory tribal financial accounts. An accountant or fiscal policy officer for the tribe, despite the lack of a computer system, is considered an essential element beneficial to the tribal administration. Some tribes hope to receive an ANA grant to begin to arrange an operational accounting system. The funds from this grant would provide a tribe with a fiscal officer or accountant.

Administrative fiscal systems of California Indian tribes are preserved by checks and
balances designed to prevent misappropriation of tribal funds. Outside audits from independent accounting agencies are an essential element to safeguard the accounting system of many California Indian tribal governments. Tribes have annual audits, a mandatory requirement to obtain money from funding sources. Some problems that could occur with financial administration are averted by a schedule of regular audits.

Another precaution against misappropriation is the requirement of dual signatures on all tribal checks and accounts. The primary check signers are tribal council members, not staff. The tribal council designates which members will hold signatory check power. Tribal checks also are inspected monthly on the tribal bank statement register. Designated council members are held directly accountable by the tribe to sign checks properly. In order to safeguard signatory power over tribal money, most tribes empower two or more tribal council members to act as co-signers. Thereafter, tribal manager reviews all payments. The co-signers’ requirement to sign tribal checks protects tribal funds from misappropriation. According to our surveyed communities, one reason California Indian tribes are motivated to use strict security measures is to reduce intervention by federal or state government agencies in tribal administration and finances. Secure financial procedures help maintain tribal self-determination.

All expenses for tribal programs, including the salaries of tribal chairpersons, are reviewed by the tribal program managers. Purchase orders are required and purchase amounts are regulated. Challenges to the budget must be cleared by the council, the project director, and the agency, in writing, before changes are made in the account system. Our surveyed tribal communities report that personal honesty and integrity are generally upheld by all persons involved in business and financial transactions on behalf of the tribe.

Most California Indian tribes are satisfied with the current state of accounting procedures and assurances in tribal management of funds. Only a few tribes are dissatisfied with current tribal funds management. This dissatisfaction is caused by a lack of sufficient knowledge about the tribal financial system. Other tribes indicated they would change their administrative financial system if there was a possibility to improve on the system. Our surveyed tribal governments report that accounting systems set up by the California Indian tribes work in conjunction with the BIA, federal, state, and other government agencies, with only minor administrative problems.

Summary

Tribes protect their financial administrative systems with strict safeguards, such as regularly scheduled audits and dual signatory power by tribal council members. Some tribes do not receive enough funds to support their tribal financial systems. Administrative interference by the federal government directly affects the sovereignty of many small tribes. Larger tribes are more effective at averting BIA administrative and financial intrusion. The small tribes do not use computers for accounting and administrative purposes because of a lack of funding. Low funding prevents smaller
tribes from effective financial management and administration, which inhibits seeking of more funding and federal grants, protection of tribal interests, and achievement of community goals.
XI. Funding Inequity and California's Special Legal Status

Public Law 280 and the Breakdown of Law in California Indian Country

Since 1953, special jurisdictional rules have operated in California, as well as several other states. Congress mandated these rules in a statute known as Public Law 280. Public Law 280 withdraw federal criminal jurisdiction on reservations in the designated states, and authorized those same states to assume criminal jurisdiction and to hear civil cases against Indians arising in Indian Country. In states without Public Law 280, the federal government has authority over most reservation crimes except for minor crimes involving only Indians; tribes have criminal jurisdiction over crimes committed by Indians, some of which overlaps with federal criminal jurisdiction; and the states lack civil and criminal jurisdiction over Indians in Indian Country.

California tribes suffer not only from funding inequities, but also from the jurisdictional effects of Public Law 280. Indeed, as the discussion below will demonstrate, the two programs are interrelated. This section highlights the problems associated with Public Law 280 and ultimately recommends a fundamental revision of its terms.

Any account of the jurisdictional effects of Public Law 280 must differentiate the symbolic, the direct, and the indirect consequences. Symbolically, Public Law 280 was an affront to tribes because it unilaterally abrogated treaty rights held by some of the affected tribes, and because it diminished tribal sovereignty of all the affected tribes without their consent. It accomplished these results by greatly enlarging the powers of certain states, including California, on Indian reservations. In treaties with some of the affected tribes, the federal government promised that reservations would be set aside for their sole and exclusive use and occupancy. Those words have been interpreted to exclude the possibility of most state jurisdiction on the reservations. Even tribes without treaties, which includes most California tribes, had been guaranteed freedom from state jurisdiction on their reservations through Supreme Court decisions resting on tribal sovereignty and the Indian Commerce Clause of the United States Constitution.

Public Law 280 overturned those treaty promises and judicial rulings without tribal consent. Indeed, many tribes actively opposed passage of the law, at least to the extent their meager funds could support travel to Congressional hearings. There was little likelihood that the Supreme Court would find Public Law 280 unconstitutional because of this lack of consent, as the Court usually upheld Congressional power over Indian affairs. But the failure to secure tribal consent demonstrated such disrespect for tribal governments that President Eisenhower was moved to comment on that defect at the time he signed the bill into law. His statement acknowledged that Public Law 280 sent a loud message that Congress would cast aside tribal rights in favor of state
power. brute force rather than negotiations among governments was the model.

Apart from this symbolism, the direct effects of Public Law 280 were twofold: First, it extended state criminal jurisdiction and civil judicial jurisdiction over reservation Indians in certain states; second, it eliminated special federal criminal jurisdiction over reservation areas in most of those states. Thus, the law substituted state legal authority for federal on all the designated reservations. Historically, states resented the special rights and status of tribes under federal law, and the federal government often intervened to protect the tribes. Public Law 280 did not strip the tribes of most of these rights, and did not erase the trust status of their lands. But by giving the states additional authority on reservations, it empowered an often hostile force.

In view of the fact that federal courts were not authorized to hear many civil and criminal disputes arising on reservations in the pre—Public Law 280 era, Public Law 280 also expanded the realm of non—Indian control over reservation activities. State courts suddenly could hear reservation—based civil disputes and criminal cases that federal courts would not have entertained in the past and that tribes would have treated as within their sole purview. The direct effects of Public Law 280 were not the only effects, however. Although this law only addressed the question of which governments had power to resolve criminal and civil disputes on reservations, its passage signaled a change in the philosophy shaping federal Indian policy. No longer would the federal government profess (if not discharge) responsibility for the welfare of tribes and tribal members. Instead, states would be asked to assume that responsibility, just as they were assuming responsibility for the education, welfare, and health care of needy non—Indians. Public Law 280 was just a small step toward the realization of that vision. But the federal Indian bureaucracy—the Bureau of Indian Affairs—used it as an excuse for redirecting federal support on a wholesale basis away from tribes in the "Public Law 280 states" and toward all other tribes.

Nowhere was this reallocation of funds more evident than in California, where the Congress also singled out 41 small reservations (out of more than 100 in the state) for termination—meaning that these tribes would no longer be recognized by the federal government, and lands would no longer enjoy federal trust protection. Together, termination and Public Law 280 formed a toxic brew, eating away at the funds authorized by federal law for Indian welfare, education, and health care in California. Moreover, for California, the advent of Public Law 280 meant that tribes were never "dealt in" to many of the new federal Indian programs that Congress and the Bureau of Indian Affairs instituted in the 1960s and 1970s, largely in response to social movements of that period. The most striking illustration of this phenomenon is funding for tribal law enforcement and tribal courts. Until the middle of this century, federal Courts of Indian Offenses handled dispute resolution on many reservations, ruthlessly imposing non—Indian norms on tribal members. In the 1960s, tribes in the non—Public Law 280 states began to form their own judicial and law enforcement systems, partly to fend off state jurisdiction and partly to express their own sovereignty. Federal funding for tribal courts and police escalated sharply outside of California, fueled by a growing
number at United States Supreme Court decisions affirming exclusive tribal jurisdiction over reservation-based disputes. In California, however, the Bureau refused to support tribal justice systems, on the ground that Public Law 280 made tribal jurisdiction unnecessary and perhaps even eliminated such tribal authority. In fact, courts, attorneys general, and federal administrators have affirmed that tribal legal authority survived Public Law 280. But legal authority requires infrastructure and institutions, and Public Law 280 stood in their way.

These symbolic, direct, and indirect consequences combined to produce much distress for tribes; but they also produced a massive irony. The legislative history of Public Law 280 is laden with references to the problem of “lawlessness” on reservations. Traditional tribal justice systems were described as weakened and ineffectual, and federal mechanisms were considered too limited in their jurisdiction and too costly to expand. Reservations were described as places of rampant crime and disorder. Public Law 280 was supposed to provide the solution to this problem of “lawlessness” by empowering state civil and criminal courts to do what the tribal and federal systems supposedly could not. Ironically and tragically, however, Public Law 280 has itself become the source of lawlessness on reservations. Two different and distinct varieties of lawlessness are discernible. First, jurisdictional vacuums or gaps have been created, often precipitating the use of self-help remedies that border on or erupt into violence. Sometimes these gaps exist because no government has authority. Sometimes they arise because the government(s) that may have authority in theory have no institutional support or incentive for the exercise of that authority. I will call this kind of lawlessness the “legal vacuum” type. Second, where state law enforcement does intervene, gross abuses of authority are not uncommon. In other words, power is uncapped by the law that is supposed to constrain it. I will call this kind of lawlessness the “abuse of authority” type.

What explains this phenomenon of lawlessness spawned by a statute designed specifically to combat lawlessness? The capacity to contrast Public Law 280 states with all others offers a kind of natural (somewhat controlled) experiment. Three recent incidents in California Indian Country, and implicit comparisons with what would have happened in non–Public Law 280 states, set the stage for an explanation.

Incident 1: Sludge Dumping at Torres-Martinez

Located in California’s Coachella Valley near the desert town of Indio, the Torres-Martinez Reservation is about half tribally owned and half allotted. In 1989, a tribal member leased her family’s 120-acre allotment to a company that proposed to use the site to dump, dry, and compost human waste from treatment plants in San Diego, Orange, and Los Angeles counties. Complaints soon surfaced from tribal members living nearby. The sludge pile stank. It attracted legions of flies. It fouled the local water supply with bacteria and heavy metals. As it dried and was hauled away, it formed great clouds of dust, which choked nearby residents and coated surrounding homes. Meanwhile, the allottee who had leased the land moved off the reservation.
What could the complaining tribal members do to get rid of the sludge? The 430-person Torres-Martinez tribe had not been asked to and had not approved the lease. This failure to seek prior permission is not surprising, given the structure and operation of the tribal government. Although the tribe has a five-member Tribal Council headed by a tribal chair, it has no constitution. Neither does it have codes or ordinances prescribing the conditions for approval of leases or imposing restrictions on activities that might harm the environment. There is no tribal law enforcement agency, and no tribal court or other form of justice system. When disputes arise within the tribe, the only recourse available is to the Tribal Council, which ordinarily refers the matter to the next meeting of the General Council — all the members of the tribe convened together. The criteria applied at such meetings are not specified in advance, but a spokesperson for the Tribal Council described the unwritten tribal policy as "you can do what you want on your property as long as it doesn't bother other people or the environment." At another point, a spokesperson stated, "She doesn't need our permission for a little business, but the tribe has to decide whether something this big is OK." 

Eventually, in February, 1994, the general council adopted a resolution that the dumping facility should be closed. But the allottee and the dumping companies disputed the Council's authority over allotted land, especially given the absence of a tribal code provision or constitution; and there was no court or other form of justice system available to enforce the Council's resolution. The dumping just went on.

Internal conflicts within the Torres-Martinez tribe partly account for the lack of legal infrastructure. There are divisions among allottees and non-allottees, as well as among traditional family groups, leading many to have qualms about creating a powerful tribal government. But part of the responsibility lies at the feet of Public Law 280, which, as described above, prevented tribal justice systems from sprouting in California Indian Country the way they did elsewhere in the United States.

State law could not help the complaining tribal members either, even with the powers the state acquired from Public Law 280. Provisions in Public Law 280 itself preclude states from exercising any authority, civil or criminal, that would affect the status or use of trust land. This exception to state jurisdiction was included in Public Law 280 because the federal government was not relinquishing its trust responsibility over Indian lands, even in states covered by that law. It was merely inserting state justice systems onto the reservations, not terminating the tribes altogether. (Of course, Congress did terminate some reservations in separate legislation enacted soon afterward.) In other words, Public Law 280 was intended to be a point on the path toward termination, but not termination itself. This exception language in Public Law 280 was enough to prevent state jurisdiction over the sludge dumping at Torres-Martinez; but there were other obstacles to state authority as well. In 1976, the United States Supreme Court interpreted Public Law 280's grant of state civil jurisdiction in a highly restrictive manner. According to the Court, states only acquired
the authority to hear civil lawsuits against reservation-based Indian defendants, not to apply state civil regulatory statutes, such as health codes and animal control laws, on reservations. Indeed, even if criminal penalties formed some part of these regulatory codes, code enforcement was outside state authority. If the complaining tribal members had sought to invoke California's solid waste disposal laws, they would have run into the argument that these laws are regulatory and therefore inapplicable to the reservation. Moreover, county zoning laws could not be employed against the dump, because other court decisions have limited the jurisdiction conferred by Public Law 280 to state laws; city and county laws are outside Public Law 280 because they are local rather than state-wide in scope. And even though federal environmental laws offer states authority over dumping if certain conditions are satisfied, these same federal laws draw limits on state authority at reservation boundaries.

In the early 1990s, the California legislature doggedly sought to pass legislation allowing the state to control reservation dumping. Legislators pursued this course even in the face of legal opinions from the Department of the Interior, the Environmental Protection Agency, and California's own Legislative Analyst maintaining that the state had no such authority under Public Law 280 or any other federal law. Eventually California's governor bowed under the weight of legal reasoning and vetoed the bill. The legislature then substituted a statute that would facilitate agreements between tribes and the state over control of dumping, a recognition of the tribes' sovereign status. This struggle over dumping legislation only underscores, however, the powerlessness of the state to aid the complaining tribal members at Torres-Martinez. The complaining members may have resisted the idea of state assistance on grounds of tribal sovereignty anyway; but even had they been willing to set those compunctions aside, they would have been confronted with the absence of state power to do anything about their problem.

Because the sludge situation at Torres-Martinez involved leasing and use of trust land, the federal government ought to have been available as a source of redress. As trustee of the allotment in question, its approval was required before the lease could be valid. Responsibility for determining whether to approve such leases rests with the Bureau of Indian Affairs. The National Environmental Policy Act also requires the Bureau to conduct an environmental assessment before approving any leases. Thus, if there was no federal approval, the Bureau should have been able to void the lease and stop the lessee's use of the property. As trustee for the remaining tribal land, the federal government was also obliged to take legal action against threats to that land, such as pollution of ground water or general nuisance. Thus, if the sludge pile was creating environmental hazards, the federal government had authority to sue to enjoin it.

In practice, however, the federal government played a passive role at Torres-Martinez. In 1990, the Superintendent for the local Bureau of Indian Affairs agency issued a cease and desist order against the dumpers. Bureau officials made no effort to enforce the order, however. Following the General Council's resolution in early 1994,
the Tribal Council again requested action from the Bureau. Another cease and desist order was issued, but again, the dumpers ignored it and no enforcement action followed. By the summer of 1994 the Bureau received a proposed new lease for the dump-site, and referred it to the White House Council on Environmental Quality for guidance about whether the lease could be approved before an environmental assessment was completed. Relying on their perception that the tribal members were divided about the dump-site, Bureau officials did nothing to expedite a decision.

Public Law 280 did not mandate this passive federal role, but it did enfeeble the federal bureaucracy in California to the point where it could not effectively discharge its trust responsibilities. As such, Public Law 280 amplified a pattern of federal bias against California Indians that dates back to the 1850s, when Congress refused to ratify treaties negotiated with California tribes. Studies conducted as long ago as the 1920s document that California Indians have not received a proportionate share of funding from the Bureau of Indian Affairs. The absence of treaties offers part of the explanation, but so does the decimation of tribal populations during the latter nineteenth and early twentieth century. California Native peoples were slaughtered, displaced, and starved; their social/political structures were disrupted; and their numbers targeted for extinction. When it became evident that they would not disappear, many were settled on small, undesirable reservations or rancherias scattered about the state, with the individuals at each such locale labeled a "tribe." It should come as no surprise that such a large number of diverse tribes, totaling over 100, was not well situated to sway the federal bureaucracy to provide funds and services. Mobilization of each individual "tribe" was hindered by the patchwork of tribal peoples that had been roughly stitched together at each site. Coordinating multiple tribes was nearly impossible without strong organization at the tribal level. And with so many tribes, the transaction costs of such coordinated action were just too high. A single tribe with the same number of members as the many tribes in California would have had far more influence.

With the passage of Public Law 280, the situation worsened. Entire federal Indian programs in areas such as welfare, health and education, and law enforcement were withdrawn from California. As a consequence, California has a much smaller federal Indian bureaucracy in relation to its budget and population served than other parts of the United States. Only three agency offices serve the entire state and its more than 100 tribes, making lack of communication and responsiveness major obstacles to effective action. In contrast, most significant tribes across the country have their own agencies of the Bureau. The Sacramento Area Office, which services the entire state, is also understaffed by comparison with area offices elsewhere in the country. Thus diminished in California, the Bureau was ill-equipped to investigate the problem at Torres-Martinez or to seek legal action from the United States Attorney in San Diego. And dealing with the remote and overworked Bureau staff was not an effective outlet for tribal grievances.

With the tribe, the state, and the federal government all hobbled by Public Law 280.
the eruption of lawlessness was predictable. Tribal members at Torres-Martinez organized a protest group and began hounding the Bureau and the EPA with complaints. After the group organized a one-day blockade of the dump site in August, 1994, the house of a prominent group member was sprayed by bullets from an automatic weapon. Despite calls to the local sheriff, there was no state law enforcement response. Two months later, the protesters, now joined by over 100 environmental activists, members from other tribes, and local members of the United Farm Workers Union, piled old tires, railroad ties, chain-link fencing, and empty barrels at the entrance, bringing the 1,000 ton/day sludge deliveries to a halt. A tent encampment also materialized on the site, the protesters signaling their determination to resist the smelly invasion. As rumors circulated of attack by the allottees and their tribal allies, protesters fortified the encampment and prepared for confrontation. County sheriffs cruised the area but held back from arresting the protesters. At one point, trucks carrying the allottees and some sludge executives tried to break the blockade. After almost two dozen sheriff's deputies moved in, the blockaders stepped aside to allow the truck entrance. Then the blockade resumed.

At last, the federal government roused itself to action. At the request of the B.I.A., the United States Attorney for the Southern District of California filed suit to enjoin the dumping, claiming it was being conducted without federal lease approval and that it constituted a nuisance. Within two weeks of the start of the protest, a federal judge issued a temporary restraining order. A preliminary injunction followed six weeks after that. In the meantime, allies of the allottee seized the tribal hall during a meeting to nominate candidates for the next Torres-Martinez election and locked out the current chair, a sludge opponent. Notwithstanding this disruption, the current chair won reelection.

Lawlessness of the "legal gap" type is the central current of both this story and several of its tributaries. The chief instance of lawlessness, of course, is the blockade, itself a response to the legal vacuum that had been created on the reservation. Had legal authority been more fully realized in the tribal or federal government, the blockade — a self-help action fraught with possibilities of lawless violence — probably could have been avoided. If, for example, the tribe had developed a leasing code, an environmental review process, and some dispute resolution system, a decision could have been made to allow or not to allow the dump; and that decision would have benefited from community acceptance of the process. Alternatively, if the federal government had provided greater support for the Bureau officials in California, so they could enforce the laws of trespass and nuisance, the complaining tribal members might not have become so frustrated with federal inaction.

Yet this dominant tale of lawlessness should not be allowed to obscure the subplots. Lawlessness is also evident when members of the group opposing the dump were subjected to threats and intimidation, with no response from local law enforcement authorities. Even a spray of bullets across the home of Marina Ortega, the opposition leader, could not evoke a police presence. And as rumors of attack darkened the
protesters' camp, they prepared fortifications rather than bother calling the sheriff.

Such stories are unfortunately common on reservations in Public Law 280 states such as California. John Mazzetti, Vice Chair of the Rincon tribe, testified in 1989 before the Senate Select Committee on Indian Affairs:

[The County Sheriff's Office response to criminal activity is almost non-existent. When the Sheriff's Office receives a call regarding gunfire and someone being shot, it often takes them more than one hour to respond to the incident, if at all. With criminal activities of a lesser degree, often the County Sheriff does not respond at all, leaving the reservation with little or no protection.

The San Diego County Sheriff has stated officially that he does not like to provide services to Indian Tribes...Perhaps the reason for this is due to the reservation not having a taxable base to draw funds from in order to defer the cost of providing law enforcement.*

Many tribes suggest that uncertainty about the reach of state jurisdiction under Public Law 280 is the source of sheriffs' reluctance to enter reservations. In fact, Public Law 280 creates a large gray area where state jurisdiction is doubtful, largely where a criminal law is part of a broader state regulatory scheme. This ambiguity in the law is not incidental or merely a drafting problem, however; it is a direct consequence of Congress's attempt in Public Law 280 to steer a middle course between terminating tribes and preserving tribal sovereignty. The problem of unresponsive county sheriffs, as understood in this way, is inherent in Public Law 280.

John Mazzetti's statement suggests another diagnosis for the problem of unresponsive county officers, however. By empowering the state only partially — giving it law enforcement responsibility but not regulatory or taxing authority — Public Law 280 bred resentment and neglect among state and local authorities. As Mazzetti points out, the sheriff had costly duties (especially where reservations were remote from county centers), but no means to fund them. Moreover, because the reservations in Public Law 280 states stood apart from state regulatory policy, state and local officials did not view tribal members as part of their political community. This lack of community seems to have rendered local officials less inclined to protect citizens on reservations. When this absence of fellow feeling combined with the traditional hostility between local communities and tribal Indians, regardless of Public Law 280, the result was a void in county law enforcement.

It is true that tribes in non—Public Law 280 states complain about the nonresponsiveness of federal law enforcement, suggesting that Public Law 280 did not worsen the situation on reservations. But in non—Public Law 280 states, the tribes at least retain criminal jurisdiction over Indian offenders, so long as the penalty imposed is no greater than one year in prison and a $5,000 fine.* With the support the
federal government has provided for tribal law enforcement and courts, the tribes are not so dependent on outside authority to maintain public peace. In the more serious cases, tribes may still need to rely on the federal government. But although federal agents, prosecutors, and courts are often located further from reservations than their state counterparts, federal authorities have often established cross-deputization agreements with tribal police, enabling the tribe to ensure greater responsiveness. Furthermore, the federal budgeting process and trust responsibility open the way for tribes to put effective pressure on federal officials to provide proper services. Substituting state for federal criminal jurisdiction thus weakened criminal law enforcement as a whole.

A final instance of lawlessness is manifest in the dispute over the Torres-Martinez tribal election, which led to one faction locking the other out of a tribal meeting. Violence was simmering, near to a boil. Close tribal observers note that economic forces have led to destabilization of the Torres-Martinez. Allottees and other tribal members are at odds over whether the tribe should be able to control activities on the allotments. These sharp differences may simply be an amplification of traditions of decentralization and kin group autonomy that long existed among many Southern California tribal groups. Nonetheless, in their current form, these divisions spill over into tribal elections, where members are tempted to use force because they perceive there is no legal authority to restrain corruption, chicanery, or failure to follow tribal rules.

Following contemporary tribal self-determination policy, the federal government generally stands aside from tribal election disputes, unless the outcome warrants withdrawal of federal recognition. The state has no say in such matters, unless they explode into violence. Thus the burden of supplying law falls to the tribe. Had California tribes benefited from the kind of government infrastructure support that tribes in non-Public Law 280 states received, there might have been election codes and justice systems in place to help resolve such conflicts. Codes would have established a political balance among competing interests in advance of a particular dispute. A justice system would have offered a less political method of dispute resolution once the conflict erupted over the election. Torres-Martinez had none of these.

Public Law 280 is largely to blame for this legal vacuum. It led the federal government to take California tribes less seriously as governments, denying them money to develop codes and courts. For example, in most years California receives not a single dollar of the $10,000,000 allocated annually by the Department of Interior for Indian judicial services. Less than 1 percent of the national B.I.A. law enforcement budget is allocated to California, which has at least 6 per cent of the total Indian service population. As one tribe recently complained, Public Law 280 "has hampered our protection from the local police and developing our own police."

At this point, according to close tribal observers, the Torres-Martinez tribe is so deeply divided that members are actually fearful that a tribal justice system will concentrate
too much power in the tribal government. It is possible, of course, that traditions of
decentralization and family autonomy within the tribe may have made the tribal
members wary of a centralized justice system even without the dumping conflict and
lack of federal support. But such traditions prevail among many tribes; and those
traditions have not stood in the way of tribal court development in non-Public Law 280
states. The majority of tribes in non-Public Law 280 states have seen the advantages of
tribal justice systems as institutions that protect tribal sovereignty and promote a
more orderly community. If the federal government had supported California tribes
the way it supports tribes in non-Public Law 280 states, it is likely that groups such as
Torres-Martinez would have come to the same conclusion.

Incident 2: Evicting undesirables at Coyote Valley

The name Polly Klaas is indelibly linked with parental fears. In late 1993, this young
girl was abducted from her bedroom while her terrified girlfriend looked on and her
mother slept in a nearby room. After a two-month search that mobilized the local
community and evoked national attention, her mutilated body was found. Soon
afterward, a career criminal named Richard Davis was arrested for the crime on the
Coyote Valley Reservation, near Ukiah, California, home to about 200 Pomo Indians.
Davis, a non-Indian, was staying at his sister's house.

Davis's sister and her family had been living on the reservation for several years,
renting a home from a tribal member. Concerns soon developed within the tribe about
her drug dealing and other misbehavior, and the tribe began trying to evict her. Yet in
a striking parallel to the situation at Torres-Martinez, legal recourse was unavailable,
and Public Law 280 was largely to blame.

The tribe, the state, and the federal government were all effectively disabled by Public
Law 280 from helping the Coyote Valley people. The tribe lacked a justice system or
police arm that could carry out an eviction, as in no small part because Public Law 280
served as an excuse to deny federal support for such institutions. A state court eviction
proceeding could not be pursued because trust land was involved, and, as described
above, Public Law 280 specifically denies states authority over such lands. State
police possessed the power to arrest and prosecute Ms. Davis for the underlying drug
violations, but following a familiar pattern in California Indian Country, no police
response was forthcoming when tribal members complained. The B.I.A.,
superintendent for Northern California acknowledged that "under Public Law 280
jurisdiction is local, but 280 has ended over the years. Local law enforcement is
reluctant to come onto reservations because of cultural differences." As at
Torres-Martinez, the federal government did theoretically hold power to grant relief.
The Coyote Valley tribe could have brought an eviction action in the nearest federal
court. But forcing simple evictions into federal court is like requiring a college degree
for a menial job. It is too costly, time-consuming, and rigorous to justify the ultimate
beneft.
Art Bunce of the All Mission Indian Housing Authority in Escondido, California testified before the Senate Select Committee on Indian Affairs in 1989, complaining of the unauthorized influx of illegal drug manufacturers onto San Diego-area reservations. Even though some of these operations were in HUD-financed homes, the Housing Authority could not effectively evict them. As Bunce stated,

[T]he eviction procedure when actually used in earnest is extremely cumbersome... The Federal courts are overworked, understaffed, and the few cases the housing authority has brought for evictions in drug-related cases are taking about 9 months so far and we haven't even gotten to the state of pre-trial conference yet. If that continues... the community will continue to have to endure the danger posed by drug operations, some operating in brazen openness on the reservation.

Bunce recommended an amendment to Public Law 280, or at least a revision of the procedural rules for federal courts that would allow summary or expedited eviction proceedings of the sort routinely conducted in California municipal courts. Absent such an amendment, Public Law 280 had left the tribe with no competent means of affecting evictions.

Bunce's plaintive plea forecast the problem at Coyote Valley, where the tribe tried in vain for two years to stop the drug-related activity of Davis's sister. In another parallel to Torres-Martinez, the lack of effective legal redress at Coyote Valley (that is, the condition of lawlessness on the reservation) gave rise to self-help bordering on violence. At the time of Davis's arrest, the FBI removed Davis's sister and her family from their home for questioning and so that a search could take place. Afterwards, the FBI attempted to return the family to the reservation. But during the period while she was in police custody, the tribe had mobilized. One dozen armed deputies of the Coyote Valley Tribal Council, hastily empowered for the occasion, positioned themselves at the entrance of the reservation, limiting access only to tribal members. For more than an hour, these deputies faced approximately 60 armed law enforcement personnel at the roadblock before tensions eased and the family was taken away. Tribal members recall fearing an exchange of fire. Within a week, the tribe reached an agreement with federal and local authorities that Davis's sister and her family would not be resettled on the reservation. Violence was narrowly averted.

The roadblock at Coyote Valley had another purpose besides excluding the sister of Richard Davis. Tribal members wanted to register their outrage over the manner in which Davis had been arrested. Local law enforcement and FBI officers had swept down on his sister's house without so much as notice to the tribal leaders. This disregard for the welfare of the tribal community and disrespect for tribal sovereignty seriously distressed the tribal members.

The same motives of "legal vacuum" lawlessness that sounded at Torres-Martinez echoed at Coyote Valley. There is the jurisdictional gap created when no governmental
authority has effective control over evictions. There is also the absence of local law enforcement response when the tribal community is threatened, as by the alleged drug dealing by David's sister. Finally, there is the inevitable sequence of self-help and tense confrontation when the frustrated community can no longer tolerate its vulnerability. As explained above, Public Law 280 plays a significant part in creating each of these problems.

Coyote Valley also experienced the "abuse of authority" form of lawlessness when local law enforcement stormed into the reservation without notifying the tribe. Even though Dave was a notorious and violent offender, tribal leaders could have been alerted to this invasion of their territory. But Public Law 280 made such acts of impunity less likely. First, the absence of a tribal police force meant there was no partner on the reservation for the federal and local police. Second, Public Law 280 diminished the stature of the tribe in the eyes of federal and local police, making them less attentive to the interests of the tribe. As a result, tribal members may have been endangered, and antagonism between the tribe and surrounding non-Indian community members increased.

Incident 3: Confrontations with police at Round Valley

Round Valley, about 150 miles north of San Francisco, is one of the earliest and largest reservations established in California, dating back to the 1850s. Indians from several different groups — Yuki, Waiauc, Pomo, Concow, Nomlaki, and Pit River — settled there, some of them brought on a deadly forced march, others refugees from the war of extermination waged by non-Indians during the 1850s and 1860s. Today, approximately 1,200 Indians reside at Round Valley. In the spring of 1995, three homicides shook that community and exposed the enormous obstacles impeding effective law enforcement on California reservations.

To understand these homicides and their relationship to reservation law enforcement, it is necessary to view reservation life in historical perspective. In the nearly 150 years since Round Valley was established, the community fractured. Traditionalists, many of them educated members who had returned to the community, were on one side. They wanted to preserve and restore traditional cultures, assert tribal sovereignty, and achieve greater economic independence. On the other side were more assimilated members, connected with the Christian Church as a result of missionary activity, and integrated into the local non-Indian economy. A deep divide, coursing with animosity, came to separate these two groups, and ultimately impoverished the local non-Indian population. In particular, traditionalists perceived that the local non-Indians, who opposed the return to traditionalism, favored the more assimilated group, particularly when it came to law enforcement.

The first homicide at Round Valley involved a victim from one of these two Round Valley groups and accused from another. Teenage boys of the traditionalist Peters family had been contending with teenage boys of the more assimilated Britton family.
According to the Peters family, one of their boys, Byron, had been jumped and severely beaten by several members of the Britton family a month before the killing. Byron's father contacted the local sheriff's office by telephone on several occasions, asking for a deputy to come out to take their complaint. The Peters family claims the deputies never arrived at the appointed times. As the harassment continued, Byron retaliated on his own, shooting at a truck driven by members of the Britton family. As a result, he was sent to juvenile hall. Although no one was hurt, this incident galvanized older men of the families to become involved. Complaints continued against members of the Britton family and their allies, including several incidents where shots were reportedly fired and threats yelled outside the Peters family home. The Sheriff's Department made no arrests and merely told the Britton group to stop.

On the day of the killing, Byron's father, Leonard Peters, got into a fistfight with Neil Britton, one of the boys most often accused of causing trouble. Leonard's nose was bloodied, and he left with his friend Bear Lincoln, member of another traditionalist family. Leonard's brother, Arylis, heard of the incident while engaged in some heavy drinking. He went looking for Neil Britton, but instead encountered Neil's father, Gene, in the high school parking lot. After a heated confrontation, Gene Britton climbed into his car and Arylis shot him through the car's back window. Whether it was self-defense (because Gene Britton was grabbing for a gun in his car) or murder is contested.36

Mendocino County sheriff's deputies could not find Arylis immediately to arrest him. While two deputies searched on the reservation, they encountered Leonard Peters and Bear Lincoln on a dark and remote mountain road. Gunfire ensued, leaving Peters and one of the deputies dead. Police accounts of these killings differ dramatically from those offered by family and community members. According to the surviving deputy, Peters was killed by the police acting in self-defense, and the deputy was killed when Bear Lincoln ambushed them from the side of the road. According to the Peters family and its allies, who had examined the crime scene, the police must have killed Peters when they took his walking stick for a gun; the deputy died when he was hit by his partner's fire, and the accusation of Bear Lincoln was a cover-up. Relying on their own account, the police launched a massive manhunt for Bear Lincoln.

Immediately, Mendocino County police descended on the Round Valley Reservation in force. Round Valley tribal members described themselves as "living in a state of terror given the severe and illegal harassment" suffered at the hands of these officers. According to their press release of April 20, 1995, the incidents of police misconduct included

(1) pulling the Lincoln family from a pickup truck and placing guns at their heads, including a five-year-old child, a three-year-old, and two infants,
(2) throwing the 65-year-old crippled mother of Bear Lincoln to the
ground and verbally and physically abusing her, leaving her severely
bruised;

(3) knocking out the windows of the home of Bear Lincoln’s mother and
discharging firearms in her home, hitting the cradleboard of one of her
infant grandchildren;

(4) entering at least fifty homes without warrants or consent with guns
cocked, searching each room;

(5) pointing a machine gun at a 99-year-old elder as the police
searched her house and her young grandchildren watched in horror;

(6) pulling a 95-year-old man out of his truck at gunpoint and roughing
him up for no reason;

(7) stopping countless vehicles at gunpoint;

(8) interrogating minors in their homes while their parents were away at
a press conference;

(9) searching homes while only minors were present, with guns pointed
at the minor children;

(10) taking minors into custody without the parents’ knowledge;

(11) throwing a mentally disabled man to the ground and harassing him.

Over 50 complaints were filed with the Sheriff’s Department. To protect their children
from this police activity, many tribal parents evacuated them from the reservation.

Whether these incidents occurred at all, and if so, whether they occurred because the
victims were reservation Indians are pertinent questions in assessing Public Law 280. A
pending civil rights class action on behalf of the Round Valley residents and a
Justice Department investigation that is almost completed will help answer the first
question. With respect to the second question, there is reason to believe that police
harassed reservation residents more than they would have harassed others. When
the Round Valley people protested police practices to the local Board of Supervisors,
one member stated, “This wouldn’t have been handled like this if it happened in
Mendocino or Point Arena (non-Indian communities). It’s because it’s Covelo (on the
Round Valley Reservation).”

The current Mendocino County Sheriff claims that the department now responds
equally to calls on and off the reservation. But even he concedes that the department

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has a long history of problems with the Indians at Round Valley, including ones where the deputies were found to have engaged in excessive force and to have been drunk on duty. In May, 1957, for example, resentment against police abuse sparked a riot, as 100 reservation residents smashed windows in the small downtown area of the reservation town of Covalo. A few weeks after the riot, a violent encounter between a tribal member and a deputy left the deputy stabbed and the tribal member severely beaten. The tribal member was acquitted of attempted murder, the jury finding that the deputy had been drunk and had provoked the entire incident. When the jurors insisted on a Grand Jury investigation of the Sheriff's Department, the Sheriff retaliated by withdrawing officers from the area altogether.

Four months after the police began their intense hunt for Bear Lincoln, he turned himself in to the San Francisco Police Department, all the while insisting on his innocence. A grand jury indictment for murder was thrown out because the prosecutors had failed to reveal to the grand jury certain inconsistent statements made by the surviving sheriff's deputy. The case still awaits a preliminary hearing to determine whether there is enough evidence to warrant a trial.

The experience at Round Valley illustrates both the "legal vacuum" and the "abuse of authority" forms of lawlessness. The gap in legal authority was evident when local law enforcement failed to respond to conflicts building up on the reservation. Repeating the complaints of John Mazzetti quoted above, the Round Valley residents, particularly the traditionalists, could not count on protection from the police when they were physically threatened and abused. Public Law 280 gave local police the power to act in criminal matters, but rightfully balked at handing stasis the kind of all-purpose authority that would lead them to view the Indians as fully part of their community. The upshot, following a familiar pattern, was self-defense and violence. When the Brittons were not effectively restrained from bothering Peters family members, one of the Petasses fired his gun at a truck, and another killed a man.

The "abuse of authority" type of lawlessness is evident in the allegations regarding police response to the death of a tribal member. California tribal members have often complained that when police do attend to tribal problems, they lack cultural sensitivity, disrespect tribal sovereignty, and employ excessive force. Typically this form of lawlessness arises because the holders of power do not see themselves as accountable to reservation communities, either because those communities are a small political minority or because they do not contribute to the local property tax base. Another possible explanation for such lawlessness is that state officials do not view themselves as part of the same political community as tribal members, who owe allegiance to their tribal governments and often receive special exemptions from state law under federal statutes such as those involving environmental regulation, gaming, and child welfare. When that political separateness is coupled with cultural differences, it is predictable that police will treat the Indians as outsiders, and hence more harshly.

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Public Law 280 set up just such a situation. It exempts reservation Indians from property taxes, leaves tribal governments intact (if underfunded), and excludes tribes from considerable amounts of state regulatory law. And the separation between tribes and surrounding communities has been exaggerated by federal court decisions and legislation that have come about since Public Law 280’s enactment. Forty years ago, the present extensive regime of special federal statutes regulating Indian affairs did not exist. Indians did not enjoy freedom from state laws relating to gaming, waste disposal, or adoptive placement, as they now do. No one predicted, at the time Public Law 280 was enacted, that tribal sovereignty would receive the doctrinal support it does under current law, support that is available to tribes in Public Law 280 states along with others. What was envisioned was a relatively rapid assimilation of tribes in Public Law 280 states into the state culture, economy, and polity. Several dozen California tribes were terminated soon after Public Law 280 was enacted, and the expectation was that other tribes would follow within decades.

Those expectations were not realized, largely because most tribes in America were not covered by Public Law 280, and the successful political movements and legal victories led by those tribes swept up the tribes in Public Law 280 states with all others. Thus, most of the terminated tribes in California have been unterminated (reinstated) through successful litigation and legislative efforts spearheaded by federally funded Indian legal services. Tribes in Public Law 280 states have been strengthened by national legal decisions, both legislative and judicial, affirming tribal sovereignty. With enhanced sovereignty has come economic independence through activities such as gaming. And there has been a powerful revival of native cultures through federal education, language renewal, and repatriation legislation, to name just a few. Leaving tribes to the care of local officials does not make sense under present circumstances. It is too likely that police who feel less political, cultural, and economic affinity with tribal members will treat them disrespectfully when tensions arise, as police allegedly did at Round Valley. A state police force that is thwarted by federal courts from seizing tribal gambling machines may feel too greatly tempted to assert its authority in those areas where it still has the power to do so.

Responses to Questionnaires and Advisory Council Hearings

Responses to a questionnaire that was sent to all the recognized tribes in California reveal concern about both types of lawlessness discussed in this section—the "legal vacuum" type and the "abuse of authority" type. Of the nineteen tribes that responded, all but two complained of serious gaps in protection from county law enforcement. An oft-repeated theme is that sheriffs fail to respond when they are called, or respond hours after the incident, when it is far too late to interrupt the wrongdoing. Calls for help with vandalism, assaults, drunk driving, and drug dealing often go unanswered. In one incident where fighting broke out at a HUD house, the sheriff called back thirty minutes after a complaint was filed to ask whether any guns were involved. By the time the deputies arrived, the assailants were gone. Only when non-Indians are
involved or the financial interests of the county are at stake (as with enforcement of
trueancy laws) do county law enforcement officers seem to show sufficient interest.

The "abuse of authority" type of lawlessness takes two rather distinct forms: disregard
for tribal sovereignty and culture, and police harassment. One third of the tribes
complained that county officials fail to respect tribal culture and sovereignty. Some
protested trespassing by sheriffs' deputies, often in patrol cars going at high speeds.
Others noted a pattern of state intrusion on tribal sovereignty, as when local officials
seek to enforce county building, sign, or animal control ordinances that are
"regulatory" in nature and hence outside the scope of state authority under Public Law
280. Repeated litigation was necessary to fend off these incursions. Finally, some
tribes mentioned that local law enforcement officials fail to respect the judgment of
tribal members or leaders when questions arise about the necessity or means of
making arrests for minor crimes. There are times when an understanding of tribal
social structures and traditions is required in order to ascertain whether an offense has
really occurred. Due to a lack of funding and incentive, state and local law
enforcement officials rarely have the training that would enable them to appreciate
tribal culture. One tribe reported that the local tribal chairman's association had held
several workshops on Public Law 280 in the past four years, but the county officials
who were invited usually failed to attend.

Tribal concerns about police harassment also surface in the questionnaires, albeit in
more muted form. One-quarter of the nineteen responding tribes complained of
unauthorized searches, questioning of children in the absence of adults, excessive
force, and general intimidation of Indians both on reservations and in town.

None of the responding tribes operates a tribal court system. According to the
responses received, disputes outside the jurisdiction of state or federal courts (or
ignored by those systems) are sometimes referred to tribal councils, which usually
attempt to mediate while enlisting the advice of elders. This method of conflict
resolution is only partially satisfactory for the tribes. Some tribes report that disputants
are willing to abide by the decisions, others find less compliance. Some say the
system works well only for certain types of disputes.

More than two-thirds of the responding tribes articulate a need for tribal justice
systems. Some are concerned that they lack the funds, expertise, or critical size to
establish such systems at this time. Even those tribes, however, would like to see
conditions change and cooperative arrangements devised — with other tribes or with
the state — so that tribal justice systems can become feasible. Without some form of
tribal justice system, tribes fear that problems of alcoholism, drug use, election
disputes, trespassing, domestic violence, public disturbances, child welfare, employee
discipline, housing conditions, land assignments, and speeding on reservations will
never receive proper attention. Furthermore, tribal traditions, such as a preference for
rehabilitation over punishment, cannot be given effect without a distinctly tribal justice
system. Several tribes report working on the development of tribal or
Consortium-based court systems, usually with some project-specific federal financial support. A few are in the process of establishing memoranda of understanding with local officials to allow for cross-deputization of tribal and local law enforcement personnel.

Hearings before the Advisory Council, held between July, 1994 and May, 1995 offer much the same information as the questionnaires and reinforce their validity. With respect to the "legal vacuum," a witness from the Morongo Reservation stated, "A fund for tribal law enforcement needs to be created to allow the tribes to protect themselves when the state fails to do so." Members from the Coyote Valley and other tribes complained that drug trafficking laws, among others, are not enforced on the reservation, either because the sheriff fails to respond at all or waits on the outskirts of the reservation while local community members apply self-help. This story was repeated by a criminal investigator from the B.I.A., who noted that because the state receives no federal funds for reservation law enforcement, there is no incentive to enforce the drug laws or other criminal provisions. Not only are state law enforcement services inadequate, but the development of tribal justice systems has been hampered by the funding consequences of Public Law 280. One tribal member captured this concern when he said, "Most tribal governments and Indian organizations cannot effectively establish or administer the tribal operation, due to the insufficient allocations of funding to allow the proper administration on a continuing basis."

The hearings also include several statements decrying local officials' disrespect for tribal sovereignty, as well as their harassment of tribal members. As one tribal member stated, "The state tries to control us. And Public Law 280 has a lot to do with it, too." Because some of the hearings occurred soon after the Round Valley incident described above, numerous speakers leveled charges of police abuse. A witness from Coyote Valley, for example, asserted, "It is not acceptable to place an entire community under siege in vengeance." This same witness complained that a disproportionate percentage of tribal members, as opposed to other county residents, was being arrested for drug and alcohol related offenses, leading to a "permanent scarring" of the Indian community.

One constructive suggestion that appeared in the hearings was the creation of a series of regional "drug courts" throughout the state, which would exercise tribal jurisdiction, have governing boards appointed by tribal councils, and receive federal funding through special drug-related programs. To enforce the laws administered by the drug courts, tribal police forces would be established, their members cross-deputized with state officials to facilitate cooperative actions.

Another positive recommendation brought out in the hearings was the creation of consortium courts to hear child welfare matters, such as adoptions, foster care placements, and proceedings to terminate parental rights. The intersection of the Indian Child Welfare Act (ICWA) and Public Law 280 has generated considerable confusion, particularly with respect to categories of cases that ICWA assigns to
exclusive tribal court jurisdiction. Does ICWA override the state jurisdiction conferred by Public Law 280? There is no simple answer to this question, especially since ICWA provides a federal petitioning process for tribes in Public Law 280 states to "reassume" jurisdiction. Arguably, tribes do not need to "reassume" child welfare jurisdiction at all, because Public Law 280 never withdrew tribal jurisdiction, and because many types of child welfare proceedings (such as termination of parental rights) never came within the state's jurisdiction under Public Law 280 because they are "regulatory" in nature. Whether or not the California tribes choose to take the path of "reassumption," they cannot assert child welfare jurisdiction unless they have some form of justice system. Thus, consortium courts are one means of effectively asserting sovereignty in a system where state courts have taken control of Indian children.

Conclusion

Tribes in Public Law 280 states are at a disadvantage compared with tribes elsewhere in the United States. They suffer from lower levels of federal support and an absence of compensating state support. They are subject to abuses of power and gaps in legal authority. In California, in particular, the tribes have been broken up into such small and heterogeneous groups that forming effective justice systems is usually unfeasible at the tribal level. There is indeed a crisis of lawlessness, even greater and more genuine than the one perceived by the Congress in 1953. A federal response is sorely needed.

This time, the solution should be negotiated with tribal leaders, not imposed upon them against their wishes. It should recognize that so long as tribes remain separate polities, exempt from much state law, the solution of state jurisdiction will likely fail unless mutual and cooperative arrangements are established between tribes and states. And it should acknowledge a federal obligation to make us for the retarded development of tribal institutions in Public Law 280 states, including assistance in the formation of consortia or coalitions whenever tribes deem that desirable.

Many outcomes are possible under these conditions. Retraction of states' Public Law 280 jurisdiction back to the federal government, upon tribal initiative, is one possibility, and several tribes supported that course of action in their answers to the questionnaire. Tribally initiated reversion is far from the only possibility, however. Some tribes may prefer to receive federal help to develop tribal law enforcement and dispute resolution institutions, which would operate concurrently and cooperatively with state entities. Other tribes may want to contract with state or local law enforcement to conduct activities that would be too expensive to duplicate. Many such cooperative relationships between states and tribes have been developed in areas such as environmental regulation and child welfare, outside the framework of Public Law 280. Some may want to assert authority over some types of matters, such as child welfare or hunting and fishing, and leave remaining matters to state or federal authorities, at least initially. Once the force of Public Law 280 is lifted, similar creativity can be unleashed, including efforts to develop justice systems that are more consistent
with tribal traditions and multi-tribal consortia that take advantage of economies of scale. But the federal government will have to be a supportive partner in this effort, both financially and as an honest broker between tribes and state governments.

The states designated for such treatment in Public Law 280 were Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin. Other states could come under the terms of Public Law 280 if they took certain affirmative steps.


See United States v. Kagama, 118 U.S. 375 (1886). The Court declared, "Indian tribes are the wards of the nation...Because of local ill feeling, the people of the States where they are found are often their deadliest enemies."

There was no special federal statute authorizing federal civil jurisdiction over reservation-based disputes. Thus, unless diversity of citizenship or a federal question were involved, a federal court would not hear a tort or contract action arising on the reservation. The federal criminal statutes applicable on reservations did not reach minor crimes where both perpetrators and victims were Indian.


See Section VIII of this report, supra.

See Goldberg, supra note 1, at 540-44.

Of course, state jurisdiction was not the only possible solution to these problems. Tribal institutions could have been strengthened with federal support, the tribes could have been encouraged to enter into cooperative relationships with states, or the federal government could have assumed greater responsibility.


Id.
17 See Section VIII of this report, supra.
19 Santa Rosa Band of Indians v. Kings County, 532 F.2d 555 (9th Cir. 1975).
21 See Section II of this report, supra.
22 Id.
23 Id.
24 "Issues of Concern to Southern California Tribes," Hearing before the Select Committee on Indian Affairs, United States Senate, 101st Cong., 1st Sess., 122 (1989).
25 Statements to similar effect span the entire period since enactment of Public Law 280. A 1991 Los Angeles Times article points out that the La Jolla Reservation in San Diego County has been overrun with drugs and violence, with six young tribal members murdered during a period of several months in the late 1980s. According to a past Tribal Chair, when members called the Sheriff's Department to report a murder, it was usually an hour before a deputy arrived. Anything short of homicide, and the wait for a sheriff's response was at least three days. Sometimes no response came at all. Even representatives of the Sheriff's Department acknowledged that the remoteness of the reservations, the cultural differences between the police and tribal members, and the uncertainties of jurisdiction law discouraged police responsiveness. A. Wallace, "No More No-Man's Land," Los Angeles Times, June 17, 1991. In 1966, a U.S. Senate Subcommittee found that "Public Law 280...[has] resulted in a breakdown in the administration of justice to such a degree that Indians are being denied due process and equal protection of the law." "Public Law 280: Legislative History," Committee on Interior and Insular Affairs, United States Senate, 94th Congress, 1st Session, 29-30 (1975). The 1976 American Indian Policy Review Commission reached the same conclusion based on its own investigations.
26 This limit is imposed by the Indian Civil Rights Act, 25 U.S.C. sec. 1302.
27 Over 150 tribes nationwide have tribal courts.
28 This account is based on newspaper articles, interviews with individuals involved in the incident, and testimony given before the Advisory Council on California Indian Policy.
30 "Issues of Concern to Southern California Tribes," Hearing before the Senate Select Committee on Indian Affairs, United States Senate, 101st Congress, 1st Session, at 49 (1999).
31 This account is drawn from newspaper stories, postings on the computer bulletin board known as "Nativesnet," features from an internet newspaper called the Albaon Monitor, testimony given to the Advisory Council on California Indian Policy, and information supplied by the tribe.

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Arylis was convicted of murder based on a guilty plea, although his public defender tried to withdraw the plea and substitute self-defense. The judge refused to allow withdrawal of the plea, and the matter is on appeal while Arylis serves a 21-years-to-life sentence.


In response to a question about the major types of conflicts that come before the community or tribal organization, the following received the highest ratings: substandard housing conditions; trespass; constitutional or articles by-laws interpretations; election and enrollment procedures; land use conflicts relating to assignments or allotments; and vandalism. This list obviously does not include conflicts that are routed to state or federal courts.

These are cases where the Indian child is domiciled or resides on the reservation.

See Section VIII of this report, supra.

Id.

Answers to the tribal questionnaire reveal that California tribes believe themselves to be at a disadvantage.

These consorts also offer the feature (sometimes viewed positively, sometimes negatively) of providing decision-makers who come from outside the small community within which the dispute arose.

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As the preceding sections indicate, California Indians have endured a history of under-funding and under-administration. Although BIA and federal funding are not the sole factors that affect the livelihood of California Indians, such under-attention might result in poorer employment rates, less income, less education, and worse housing conditions when compared to national Indian rates. It is well known and documented that American Indians are among the poorest of the poor when compared with other ethnic and racial groups in the United States. For example, in the 1980 census, 56 percent of Native Americans finished high school compared with 67 percent of U.S. people from all races. In 1990, median household income for Native Americans was $20,025, down from $20,542 in the 1980 census, indicating that Indians lost ground in household income during the 1980s. Only Blacks with a 1990 median household income of $19,758 ranked lower than American Indians, while Whites ($31,435), Asians ($36,784), and Hispanics ($24,156) ranked higher. The 1990 census shows that American Indians were greatly impoverished, with 30.9 percent living below the poverty line, compared with 9.8 percent of Whites, 14.1 percent of Asians, 25.3 percent of Hispanics, and 29.5 percent of Blacks. Even higher rates of American Indian children were living below the poverty line, 37.6 percent, while 12.3 percent of White children, 38.8 percent of Black children, 16.8 percent of Asian children, and 31.0 percent of Hispanic children were living below the poverty line. In 1980, 32.5 percent of American Indian children were living in poverty, and so the decade of the 1980s indicates a deteriorating economic position for American Indian people and children. According to the 1980 census, the American Indian unemployment rate was 13 percent, while the 1990 census American Indian unemployment rate was 25.6 percent. Consequently, in recent years, Indian unemployment rates were 4 to 5 times higher than national rates for the early 1990s, and certainly at least double depression level unemployment. During the 1980s, the overall unemployment rate for reservation and trust land Indians doubled, again indicating a deteriorating economic position for Native Americans in recent years.

While comparisons of American Indian socio-economic conditions with national or other groups indicates relatively poor conditions for Indians, California Indians show even worse socio-economic rates on many indicators. The relatively worse socio-economic conditions of California Indians may well be the result of years of administrative inattention and under-funding. While American Indians as a group are among the worst off in the United States, Indigenous California Indians are generally worse off than other Indians, and therefore are poor within one of the poorest groups in the nation. The following figures indicate that indigenous California Indians have suffered in social-economic well-being relative to other Indian groups in other states, not to mention when compared with the rest of the nation.
Employment

Several sources for employment statistics were examined for California Indians. Census data, BIA labor force statistics, and self reports from surveys all provide somewhat different comparative views of unemployment rates between California Indians and other Indians. BIA labor force statistics are collected by self-reports from tribal groups under close supervision by BIA administrators. These data were collected on Indians living on or near Indian reservations or trust lands.

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<th>Year</th>
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<th>California Indian Unemployment %</th>
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<td>1993</td>
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The first issue to note from the preceding table is that the overall Indian unemployment rate for 1989-93 is in the 37-40 percent range, nearly twice the unemployment rate recorded for American Indians in the 1990 census. These data indicate that the BIA service population is much worse off than the Indian population measured by the Census Bureau. Based on the 15 years for which there are data, California Indian unemployment rates are higher than other Indians in 11 out of 15 years. Over the last decade, California Indians have had higher unemployment rates than other Indians in 4 out of 5 years recorded. Consequently, California Indians appear to be generally worse off in employment than other BIA-administered Indians. In particular, California Indians have been relatively worse off in employment over the last decade as compared to other BIA-administered Indians.

A second set of California Indian unemployment rates derives from 1990 census data based on 79 reservations and rancherias. These data indicate that 24.8 percent of California Indians were unemployed, while the unemployment rate for all Indian
reservations was 25.6 percent. Both numbers are far lower than BIA statistics, and in these data California Indians have a slightly lower unemployment rate than other reservation Indians, although still having a rate nearly five times the level of national U.S. unemployment.

As part of our task force's effort to better understand California unemployment trends, our team analyzed a 5 percent sample drawn from the 1990 census data for rural California Indians who were 18 years or older. This analysis yielded an unemployment rate of 10.3 percent for rural California Indians over 18 years old, and compares with an unemployment rate of 9.46 percent for non-California Indians who were 18 years or older. Thus rural California Indians have a higher unemployment rate than rural Indians in other states.

Our own 1995 survey data provide self-reports from 27 California Indian communities. The surveyed Indian communities estimated unemployment in the 15 percent to 90 percent range, with a median unemployment rate of 30 percent. The self-report survey indicates wide variation in perceived unemployment among California Indian communities and records that most California Indians believe their unemployment rates are high.

California Indians have unemployment rates near or above the rates of other Indian communities in the United States. Most indicators of California Indian unemployment rates demonstrate that California rates are higher than those of other Indians, and California Indians believe their unemployment rates are high. California Indians may suffer higher unemployment levels because they were under-served and under-administered by BIA and federal programs.

Poverty Levels

California Indians have higher rates of poverty than other Indians. Census data from 1990 indicate that poverty rates on California Indian reservations is 34.1 percent; in other words, 34.1 percent of California reservation and rancheria households have incomes below minimum U.S. standards. The 1990 census poverty level for all Indians was 30.9 percent, over three percentage points lower than California Indians.

In a comparison of rural Indians through a 5 percent sample of the 1990 census data, 28.6 percent of rural California Indians, excluding out-of-state tribes, were below the poverty line, while 27.8 percent of all non-California Indians were below the poverty line. Thus rural California Indians were more impoverished than other Indians.

Our own survey of 27 California Indian communities, conducted in 1995, provided self-reports of poverty rates ranging from 18 percent to 100 percent. The median self-reported percentage of people below the poverty line was 70 percent. California Indians believe that a very high portion of their community is suffering from financial distress and that their community members are suffering impoverished life conditions at rates more than twice as high as the census data report.
California Indians are more impoverished than other Indians, even though American Indians are the most impoverished group in the nation. California Indians are among the poorest of the poor. California Indians are well aware of the poverty within their communities and perceive their poverty to be considerably higher than indicated by official statistics.

Income

Based on the 1990 census of 79 California reservations and rancherias, the average of the reservation/rancheria median incomes was $15,871.43, which is far below the national Indian median household income of $20,025. The average median for California Indian reservations also was significantly lower than the $19,756 median household income of Blacks, the group with the lowest national median income in the 1990 census. Consequently, as a group, California Indians have one of the lowest income levels of any group in the nation.

The task force explored California income rates by analyzing a 5 percent sample of the 1990 census. In this analysis, median household income for rural California Indians was $21,802, while median household income for all other U.S. Indians was $21,912. The median income for rural California Indians who were full-time workers was $14,193.50, while the median income for all other full-time Indian workers was $14,000. The average per capita household income for rural California Indians was $6,590.42, while for all other Indians the average was $7,063.18. When rural California Indians find full-time work, they do slightly better than other Indians, but because they suffer higher unemployment rates their household incomes are lower than the household incomes of other Indians.

The income levels of California Indians are among the lowest levels of any group in the nation. California Indian household income is lower than the household incomes of all other Indians.

Education

Census data for 1990 indicate that in 79 California reservations and rancherias, the percentage of high school graduates for 18-24 years old is 34.7 percent, while the national Indian average for reservations is 35.5 percent. Thus for 18-24 year old, California Indians are graduating from high school at slightly lower rates. Those California Indians between the ages of 18 and 24 who have taken some college total 13.4 percent, while 16.9 percent of all Indians in the same age group have attended some college. California Indians in the 18-24 age group were from college at a .47 percent rate, or less than one-half of one percent, while nationally Indians in the same age group graduated from college at a .53 percent rate, or slightly more than one-half of one percent. These data indicate that reservation California Indians in the 18-24 age group are less well educated than Indians in general. Young California Indians graduate from high school and college at lower rates and fewer years of college than the national average for American Indians living on reservations.
For older California Indians, age 25 or above, educational achievement is better for high school and grade school, but worse in post-high school education, than other older reservation Indians and the rest of the nation. According to the 1990 census, 2.6 percent of older California Indians have not completed the fifth grade, while nationally for reservation Indians, ages 25 or above, 9.5 percent did not complete the fifth grade. Furthermore, 8.5 percent of older California Indians finished school between the 5th and 8th grades, while for all older reservation Indians 12 percent finished school between the 5th and 8th grades. Among older California Indians, 31.5 percent attended some high school but did not gain a diploma, while 24.4 percent of all older reservation Indians attended some high school but did not finish. Adding the latter percentages together yields at total of 42.5 percent of older California Indians who did not graduate from high school, while 45.9 percent of all older reservation Indians did not graduate from high school. Similarly, there were 31.7 percent of older California Indians who finished their education with a high school diploma, but no additional schooling, while 29.4 percent of all older reservation Indians graduated from high school but took no additional educational training. A smaller proportion of older California reservation Indians than other reservation Indians finished their education in grade school or did not complete high school, and a higher percentage finished high school.

In post-high school education, California Indians of age 25 years or older fare worse than all other reservation Indians in the same age group. Older California Indians with some college totaled 7.7 percent, while 15 percent of all Indians attended some college. Older California Indians collected two-year occupational degrees at a 2.9 percent rate and two-year academic degrees at a 2.4 percent rate. All older reservation Indians collected occupational two-year degrees at a 4 percent rate, and 1.3 percent collected two-year academic degrees. Older California Indians are obtaining two-year academic degrees at a higher rate than the average, but are collecting two-year occupational degrees at a lower pace than average for all older reservation Indians. Older California Indians also complete college at a lower rate (1.9 percent) than all older Native Americans (2.9 percent). The rate of completion of professional and graduate degrees by all Native Americans is higher (11.3 percent) than older California Indians, among whom .8 percent, or less than one percent, complete graduate or professional degrees. Except for two-year academic degrees, California Indians over 25 are less well off than the average of all reservations in completing post-high school education.

Our 5 percent sample of the 1990 census study yielded an average of 11.25 years of education for rural Indians living in California (aged 25 or over), but excluding any known non-California tribes, while the average education level for all other U.S. Indians (aged 25 or over) was 11.34 years of school. Consequently, older rural California Indians were on average slightly less well educated than all other Indians.

In summary, younger California Indians are less well educated than average reservation Indians, while older California Indians are better educated at the precollege level, but less well educated in the post-high school level. California
Indians 18 years or over lag behind national averages of Indians at the post-high school, college and occupational levels. Older California Indians do better than the national average for reservations in obtaining higher levels of grade school and high school education. The fact that younger California Indians (18-24) are doing worse than the Indian average for that age group indicates that in recent years less attention has been given to California Indian education. Younger California Indians are falling behind other indians, and are falling further behind national averages for all people. Greater attention needs to be given to California youth in order that they will not fall further behind in education at all levels; more should be prepared for college and other post-high school training. The under-representation of California Indians in the ranks of college and professional graduates relative to Indians as a whole indicates that more attention needs to be directed toward preparing and assisting California Indians for post-high school training and education.

Household Characteristics

Each decade the Census Bureau collects information on housing characteristics, which in turn indicate the conditions and physical qualities of life within the U.S. population. In recent years, the census collects information on complete plumbing, complete kitchens, household occupancy by ethnicity, access to a vehicle and presence of a telephone in a household, as well as other types of information. Some of this information can be used as indicators of economic well-being, and hence we compare California reservation and rancherias to non-California reservation Indians with respect to household characteristics.

An interesting statistic collected by the 1990 census was household occupancy in American Indian and Alaska Native areas. While these data are not directly indicative of socio-economic situation, they can indicate the relative density of Native American tribal members compared to non-Indians living on reservations and rancherias. More non-Indians living in Indian areas would indicate potential loss of community control and sovereignty by Indian communities. Drawing from table 2 of the 1990 census report on characteristics of households, 96 California Indian reservations and rancherias reported Indian and non-Indian household occupation rates on Indian land. Indians occupied 4,197 households out of a total 18,574 households on California reservations and rancherias. Thus only 22 percent of the households on California Indian territories is occupied by Indian families. The California data, however, are highly skewed by the special conditions at Agua Caliente, where there are only 52 Indian-owned households out of 10,546 households. If we withdraw Agua Caliente from the analysis, then the rate of Indian household occupancy in California Indian Country is 50 percent, since there are 4,055 Indian-occupied households out of 8,126 households in California Indian areas. The national rate of Indian occupancy of households in Indian areas is 45 percent, with 12,615 Indian-occupied households out of 25,065 in Indian Country. Thus if we discount the special case of Agua Caliente, California Indians as a group occupy 5 percent more households within their Indian-designated territories than the average national household occupancy rate for all Indian areas.
Turning to the characteristics of Indian occupied households, 20.2 percent of Indian occupied households on reservation and trust land lacked complete plumbing, 17.5 percent lacked complete kitchens, 22.4 percent did not have access to a vehicle, and 53.4 percent did not have a telephone. Seventy-one California tribes reported the latter household characteristics representing 4,102 Indian-occupied households. The census reports that 173 (4 percent) of California Indian homes did not have complete plumbing as compared with 20.2 percent for all Indian-occupied households in Indian areas. There were 165 (4 percent) California Indian-occupied households that did not have complete kitchens, while 17.5 percent of Indian-occupied households in all Indian reservation areas did not have complete kitchens. Households without access to a vehicle totaled 704 (17.2 percent), which is slightly lower than the national rate (17.5 percent) of Indian households in Indian Country without access to a vehicle. There were no telephones in 1,270 (31 percent) California Indian-occupied households, while 53.4 percent of Indian-occupied homes in Indian Country did not have telephones. The census data indicate that California reservation Indian households are better equipped with modern conveniences than average reservation Indian households.

For all Indians in California, including non-indigenous California tribes, the median year their house was built is 1968, while the median year of household structure construction for all U.S. Indians was 1970. As a group, all Indians living in California occupy somewhat older household structures than all U.S. Indians.

The task force's survey of 27 California Indian communities, however, does not indicate that California Indians are well satisfied with their present housing accommodations. Virtually all responding communities indicated that they were in need of better housing, with needs ranging from 15 to 214 units, and many needing housing in the 20-30 unit range. In addition, ACCIP hearings brought forth additional comments on housing issues. For example, during the September 16, 1994 ACCIP hearings, the chair of the Morongo Reservation presented testimony that most tribal housing was substandard, and that the tribe needed base funds for maintenance and good management.

The 1990 census data indicate that California Indian households do much better than the national reservation Indian average by having more complete kitchens and plumbing, slightly more access to vehicles, and more telephones. California Indian communities, however, still believe their communities are rife with substandard housing structures and are in need of new housing and administrative and funding capability to maintain their present housing.

Summary

When compared to non-California reservation Indians, California Indians have higher rates of poverty, lower household income, slightly less education, less post-secondary education, and higher rates of unemployment. Only in household characteristics do California reservation Indians do better than non-California reservation Indians.
These combined indices of adverse socio-economic conditions put California reservation Indians among the lowest socio-economic groups in Indian Country. Since Indians are already among the lowest socio-economic groups in the country, California Indians are among the most economically deprived groups in the nation. The past and present history of administrative neglect and underfunding most likely has contributed to the adverse socio-economic position endured by California reservation Indians.
Our survey included queries about funding levels of and degree of satisfaction with state and federal programs on California Indian reservations and rancherias. In addition, at the numerous hearings held by the Advisory Council on California Indian Policy, many tribal leaders presented comments about existing program needs and delivery. Our survey included federal, BIA, and state programs information such as road, health, Headstart, aging, commodities, Administration for American Indians (ANA), housing, and other programs. In general, California Indians felt they were underfunded and had access to few federal and state programs, and the often believed they did not have enough information about state or federal programs. Many small rancherias or reservations believed that they were too small to administer some programs, such as justice systems, Indian Child Welfare Act programs, and welfare programs. In many instances, small tribes would like to work within consortia arrangements in order to gain access to more state and federal programs. One such example is the California Services American Indian Block Grant (CSAIBG) grant which is administered on a statewide basis through three consortia. A welfare grant aimed at families below the poverty line and homeless people, the CSAIBG grant is allocated from Congress to California—Department of Economic Opportunity—which divides the funds according to formula among the reservations, rancherias, and urban Indian centers. This arrangement was agreed upon by the state, reservations and rancherias, and urban centers during the middle 1980s. For many programs, however, there are no such arrangements, and small tribes are deprived of badly needed and potentially beneficial services because they are too small to qualify for a funding program or do not have enough staff or administration to apply for or administer the grant. An overall discussion of the needs of small tribes should be conducted by the tribes and federal agencies. Consortia agreements should be created in order to create more access and administrative capability among small California tribes. To the greatest extent possible, any such consortia should be composed of and managed by California Indian people.

Poverty rates among California Indians are among the highest of any group in the United States. In general, California Indians believe they can benefit greatly from more federal and state programs. Most California Indian communities have had little support for building viable tribal governments capable of exercising their full powers of self-governance. In the sections below are summaries of program needs information taken from the ACCIP hearings and from surveys of 19 federally recognized California Indian communities.

General Federal Programs

Our surveyed communities list a variety of programs as very important to them. BIA programs, Aid to Tribal Government, ANA, HUD, IHS-health centers, and commodities are among the programs most highly regarded by the tribal communities. These
programs help keep the tribal community alive and provide employment and services to tribal members. Federal programs do their best work in the Indian communities when they provide health care, employment services, housing, child care to parents so they can work, roads, and development of tribal administration, and improve the standard of living within the tribal communities. Our surveyed communities were highly appreciative of federal programs that tangibly improved the living standards of tribal members.

Nevertheless, the vast majority of the surveyed communities believe that the funding levels of federal programs are inadequate for their community needs. They say that California Indians are underfunded when compared to other regions. California has suffered underfunding and less administrative attention from the federal government and BIA because the California treaties were not ratified and the California Indians could not establish stable land bases under U.S. law. Furthermore, BIA labor force reports are erroneous because many of the questions are not applicable to the California Indian situation. Consequently, California Indians are undercounted and underfunded. Furthermore, California Indians are more scattered about the state, with over 106 recognized groups and many communities yet to be recognized by the federal government. The multiple and fragmented distribution of California Indian communities increases the administrative difficulties and costs to the BIA and federal government. The cost of living is higher in California than in other areas of the country, thereby weakening the already weak funding effects of federal programs for California Indians. The political environment in California has been historically more hostile to Indians than in many other states. One respondent to our community survey wrote, "The state government of California is extremely backward in areas involving Indians as opposed to Washington or Oklahoma." Federal programs for California Indians are underfunded, and all employees at the tribal level are underpaid. More base funding is needed for the many small California communities, especially for the operation of tribal government. Funding should be more directly allocated to tribal governments, with fewer layers of administrative bureaucracy.

Our surveyed communities state they are greatly in need of additional BIA services and programs. Some BIA programs have not earmarked any funds to California Indians, for example in areas such as law and order programs, environmental protection, and education and scholarships. Aid to Tribal Government (ATG), small tribes funds, Housing Improvement (HIP), Community Fire Protection, tribal courts, schools, higher education, adult education, tribal rights protection, land acquisition, road building and maintenance, water rights, legal services, reentry service, and base funding for tribal governments are programs for which many communities desire additional or initial funding. In addition, some tribes believe that the BIA should provide more technical assistance.

Most of our surveyed communities did not receive significant program attention from the state of California, but most wanted additional state-administered services. State government could provide more funds for education, juvenile justice programs, Indian
education centers, funds to fight drug abuse, and real estate services to help obtain land necessary for some HUD programs.

Our surveyed tribal communities believe that California tribes face special issues that differ from those of tribes in other states. The failure to ratify treaties in California was an issue already mentioned above. But California Indians say, "People outside California don't understand small tribal governments." Small California tribes are over-legislated, restricted by state and federal law, and over-patronized, but have few funds or independent resources to counter these constraints. In small tribal governments, tribal employees have little job security, since grants are usually short term and often cannot be relied upon for stable planning and secure employment. With no support for administration, small tribal governments have great difficulty conducting normal business and often cannot pay for heating oil, telephones, and lights. Some small tribal governments operate on as little as $3,000 to $5,000 for administrative expenses per year. Without a sufficient administrative base, small tribal administrations have difficulty mobilizing grant writing for securing additional programs and funds for the community. Many small tribal governments must rely on volunteer hours from members of their tribal communities. Some small tribes state that each tribal government needs a guaranteed base funding of at least $180,000 for administrative expenses. Without base funding, many small tribes will be unable to create viable tribal administrations, will fail to exercise significant community self-governance, and will be severely constrained in any efforts of economic development. Significant base funding must be a high priority for most small California Indian tribes.

Maintenance of Roads

California receives a small share of BIA roads funds for building or maintaining roads. Furthermore, California reservations and rancherias are often located in areas where there are few state or county roads, and therefore access to many rancherias and reservations is difficult. Where the terrain is mountainous or desert, there are few roads, and the cost is high for building and maintaining the roads in such isolated locations. Because of the difficult terrain, the limited funding that the BIA provides to California Indians supports construction of only a few miles of roadway, which is inadequate for the needs of the over 100 California reservations and rancherias. Some reservations and rancherias do not have public access roads, and the Indian residents must gain access from private owners. The lack of access roads and on-reservation of rancheria roads presents difficulties for adequate police protection and inhibits potential for economic development.

Most reservations or rancherias in our survey were not directly involved in road maintenance. This task was left primarily to county and local officials, since the BIA maintained only a small amount of roadway. In order for tribal governments to effectively maintain roads on their lands, they need more funding, more work crews, more equipment. Tribal governments want clearer definition between tribal and county roads. Since there were few BIA roads and relatively more county roadways,
tribal governments were concerned about jurisdiction issues concerning county roadways on California Indian land. There are some complaints that counties do not keep up their roads on Indian land. Sometimes, the BIA funded the building of roads, but then turned the roads over to county government, who gave such roads little or no attention for upkeep.

When the BIA maintains reservation roads, most tribal governments believe that the funds for maintenance are inadequate. Several communities were satisfied with BIA road maintenance in recent years, and that the roads had been properly managed with new road signs, repaving and grading. There is a waiting list for building BIA roads, when the BIA does build roads, they perform satisfactory work. However, the waiting list is long and funds scarce, and therefore most communities must wait a long time for even modest road improvement.

According to our survey sources, BIA road building and maintenance could be improved by more funding and more direct funding to the BIA. At least some tribes preferred that road building and maintenance funds come directly to the BIA, and not channeled through the California State Highway Department. Tribes thought that there should be more information provided about tribal roads, more consultation with tribes on roads projects, more tribal control over BIA roads, and more 638 contracting and greater technical assistance to design and maintain roads in the areas where they are needed.

USDA Commodity Programs

Most California Indian communities responding to our survey indicated that they did not receive commodity foods directly from the Department of Agriculture programs or agencies. Those communities that received commodities got them from the Sherwood Valley Food Distribution program, the Aid on Aging program, county programs, and programs administered by other tribes. The Sherwood Valley Food Distribution program is a consortium for food distribution to the community, and at least 7 tribal reservations and rancherias participate. Most or our surveyed communities believed that at least some members of their communities needed commodities, with the percentage ranging from 3 percent to 70 percent. A median of 40 percent of tribal members within the surveyed tribal communities were estimated to need food supplements from the commodities program. Most California Indian communities in our survey believed that a significant portion of their people needed access to the commodity program.

A small majority of our surveyed communities believed that the commodities program adequately serves the nutritional needs of their communities. Those communities that felt that the commodities program fell short of their nutritional needs, said that the types and amounts of foods offered by the program were limited. Commodities could not satisfy any community’s complete nutrition needs. There is little attention to diabetic concerns, and a better emphasis on healthy eating and diabetic diet should
accompany or complement the program. A diet of cheese and butter is inadequate. One tribe remarked that the commodity program served the overall needs of those tribal members who qualified. Nevertheless, this community supplemented the food program with nutrition workshops to help people prepare food and to educate them about low-fat, low-salt, diabetic, low-sugar cooking. One community reported that the commodities program has improved over the years. Nevertheless, the food is still too full of salt, sugar, fat (cheese, real butter, peanuts, peanut butter), and canned red meat. The food content of commodities must be reconsidered, and healthier foods such as fresh fruits, fruits packed in natural juices, and vegetables should be made available.

In addition to fresher, more varied, and healthier food, our respondents suggest that the commodities program could be improved in terms of better access to storage, and more direct tribal control of the program. Tribes need to deal directly with the USDA and not California state agencies. The commodities program should also be more sensitive and knowledgeable about tribal eating practices and preferences. A nutritionist should develop more culturally sensitive menus for use by tribal peoples. Federal regulations of the program are too restrictive. For example, people on food stamps don’t qualify no matter what amount of food stamps are received. Regulations should be reconsidered in order to better serve Indian people. More information should be disseminated about the program within the Indian communities. Needy urban Indians need to be granted access to the commodities program. In California, a high proportion of tribal members do not live on reservations, and have migrated to nearby urban areas in search of employment and other goals. Needy urban Indian residents are not granted access to commodities, even if they have membership in a California tribal community. Many California Indian people have difficulty getting transportation access to commodity distribution points. More transportation to commodity distribution points needs to be provided for needy members of the tribal communities. Home delivery of food should be considered for the neediest and most isolated tribal members. Food could be distributed on a weekly basis, rather than on the current biweekly, or longer, schedules now in place. California Indians have many pragmatic suggestions for the commodities program, and adopting many of their suggestions will materially improve the value of the program to the neediest community members.

Administration on Aging

Our surveyed communities estimate that their resident population aged 65 or over ranges from very few to 40 percent. The median for this group of communities is 5 percent of the population aged 65 or over. Of this elders group, those who are in need of care varies from very few to 100 percent in some communities. The estimated median need for program care among the elderly is 30 percent. Those elderly in need of care and without care ranges from very few, or none, in some communities to 100 percent in two communities. In some instances, the elders are cared for by family members.
Seven communities had Title VI Administration for Aging programs, while 7 communities did not. For those without programs, their elderly were cared for by the county, by subcontracts, by non-Indian community agencies, and through the Tolyste Indian Health project. Those communities with Title VI programs report that only a slight majority are satisfied with program services. Most complaints focused on the lack of funding and inadequate services. The services were not able to meet the needs of the elderly. Several members of the community who lived off the reservation could not be served by the program. Transportation for the elderly was not sufficient; buses would not travel to some parts of the county. At least one community suggested that their Title VI program did not make a serious effort to reach out to Indian elderly.

Our surveyed communities suggest that the Title VI Administration on Aging program could be improved in a variety of ways. Their foremost suggestion is that more funding and services are needed. Small tribes have difficulty organizing Title IV programs, but organizing program consortia to serve many small Indian communities would improve chances of service. Better transportation and regular provision of food for the elderly would improve the value of the program to Indian elders.

Headstart

Most of our surveyed communities did not have Headstart programs. Several communities thought they were too small to organize a Headstart program, but would be interested in a consortium of California Indian communities that would administer Headstart programs. Some communities send their children to city and county programs, but their attendance is restricted by availability. A slight majority of communities with Headstart expressed satisfaction with the program. Some communities were dissatisfied because many community members had difficulty transporting their children to the program site. One community expressed the need for more supplies and equipment. Full day programs are preferred to half-day programs. Possibilities of program cutbacks are discouraging to some communities that already administer the program or are contemplating future application.

Administration for American Indians (ANA)

Most of our surveyed communities had ANA programs, and those that didn’t either had one in the recent past and/or were working on an application to fund a program in the near future. Current grants ranged from $58,000 to $176,000. ANA grants are used for a variety of purposes. Several communities use their grant for developing tribal legal codes and ordinances or to amend their constitution. Others have grants for economic development projects. Most communities are satisfied with ANA grants and administration. Nevertheless, several communities expressed the need for more funding opportunities and higher levels of ANA funding. Economic development funds were among the most mentioned needs for ANA funding.

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Housing Programs

Most of our surveyed communities received federal funds for new construction or renovation of housing, and most received Housing Improvement (HIP) funds from the BIA. HIP funding levels varied from $2,000 to $53,000, and the number of housing units affected ranged from 1 to 30 units. About half of our surveyed communities received Housing and Urban Development (HUD) funding for building new houses. Those who did not receive HUD funds stated that they were too small and needed the help of a consortium for grant writing and administration; others had not applied, or had their applications rejected. An overwhelming portion of our surveyed communities did not believe that HUD funding was adequate. The large majority stated that more housing was needed. Housing needs ranged from 5 to 214 housing units. Many communities complained that the HIP and HUD funding levels currently received were so small that they were of very little practical or effective value. For example, as one community referred to their HIP funding level, “How much can you do with $12K?”.

Most California Indian communities in our survey stated that they were in desperate need of new housing and home repair programs. Some communities have homeless tribal members. More funds were needed for housing and, in some cases, funds for land acquisition for suitable property to build on.

Department of Health and Human Service (DHHS) Programs

Most of our surveyed communities received funding from DHHS. Many of the programs are administered through health consortia, such as the Toiyabe Health Project, by the Indian Health Service (IHS), and through county administered services. The types of programs funded include general health programs, Indian Child Welfare Act (ICWA) programs, child care, tribal management through the ANA, family services, alcohol programs, dental services, and substance abuse programs.

Our surveyed communities were evenly divided over satisfaction with the DHHS programs, with half stating they were satisfied and half stating they were dissatisfied. Problems reported were that the programs were not sufficient to take care of community health needs. There are inadequate staff and a need for service delivery people who are conscious and sensitive to the needs and cultural preferences of Indian community people. Indian people are generally reluctant to come to clinics if they are not sensitively treated.

DHHS programs could be improved with more funding, more cultural sensitivity training for service delivery personnel, placement of more clinics within reach of tribal communities, better transportation to health facilities for tribal members, greater training of tribal advisory board members in contract monitoring, administrative, and fiscal management, and reevaluation of program monitoring procedures.
Most surveyed communities believe that they have great and pressing health and welfare needs. Many tribal community people are in need of health and welfare service, but are not currently being served. More funds are needed for patient care, dental services, elderly services, and contract health care. More funding and more programs are needed for Education and Child Care, Meals on Wheels, Senior Nutrition Programs, and food vouchers. More programs and funds are also needed in health treatment, youth and substance abuse treatment, parent training, and community activities. Full-time health clinics and health care beyond levels provided by the IHS should be considered, especially for California Indians. Our surveyed communities believe that they have significant health and welfare problems that need greater administrative and funding attention from the DHHS.

Indian Child Welfare Act (ICWA) Services

About a one-third of the reporting communities indicated they were involved in an ICWA consortium, and most were satisfied with this arrangement. Even those within consortia, however, thought that ICWA services needed increased funding at rates two to six times present levels, and also indicated the need for more staff and better staff training.

Those tribal communities that did not work within a consortium had similar comments. More funding was needed to run adequate programs, and more training of personnel was necessary. Not only were greater funding levels needed, but more consistent funding and more consistent delivery of technical services are desirable. One tribe suggested that ICWA programs might be improved by reducing layers of bureaucracy and delivering ICWA program funds more directly to the regional offices and to the tribal governments.

Most tribal communities valued their ICWA programs, although they did not always win jurisdiction over orphaned members of their tribe. Nevertheless, all the tribal communities voiced a need for increased ICWA funding and for greater community and tribal government attention about ICWA matters.

Summary

California Indian communities greatly value BIA, federal, and state assistance programs. High rates of poverty in California Indian communities foster many social, economic, and health problems. Federal and state programs are often the only available means to provide aid to needy tribal members. Government programs are very helpful, but most California Indian communities believe that they need significantly more funding, technical assistance, access to more BIA funding categories, and more training of tribal members. Tribal governments prefer to gain more control and input into programs that serve their communities. The large numbers of small tribes in California creates special needs for minimum base funding to manage tribal governments and the need to consider group alliances or consortia for
application and administration of many BIA, federal and state programs. California Indians believe they are underfunded and underadministered when compared to other Indian communities, and the data provided in this report support their belief.
XIV. Status and Needs of Unrecognized and Terminated California Indian Tribes

The Government, which in many instances actively participated in the destruction of tribal communities in California, now sits in critical judgment, through its agencies and the federal acknowledgment process, of the tribal status of these groups. This absurd situation must be changed through effective intervention of Congress. — Stephen Quesenberry, California Indian Legal Services attorney

Fairness is not our eighth criterion. — Branch Chief of the Bureau of Acknowledgement, Department of Interior

Introduction

Tribal existence and identity do not depend on federal recognition or acknowledgment of the tribe. Federal recognition does not create tribes, but rather recognizes social/political entities that predate the United States. It creates a trust relationship between the tribe and the federal government, entitles tribes and their members to certain federal benefits, and triggers the operation of a whole body of U.S. law involving respect for tribal sovereignty. In practical terms, it allows tribes to make claims under federal law for the repatriation of their skeletal remains and sacred objects, and to develop gaming and other forms of economic development that take advantage of the tribes' sovereign status. In addition, tribes can receive start-up funds and continuing federal support for their tribal governments, including law enforcement and courts. Federal recognition both introduces federal authority and enables tribes to gain control over their affairs.

More than fifty-five tribes in California remain unrecognized by the federal government. In addition, twelve tribes were terminated during the period of the 1950s–1960s and have not been restored. Over 80,000 individuals are affected. This is the largest group of unrecognized tribal groups and individuals of any state in the United States. The federal government's failure to recognize these groups perpetuates unfair policies directed toward California tribes since the 1850s. Moreover, nonrecognition has produced harmful social and economic consequences for these tribes and their members.

Detailed descriptions of the problems and needs of seven unrecognized tribes and one terminated tribe are available from responses to a survey that we distributed to groups throughout the state. These responses indicate that tribes seek recognition for four primary reasons: first, and most important, to gain the capacity to protect their sacred and culturally important sites; second, to gain a land base and access to federal Indian job-training and education programs that would benefit their youth and...
bring employment opportunities to their communities; third, to gain greater control over the quality of life in their communities, especially matters involving child welfare and environmental hazards, but not necessarily through a formal court system; and fourth, to establish eligibility for federal programs designed to relieve poverty within their communities, especially housing and health care programs. Contrary to some widely held views among non-Indians, the desire to establish casino gaming is not driving efforts to achieve recognition. Indeed, many of the groups surveyed began petitioning for recognition before gaming became a lucrative opportunity for some federally recognized tribes.

Current federal administrative procedures for achieving tribal recognition do not provide adequate recourse for California Indian groups. These procedures create a burdensome, time-consuming, and expensive process that most tribes cannot afford to undergo. Moreover, the special history of California groups warrants special procedures tailored to their unique experience. The current set of procedures, designed as a generic package for all tribes, fails to take account of the distinct forms of injustice wreaked upon California tribes that impedes their success in petitioning for recognition and supports a simpler and expedited process.

A Distinctive History

Five sets of events in the history of California Indians created distinct conditions relevant to the question of recognition: (1) the federal government's negotiation of eighteen treaties with California tribes during the 1850's and Congress's refusal to ratify those treaties; (2) creation of lists or "rolls" of California Indians for purposes of distributing land claims judgments during the 1940s and 1960s; (3) creation of public domain allotments for many California Indians who were not settled on rancherias or reservations; (4) provision of services to California Indians; and (5) the termination of 44 California tribes during the 1950s and 1960s. This distinctive history suggests that California tribes should not be subjected to the standard federal process for achieving tribal recognition. Rather, a process should be established that takes the unique needs and special circumstances of California Indian groups into account.

Past Treaty Relations and the Failure to Ratify Treaties

The failure of the United States to ratify treaties with the California Indians creates a moral obligation to recognize the descendants of this mistreatment as Indians. It also provides evidence of formal relations between the United States and certain unrecognized tribes and sets in motion certain mechanisms that should facilitate such recognition.

Before the United States acquired California in the war with Mexico, colonial policies and the mission system significantly disrupted tribal living patterns and populations in California. Soon after California statehood, approximately one-third to one-half of the
remaining tribal groups negotiated eighteen treaties with the United States. According to these treaties, the Indians were to settle in large tracts (totaling 3.5 million acres) set aside for their permanent occupation and use, and cede all aboriginal claims to their ancestral lands. Simultaneously, Congress passed two laws that effectively passed all Indian aboriginal lands into the public domain.

In keeping with these treaty provisions, and at the behest of federal officials, large numbers of California Indians moved to the tracts that were set aside for them. Unbeknownst to them, however, pressure from the California congressional delegation prevented ratification of the treaties. Left homeless and vulnerable to starvation, these Indians were further assailed by armed bands of vigilantes who hunted them down as if they were game. The Indian population plummeted by 85 percent between 1850 and 1890, leaving no more than 15-20,000 California Indians.

The unratified treaties were withheld from the American public until 1905. Following disclosure of these treaties, a large public outcry led Congress and the President to establish sixty-one small reservations or rancherias, totaling approximately 7,500 acres, for the settlement of homeless Indians. With passage of the Indian Reorganization Act in 1934, the Indians on each of these tracts were empowered to vote on whether to establish a constitution. Effectively, each of these settlements was recognized as a tribe, regardless of the fact that some included members of different ethnographic/linguistic groups, and many had not continuously functioned as a single social-political system.

Some of the homeless Indians did not choose to move to these reservations or rancherias, however, because the lands were too arid, inaccessible, steep, or remote. Others, like the Gabrieleno and the Chumash, did not wish to leave their ancestral areas, even if they lacked a federally protected land base in those areas. Somehow the Indians living outside the rancherias scratched out a living, many of them squatting on national forest lands or working as migrant farmers. Some tried to minimize public awareness of their Indian identity, in order to avoid hostility and discrimination. Yet the individuals and their descendants who failed to achieve recognition by virtue of living on the reservations or rancherias were no less Indians. In many instances, lineage-like “families” continued to live in close proximity to one another, sharing limited resources. Cultural traditions and community leadership were sometimes maintained, albeit with low visibility to the outside world.

Congress’s failure to ratify treaties with the California Indians altered tribal organizations and decimated tribal populations. Creation of small reservations and rancherias, followed by the Indian Reorganization Act, reestablished a semblance of tribal organization for some of the affected Indians, but not all. Many of these remaining groups are the ones now seeking federal recognition. If Congress could authorize recognition for groups via the Indian Reorganization Act, it can do so again, to compensate for the unscrupulous and ruthless means by which it upset tribal patterns. Tribal life was not extinguished altogether in this process; and it is imperative that the federal government recognize the more disguised and subtle forms that tribal
organization was forced to take in the wake of nonratification of the treaties.

Furthermore, the fact that the California groups seeking recognition descend from groups that made treaties with the federal government indicates that the federal government acknowledged their tribal existence at one time. Most of the tribes presently seeking federal recognition are named in at least one of the eighteen unratified treaties of 1851-52, and some tribes were even named in up to four of these treaties. Given this prior act of recognition, which is usually a firm basis for treating a tribe as federally recognized, California Indian groups should not be forced to undergo the full rigor of the administrative process.

Establishment of Judgment Rolls

One of the most troublesome problems in establishing recognition of Indian groups is distinguishing truly indigenous peoples from individuals who seek some advantage by falsely presenting themselves as Native American. While this problem is commonly raised with respect to southeastern groups seeking federal recognition, it poses little if any difficulty for groups in California. As a consequence of the claims cases that have been brought by California Indians against the United States in the twentieth century, there are judgment rolls listing the individuals who can rightfully claim to be indigenous to this state. These judgment rolls, which were established for purposes of distributing the judgment funds, purport to list all individuals who "were residing in the State of California as of June 1, 1852, and their descendants now living in said state." The United States Court of Claims rejected all arguments that "the Indians of California," as so defined, were not an "identifiable" group of Indians within the meaning of the claims legislation.

Accordingly, one of the strongest forces compelling California Indian groups to seek recognition is the fact that their members can point to federal government certification of their Indian status. Every nonrecognized tribe we surveyed indicated that a substantial number of their members were listed on the California Indian rolls. It is baffling to these individuals that the federal government can at once affirm their status as Indians and simultaneously force them to petition the government to achieve recognition of that same status. Indeed, it is precisely because of this anomaly that Congress has authorized some limited benefits, such as health services, to California Indians who can trace their ancestry to these rolls, regardless of whether these individuals are members of recognized tribes.

Creation of Public Domain Allotments

The General Allotment Act of 1887 provided for the allotting of tribal land to individual members of a tribe or, where there was no tribal land, allotting of land out of the public domain. By the end of the 19th century, there were small areas of tribal lands in California as a result of Presidential executive orders and the Mission Relief Act of 123
1891. A large number of California Indians remained landless, however. Accordingly, 2,580 public domain allotments were made to California Indians, mostly in parts of the state that were unsuitable for agriculture. Over the years, these lands, like so many other allotted lands, have found their way into non-Indian ownership. Fewer than 200 remain in trust.

Yet the Indians who kept hold of these public domain allotments used the land to maintain cultural ways. If one family in a tribe possessed an allotment, a larger group of that family’s relations would separate from the rest of the tribe and settle there. Subgroups were established, with their own patterns of leadership and organization.

Some of the California Indians who have retained public domain allotments are not members of federally recognized tribes. They find it odd and distressing that they can be the beneficiaries of trust land, as well as identified as Indians according to the California Indian rolls, yet have no official status as Indians in the eyes of the federal government. Of course, there can be a difference between recognition of a tribe and recognition of an individual as being of Indian descent. Yet the existence of the public domain trust allotment offers some evidence of a federal responsibility and relationship. It also provides a location for the practice of tribal culture and the gathering of group members. The fact that the group may have splintered in order to survive on smaller, more dispersed lands should not matter for purposes of recognition under these circumstances.

Scott Keep, an attorney in the Office of the Solicitor, Department of Interior, recently told Anne Marie Sayers of the Indian Canyon Nation, an unrecognized group,

In California there are in excess of 3,000 California Indians who are not federally recognized who hold in excess of 18,000 acres of land in trust. The legal opinion in Washington, D.C. is that if you are not a member of a federally recognized tribe, this government cannot hold land in trust for you.

Thus, so long as the federal government exerts the control and provides the services associated with public domain trust allotments, it should carry through on the logical extension of that relationship — full provision of federal benefits through recognition.

Provision of Services

California Indians have received some services under federal statutes benefiting Indians for many decades, regardless of their membership in nonrecognized groups. For example, the B.I.A.’s Higher Education Grant Program was established in 1949 pursuant to the Snyder Act of 1921, which authorized the Bureau to "direct, supervise and expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians of the United States...for support...including education." In 1957, the B.I.A. published regulations defining the eligible class of
recipients as Indian "students of one-fourth or more degree Indian blood." Under this definition, members of unrecognized tribes who are at least one-fourth degree "Indian blood" were qualified to receive educational grants, and California Indians who were members of unrecognized tribes received such benefits until 1936, when the B.I.A. amended its regulations to require enrollment in a federally recognized tribe. Past provisions of such benefits is strong evidence of the kind of relationship between the tribes and the federal government that supports recognition.

Termination

In 1954, Congress decided to abandon its trust relationship with a group of tribes that it determined, unilaterally, were ready for full assimilation into non-Indian society. Termination meant an end to federal recognition and the distribution of tribal lands in fee to individual tribal members. By 1958, through the California Rancheria Act, 44 California tribes were identified for termination, with Congress promising them improved roads, water systems, sanitation facilities, and vocational schools before the termination would become effective. While it went about distributing tribal assets and denying federal recognition to these groups, the federal government failed to live up to its promises. Because of inadequate water and sanitation, the lands were rendered uninhabitable and were later sold or passed out of Indian ownership through tax sales or sales born of economic desperation. As a result, the terminated groups brought lawsuits challenging termination on a variety of theories. In 1983, in the case of Hardwick v. United States, 17 northern California tribes were restored through the settlement of a class action. Through other individual cases, all but twelve of the originally terminated groups have been restored. The federal government has not yet, however, fully aided these restored tribes to reestablish their governmental functions.

The policy of termination has been repudiated by Congress and the Executive Branch. Yet the harsh lingering effects on twelve California tribal groups remain. They should not be forced to undergo the rigors of litigation in order to achieve restoration to the status of federal recognition.

Special Difficulties and Requirements of California Tribes in the Federal Recognition Process

In 1978, the Department of Interior adopted new regulations that set forth procedures for establishing a group as a federally recognized Indian tribe, and that authorized the Secretary to publish a list of tribes that were already federally recognized. Before the adoption of these regulations, recognition was accomplished through informal executive branch action, by judicial decree, or by general or special Congressional enactment. Thus many tribes that might have been able to satisfy the pre-1978 criteria are now subjected to a more rigorous process. Designed to regularize the mechanism for recognition, these new regulations presented seven criteria that Indian
tribes must satisfy. Since 1978, the policy has been amended and somewhat relaxed at various times, with the most recent and far-reaching amendments in March, 1994. Administration of the regulations is in the hands of the Bureau of Acknowledgment and Research (BAR) within the Department of Interior.

Only twenty-two cases have been resolved through the post-1978 recognition process, commonly known as the Federal Acknowledgment Process (FAP). Over half of the 55 unrecognized tribes in California have initiated FAP petitions, including six of the eight tribes that responded to our survey (see Table XIV-1). None has succeeded, and only one (outside our survey response group) has been denied, the Kaweah Indian Nation. Pursuant to an ongoing legal action, the BAR recognized one other California tribe, Commissioner of Indian Affairs Ada Deer, using her administrative authority, short-circuited the FAP and recognized the Lone Band of Miwok Indians. Thus it is fair to say that no California Indian tribe has successfully navigated the FAP.

The seven criteria set forth for recognition under the FAP provide that a tribe must

(a) be identified as an Indian entity by anthropologists, historians, or other scholars on a substantially continuous basis;

(b) live in a distinct community;

c) submit proof of political influence over its members as an autonomous entity throughout history until the present;

(d) present a copy of the tribe's governing document;

(e) list all tribal members showing that they all descended from a historical Indian tribe;

(f) prove that its members do not belong to any other tribe; and

(g) not be barred, by law, from a formal legal relationship with the United States.

The bureau chief of the BAR has explained that although a petitioning group may once have existed as a tribe and been dispersed or abused by federal policy, the acknowledgment process does not make up for that. According to the regulations, a tribe is a tribe only if it can prove its continuous and cohesive existence since at least the early nineteenth century.

The federal government has taken the position that all Native Americans should fit the criteria set forth in the FAP in order to achieve federal recognition. However, many California Indian tribes should have been recognized previously in accordance with recognition procedures that predate the 1978 regulations. For example, before the 1978 regulations, the federal government extended recognition to tribes if the
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1 BAR: Bureau of Acknowledgment and Research
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**Ready Status:**
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- **Petitioner**

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**Note:** * represents tribes who have only submitted a letter of intent to petition
Numbers in parenthesis represent priority numbers as given under the old regulations.
government had established a reservation for the group, had treaty relations with the group, or had some continuing political relationship such as by providing services to the group. Because of their distinctive history, described above, many nonrecognized groups in California fit this description.

Thus, with promulgation of the 1978 regulations, the federal government has switched the burden of proof from the government to tribes in proving descent from a historical tribe without interruptions from historical times to the present. It is important to note that in California there is a diversity of recognized tribes whose history is analogous to present-day nonfederally recognized communities. Recognized tribes include historic tribes, Indian Reorganization Act tribes, "unterminated" (restored) tribes, (un)organized tribes, (non)reservation based tribes, and tribes with reservations created by act of Congress or federal executive order. Recently the Interior Department attempted to limit the sovereignty of those recognized groups that it denominated "non-historic" tribes, meaning they were often amalgams of members of different ethnographic tribes. But once Congress caught wind of this practice, it firmly directed Interior to cease distinguishing among recognized tribes on that basis. If the recognized tribes in California have these characteristics, it is difficult to understand the exclusion of very similar nonrecognized groups.

It is time-consuming, burdensome, and expensive for a tribe to document how it satisfies the FAP's seven criteria. Expert witnesses, such as anthropologists, and extensive historical research are essential because of the difficulty and complexity of the proof process. Thus, a successful petition usually costs hundreds of thousands of dollars and takes from eight to ten years.

Limited funds are available to unrecognized tribes through a competitive grant process administered by the Department of Commerce's Administration for Native Americans (ANA). Two of the tribes surveyed had indeed received such grants. Yet such support is not always available, and rarely is it sufficient for the task. Thus many unrecognized tribes do not have the resources required to complete the petition. The San Luis Rey Band of Indians in Southern California, for example, has not been able to secure funding for recognition purposes. Another tribe, the Mono Lake Indian Community, has been denied funding through ANA. Indeed, all of the tribes we surveyed complained that they lacked sufficient funds to conduct the background work necessary to support their petitions.

Petitioning for recognition is nearly an endurance contest for tribes. Only 1.5 to 2 petitions are completed each year through FAP. With more than a hundred groups seeking recognition, the process will extend far into the twenty-first century. Exacerbating this problem is the fact that many unrecognized Indian groups have not yet pursued their petitions. Tribes that we surveyed indicated that years passed between the time of filing a petition and receiving a "deficiency" response from the Bureau, and that it was difficult to secure a timely response to their inquiries about the recognition process and criteria.

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Out of the seven criteria set forth in FAP, four are especially troublesome for California tribes: (a) being recognized on a continuous basis; (b) living in a distinct community; (c) maintaining political influence over tribal members; and (e) descending from a historical Indian tribe. These criteria are unsuited to the experiences of California tribes as a result of government policies and distinct history described above. Although the government participated in the disruption of tribal communities while continuing to deal with the Indians of California, it has not intervened to re-recognize the tribal groups.

Section (a) of FAP states that the petitioner must be recognized on a continuous basis from historical times to the present as an American Indian entity. "On a continuous basis" does not take into account the manner in which the federal government intervened in individual community affairs, established reservations and rancherias, reneged on treaties, failed to protect Indian lands, or established public domain trust allotments. Because of such intervention, many groups were broken up and later reorganized. "Continuously" does not allow for a period of interruption greater than forty years. However, there have been no pauses in government policies to remove, relocate, assimilate, or terminate California tribes. As a result, many tribes today have a solid government, but they lack the recognition on a continuous basis. In spite of all the federal policies, the tribes existing today managed to endure.

Another problem California tribes face when petitioning for federal recognition is establishing that tribal members live in a "distinct community." Section (b) of FAP states, "A predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present." Again, the discontinuousness of community life is difficult to document because of previous federal policies. In addition, many tribal members are spread throughout their respective counties or the state because there is no land base set aside for them and there are few jobs available in their respective communities. One example of this problem is the Juaneño Band of Mission Indians. They were scattered by the federal government, and other members have spread out to locate jobs for the purposes of establishing security.

In March 1995, Michael Anderson, Acting Deputy Assistant Secretary of Indian Affairs, wrote that under FAP "there is no requirement that a petitioner for federal acknowledgment have a land base and not having a land base does not have a negative impact upon the petitioner's case." However, without a land base, it is difficult to find a majority of tribal members residing in the same geographic community. The criterion should be interpreted to take account of the informal social networks established within California tribes because there have been no large land bases since the 1800s. The absence of such land bases is, of course, a consequence of Congress's refusal to ratify the treaties of 1851–52.

Another problem with criterion (b) is proving lineage from a specific historic tribe. The
insistence on tracing tribal progenitors clearly represents a misunderstanding on the part of the United States government concerning survival of Indian communities through continuous interaction and intermarriage with other Indian peoples. Indian communities (including federally recognized tribes) have been intermarrying with other tribal groups for hundreds, perhaps thousands, of years. The whole notion of tracing one's lineage and proving the lineage is a white concept. Certainly some recognized tribes have similar histories of intermarriage with other Indian people.

Within many California Indian groups, there is an amalgam of many ethnologic tribal groups or individuals. Many tribal groups were decimated by the effects of continuous white encroachment. Many tribes were also weakened due to the expansion of the United States following the mission system. However, the tribal groups have continued to maintain their identity as Indian people and distinct tribal affiliations. Thus, this requirement fails to recognize the assimilation and termination policies that California Indians have had to overcome in the course of maintaining their identities.

FAP's third problematic criterion (c) concerns political influence. Section (c) states, "The petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present." In order to establish criterion (c), the tribe must prove descent from a historical tribe as listed in section (b) of FAP. Thus, the problem with (c) is that it is a continuation of (b). Also, the "continuous" phenomenon remains for tribes to prove although their livelihoods were continuously interrupted. This is not to say that California Indian tribes lack traditional governments, but that their governments have been altered by the vast policies of federal and state legislation.

The final criterion that poses a problem is (e), which insists that the tribe descend from a historical Indian tribe. According to (e), "The petitioner's membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity." Although Indian identity can be verified "without doubt or question," the petitioning tribe must descend from a specific historical tribe or historical tribes that combined and have continued to function as a single entity. Acting Deputy of Assistant Secretary of Indian Affairs, Michael Anderson writes that "it is the administration's policy to recognize tribes that have continued to exist." The fact that historic tribes have combined with other tribes does not count for the purposes of federal recognition. "The Federal Acknowledgment Procedure is expressly designed to avoid the splintering of existing tribes." Additionally, most tribes do not have documented histories and the researcher spends many years searching for information.

Because of the complexities, contradictions, and inappropriateness of the criteria, California Indians cannot fairly petition for federal recognition considering the special circumstances they have faced. Many tribes have been displaced throughout the state, changing their geographic areas and influencing them to take measures for survival. For all of these reasons, California Indians should be entitled to a greater
than forty-year gap if they are to petition under the current regulations.

**Revised Regulations**

The latest development in FAP regulations has been the revised Rules and Regulations adopted by the Department of the Interior and the Bureau of Indian Affairs on the "Procedures for Establishing That an American Indian Group Exists as Indian Tribe," 25 CFR Part 83. The effective date was March 28, 1994. The new regulations include substantial changes in the administration process for federal acknowledgment of Indian entities as tribes. These changes were made to clarify the mandatory requirements for federal recognition and to define more clearly the evidence permitted in petitioning to receive acknowledgment.

These new regulations allow the BIA to base its findings on only one of the seven mandatory criteria. The seven criteria basically remain the same. With the revised regulations, less time is needed to evaluate a petition because the BAR does not fully research the petition. "The new regulations have reduced the amount of time and work needed to complete a petition evaluation in cases with little merit, according to BIA officials." It also hopes to reduce the burden of proof in the area of Previous Federal Acknowledgment.

Many unrecognized tribes in California can qualify for recognition by petitioning under previous acknowledgment in the revised regulations, sec. 83.8—Previous Federal Acknowledgment. Tribes can qualify to petition in this manner if they were named in the unratified treaties or listed on federal rolls, i.e., California Indian Rolls. According to Holly Rackord, a group was considered a tribe from the point when either of the previous events occurred. Under sec. 83.9—Previous Federal Acknowledgment, the tribe need only establish identity (sec. 83.7 a), community (sec. 83.7 b), and political influence (sec. 83.7 c) from the point of last recognition. In addition, a tribe must have continued to maintain a relationship with the federal government since the last period of recognition. Although these changes promise to ease the burden of petitioning for California groups, they have not yet yielded any successful outcomes.

**Importance of Federal Recognition**

It is important that the federal government take responsibility for its past actions towards California Indian tribes. The responsibility must begin with the restoration and acknowledgment of all California Indian tribes. In most cases, unrecognized tribes receive no funding at all from the federal government. All nonrecognized tribes who participated in the survey conducted by the UCLA American Indian Studies Center stated that they need funding to establish networks within their communities, to raise their poverty levels through job training programs and scholarship funds, and to provide health services and economic development. Most tribes have some form of government and maintain traditional values and ceremonies within their community. However, they need recognition to gain land and water rights, to instill pride in their
youth, and to exercise fully their religious freedom. Most important, however, is becoming recognized and respected as a (limited) sovereign nation. The experience of the Fernandeño Tataviam tribe, described below, illustrates the problems and needs of unrecognized California tribal groups that responded to the Center’s survey.*

**Fernandeño Tataviam**

"We are a small group of Native American Indians trying to survive in a disastrous economic situation."*

The 300-member Fernandeño Tataviam tribe was unaware of its status as an unacknowledged Indian group until they were denied the allocation of federal grant funds for their people. They have lived as a community of people and are recognized by other Indian communities as Indian people. They are listed on the California Indian rolls and have a tribal organization. Because the tribe has been unaware of its nonrecognized status, the Tataviam tribe has not sought to obtain recognition. They have only recently mobilized to work on federal recognition. The Fernandeño Tataviam tribe needs to upgrade its community's standard of living. With recognition and the consequent federal grant monies, the tribe hopes to establish funds for education, job training programs, food supplements, and decent clothing for their people.

The Fernandeño Tataviam tribe's greatest strength lies in unity. Through reliance on the community for support and survival, the tribe has been able to endure the lack of government funding. Families play an important part in tribal affairs. All members of the Tataviam are entitled to vote and have a voice in everything that is brought before the tribal council. Although the tribe has a contemporary tribal council, traditional forms of government also remain.

The tribe uses traditional forms of settling disputes among its members. In dispute resolution, the parties involved notify the tribal council of the disagreement. The tribal council then appoints someone to initiate the process of mediation, notifying the persons involved to schedule the time and location. In the mediation process a neutral third person helps the two parties to resolve their differences and to arrive at an agreed-upon solution. The parties are immersed in resolving the dispute, creating ownership in the solution, and producing an agreement they both can accept. The role of the third party is to encourage open and honest communication while remaining neutral throughout the process. The Tataviam do not want a formal court system because the mediation process has been very successful among them and closely follows the rules of a tribal court system. Although dispute resolution is not funded, the tribal council ensures the existence of this method of solving problems.

Despite being unrecognized, the Tataviam tribe maintains a tribal organization and holds monthly meetings. The tribe conducts a powwow, makes presentations in the surrounding communities, deals with dispute resolution, and ensures equality among

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the members. Every member of the Tataviam tribe has an opportunity to speak on every resolution brought forth at tribal meetings, or to make a written submission. Decisions are made by a majority vote.

Although the Fernandeño Tataviam tribe is not recognized by the federal government, all of its members are listed on the California Indian rolls. Thus individuals are recognized by the government as Indians, but not as a specified tribe. For this reason, Tataviam is eligible to petition for federal recognition under 25 CFR Part 83.8—Previous Acknowledgment. Members of the Tataviam tribe are identified by other Indian people and the surrounding community as Indians. They are recognized as an Indian tribe/community through their participation in public appearances, powwows, parades, etc.

The Tataviam are very poor. They have always had difficulty securing funds, but have survived through community support, special appearances, and private donations. Members of the Tataviam community do not receive federal aid because they are not members of a federally recognized tribe. The tribe does not receive any other monies from other resources or groups. Many members donate their time and money to projects and activities. In addition, the tribe generates money by performing for the general public and by participating in parades and powwows with other Indian tribes in California. Although there are no federal monies or programs available for the tribe, some individual members qualify for some type of aid from federal, state, and county agencies: Tribal leaders estimate that 25 percent receive federal aid, 15 percent receive state aid, and 5 percent receive county aid.

Twenty percent of the members of Tataviam live below the poverty level, and over 35 percent are currently seeking work. According to tribal members, job opportunities are very rare for the Tataviam people because tribal members have neither the experience nor the education needed to compete in today's difficult job market. The only available employment for Tataviam tribal members is retail, and there are no Indian-owned and operated businesses. Consequently, the tribe's most pressing problem is lack of employment opportunities. The tribe's highest priority is job training for their people. If federally recognized, the tribe would hope to obtain federal funds to promote business development. The primary goals of the Tataviam tribe are to educate their youth and to help members find job training programs.

The economic situation of the Fernandeño Tataviam tribe should be reversed. They receive no federal money or programs because they are unrecognized by the federal government. The tribe would like to obtain recognition to protect their sacred sites and way of life, to improve their overall economy, to generate funds for education and job training, which would improve economic well being within their community.

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17) ROHNERVILLE (Humboldt)
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*This section dealt with authorization to sell unoccupied ranches.*

Patty Ferguson 8/95
Termination and its Consequences for California Tribes

Adopted by Congress in the 1950s, termination is the policy of abolishing Indian reservations and removing all governmental power from the Indian tribes. Termination nullifies the federal trust relationship between a tribe and the federal government. As a result of termination, tribal members are expected to assimilate into American society and thus become ineligible for special services provided to indians by the federal government. A terminated tribe is not listed in the Federal Register as a federally recognized tribe and is ineligible to petition for recognition through FAP.

Although terminated tribes may be, and sometimes have been, restored to recognized status, there are no set criteria for restoration. Terminated tribes have gone through various mechanisms in order to regain recognition (see Table XIV-2). For example, because the government had violated the California Ranchería Act of 1958 by failing to provide promised services, 17 rancherías were restored in the case of Hardwick v. United States.9 Most of the terminated rancherías have been restored through judicial decisions or settlements guided by California Indian Legal Services. Yet the restored tribes have not received sufficient federal support to enable them to reinstate their land bases and reestablish their governments. And twelve tribes remain terminated. Clearly termination has impeded tribal sovereignty, community and economic welfare.8

Pre-termination

Congress was considering terminating the federal relationship with California Indian tribes as early as 1947. There were several bills floating about Congress regarding termination before the policy was actually implemented. From these bills and the California Ranchería Act, it seemed the goal of Congress was to expedite termination in California.

As it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that it is hereby declared to be the policy of the Congress to provide for a termination as quickly as possible of federal supervision over Indian affairs in the State of California, and to place the Indians living in California in the same status as other citizens living in the State. In furtherance of that policy it is the purpose of this Act to facilitate termination of federal supervision over the trust and restricted property of Indian tribes, bands, and groups, and individual Indians in California, and a termination of federal services furnished such Indians because of their status as Indians (Bill 10/25/51 p.1).

The purpose of this 1951 proposed bill was to facilitate the termination of supervision in California regarding all property in trust or restricted status belonging to individuals or tribes.

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Regarding the land, Congress was well aware of the implications of termination. Congressional members acknowledged that Indians might well lose or sell their land because of their inability to pay taxes. Furthermore, at least one member noted that when an Indian leaves the land, he has ceased any connection he may have had to that land. To justify termination, this member asserted that California Indians are living on the land by sufferance, and they have no rights to remain on the land. The lands were not bought and not held in trust for any particular Indian or group of Indians, but rather were set aside for California Indians based on their locality.

This characterization of the rancherias does not hold for at least some. For example, the Ruffey Rancheria was purchased for the Ruffey Band of Indians and is referred to as the Ruffey Allotment by the Indians in the area. Thus, this rancheria was established for a specific group of Indians. In addition, when land was set aside for Indians of a particular area, this group would then become a particular assemblage of Indians who have a unique community brought about by the actions of the federal government. Thus, the rancherias established according to location would comprise particular Indians of the locality and would have been bought for certain Indians residing in that location.

In addition to land, the federal government was well aware of funding issues concerning California Indian tribes at the time termination policies were discussed and implemented. Congressional member Sisk stated,

I think it is important that some consideration be given to the fact that California Indians as a whole, over a period of a great many years, have not shared to any substantial measure in federal expenditures.

Congress amended the proposed termination act to ensure that terminated tribes would not receive any federal Indian services. Sisk challenged this amendment by stating that California Indians have been denied most benefits by the Bureau for years and it is not necessary to include provisions that ensure that terminated tribes are not entitled to any services provided by the United States because of their status as Indians. Thus, Congress was fully aware that California Indian tribes were inequitably funded at the time the Rancheria Act was implemented.

One other goal of the Rancheria Act was to terminate Indian tribes without their consent or knowledge of termination. In a letter from Commissioner Myer to the Area Director of the Sacramento Indian agency, Myer emphasized that it is essential to keep section five regarding termination noncontroversial to accomplish "their" (the Bureau's) purpose. Section five includes, "authorizing the issuance of patents in fee to individual Indians after notice but without application or consent."

Provisions of the Rancheria Act

The Rancheria Act, PL 85–671 as amended by PL 88–419, terminated forty-one
California Indian rancherias (see table XIV-2). In addition, three other rancherias were terminated as a result of the act. In exchange for the forced distribution of their lands to tribal members, tribes were promised various services. There would be special programs for education and training and improvements of roads, and water systems would be installed or fixed. In addition, individuals who received land distributions would be required to pay taxes and be ineligible to receive federal services.

The promised benefits did not materialize. Almost 180 of the 225 members of the Big Valley Rancheria were terminated without land distributions. Only 67 Indians at this rancheria received homesteads.*

In the case of Smith River Rancheria, the distribution plan was voted down four times. Hence, the termination act should not have gone into effect according to the Rancheria Act. Section 2 (b) of the Rancheria Act states, "If the plan is approved by a majority of such Indians who vote in a referendum called for that purpose by the Secretary the plan shall be carried out." No reference is made to the acceptance of termination if the distribution plan is not approved.

**Conditions Once Terminated**

In the 1970s when the Commissioner of Indian Affairs, Louis Bruce, visited California, he saw the hopeless conditions of terminated California Indians resulted from the Rancheria Act. Neither state nor federal governments helped these groups of Indians because each government laid the responsibility upon the other. For example, states reasoned that it was the federal government's responsibility to provide services to Indians while the federal government distributed their funds to those who were legally under their jurisdiction. Thus, it was left by some that termination was enacted "without even bringing the basic necessities of community living up to a reasonable standard".**

As a result, the California Rancheria Task Force was established to investigate the living conditions of terminated Indians. Failure of the government to abide by the Rancheria Act can be established from the reports submitted by two task force teams on the conditions of twenty-six terminated tribes. Through these reports it becomes evident that the government allowed substandard domestic water systems and, in most cases, provided substandard water systems at the time of termination. In addition, the Bureau allowed termination to occur knowing that substandard housing existed in most areas. Due to the negligence of the Bureau of Indian Affairs, terminated tribes were unaware of the opportunities for education and training under Section 9 of the Rancheria Act.

The task forces evaluated 187 households on twenty-six terminated rancherias. Their basic conclusion was:

The majority of homes inspected were substandard in most respects, including but not limited to: poor or no foundation, deteriorated floor

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joists, siding and roofing; inadequate electrical service or unsafe house wiring; inadequate plumbing often lacking hot water, and insufficient heating equipment that does not provide adequate service throughout the house.

The majority of homes were considered unsafe and unsanitary with inadequate space for the number of occupants living there.

Under the terms of the Rancheria Act, land was distributed to Indians, but water and sanitation were either inadequate or not provided at all in nearly every circumstance. The Indians' housing needs were not addressed either. Most lands distributed to the Indians were either rendered uninhabitable or passed out of their control. Many Indian families sold parcels of their land to pay taxes or failed to pay taxes and risked losing their land through tax defaults. Many families surveyed did not want to make improvements on their land because of the increase in taxes they would have to pay. These improvements would lift their taxes to a level that they would not be able to afford.

Unsanitary health conditions as a result of termination seemed to be one of the largest problems encountered by terminated rancherias. Unsanitary health conditions throughout the rancherias consisted of: substandard homes, open septic tanks, plugged drain systems, inadequate living quarters, lean-to added on to lean-to, people living in storage sheds, and three and four families living together in one- and two-bedroom shacks. Moreover, task force members indicated that virtually every person interviewed was in need of dental attention.

In terms of housing for terminated Indians, most houses were in bad condition and were reported as being eligible for condemnation at any time. Neither Finleyville nor Redwood Valley Rancheria could comply with any housing code. At Redding Rancheria there was a two-bedroom shack that housed fourteen people with one outdoor privy. One woman at Robinson Rancheria declared that "a good strong wind would blow her house down." In addition, the task force found that only one rancheria, Table Bluff Rancheria, was connected to any approved sewer district out of the 26 rancherias in the study. These are only a few examples of the inadequate housing conditions that the California Rancheria Task Force found on the terminated rancherias.

Water on many rancherias was found to be contaminated. This was the case on Chicken Ranch Rancheria. The water on Chicken Ranch came from an old mining tunnel located in the back of the rancheria. Big Valley Rancheria also had a very serious water problem. Consequently, there were numerous cases of diarrhea and hepatitis. Task force members reported, "The water is not fit for animals." Thus, the federal government failed to implement Section 3 (c) of the Rancheria Act: To install or rehabilitate such irrigation or domestic water systems.
Likewise, the federal government failed to meet Section 3 (b) of the Rancheria Act which promised construction and improvement of roads to meet state standards. The government also failed to convey rights-of-way for roads on terminated rancherias. Inadequate roads and no roads at all presented another problem for the tribes after termination.

Currently houses on the terminated rancherias, as a whole, have inadequate driveways from the main service roads. Very few houses have sidewalks from the driveway to the house entrance. Existing conditions show a need for proper planning and construction of access roads, driveways and sidewalks to the rancherias.  

An example of the federal government's failure to meet Section 3 (b) was found on Graton Rancheria, a nonrestored rancheria. On Graton, the original road to the rancheria property was blocked off by a private owner who would not give a right-of-way.

In addition to inadequate living conditions, other difficulties result from termination. One woman from Auburn Rancheria was fired from the Bureau of Indian Affairs office in Sacramento when the Bureau learned that her tribe was terminated. Another young woman, the granddaughter of Virginia Buck, a member of Cloverdale Rancheria, was visiting her grandmother at the time the list of tribal members was prepared for purposes of termination. As a result, she was included as one of the Indians who lost their eligibility for federal Indian programs due to termination. In fact, however, the granddaughter was a member of a different rancheria that remained recognized. Nevertheless, she lost her eligibility for BIA education benefits. These examples were directly linked to termination and display how the termination policy, when enacted, went beyond the terms of the act.

The termination process was implemented with the assumption that the tribal members were ready to accept full responsibility for their affairs, that they were also ready to become integrated into the mainstream society, and that termination would not pose any federal hardship upon them. These views may have resulted from the testimony of one Frank Quinn, who testified that all of the Indians involved in the process, except for a few, were in favor of termination. However, many tribes were not informed of the termination process and felt that they were being forced into the process. At Elk Valley Rancheria, the people stated that the B.I.A. gave them the choice either to terminate or to move. They were not fully informed of the process and were unaware that they were giving up the rights of their children. Furthermore, even if the Rancheria Act had been fairly implemented, it was never enforced to the full extent of its provisions.

**Lower Lake**

Although, Lower Lake Rancheria was sold in a termination statute (PL 443), the Indians of Lower Lake Rancheria were not terminated according to the statute or by
any other government action. In 1916, funds were appropriated to buy lands under the Act of August 1, 1914, 38 Stat. 583, 589 specifically for the Koi Pomo. These lands were also bought for Lower Lake and Sulphur Bank Indians. Thereafter, the land became called Lower Lake Rancheria. In 1956, the 84th Congress passed Public Law 443, "Conveyance to Lake County, California, of Lower Lake Rancheria." In this act, Congress sold all but one forty-acre lot of the Lower Lake Rancheria to the county of Lake "for the purpose of establishing an airport" (Pearce Airport). Nowhere in the language of these acts is the tribe(s) for whom the rancheria was established terminated, nor is any federal relationship to such tribe(s) forbidden.

Although the Indians of Lower Lake were never officially terminated, they currently are not listed in the Federal Register as a recognized tribe. In a letter to the Sacramento Area Director on October 21, 1980 concerning the non-terminated rancherias, John Geary of the BIA revealed his intention to include Lower Lake Rancheria of Pomo Indians and Strawberry Valley Rancheria of Maidu Indians. Although no objections were found, Lower Lake Rancheria remains without recognition status.

As a result, ACCIP Executive Director Pauline Girvin addressed this issue in a letter to the Assistant Secretary of Indian Affairs in June, 1995. She pointed out that the Lower Lake Rancheria of Pomo Indians "Koi" were slated for publication in the 1981 Federal Register as having a "government to government" relationship with the United States. Furthermore, the Koi tribe qualifies for administrative recognition under the criteria enumerated in the sec. 83.8—Previous Federal Acknowledgment. In this case the tribe need only prove identity (sec. 83.7 a), community (sec. 83.7 b), and political influence (sec. 83.7 c) from the point of last recognition. In this letter, Pauline Girvin presented evidence that the tribe meets each of these criteria and reiterated why they should be recognized in addition to the intention letter sent by John Geary of the BIA.

**Coyote Valley**

The Coyote Valley Band of Pomo Indians' situation is analogous to that of Lower Lake. The Act of July 10, 1957 (71 Stat. 283), which transferred the lands of the Coyote Valley Rancheria from the Secretary of the Interior to the Secretary of the Army for use in connection with the Coyote Valley Dam of the Russian River Basin Project, did not terminate the Coyote Valley Band for purposes of eligibility for Bureau services. Although the federal government appropriated Coyote Valley's land in a similar manner to Lower Lake, Coyote Valley is federally recognized.

The status of Coyote Valley was confirmed in a 1977 letter written by the Acting Deputy Commissioner of Indian Affairs to Ira Campbell, Chairman of the Coyote Valley Tribal Council. The act transferred lands from the Coyote Valley Rancheria to the Coyote Valley Dam of the Russian River Basin Project "did not terminate the Coyote Valley Band for purposes of eligibility for Bureau services. They are recognized as a tribe."
CONCLUSION

Federal policies should be changed and legislation should be enacted to alleviate the problems and unfavorable conditions of unrecognized and terminated California Indian tribes. The past and present policies implemented by the federal and California state governments hinder the development and livelihood of these tribes. Past policies continue to affect individual California Indian communities. Because of this history, there should be legal action to change the status of unrecognized and terminated tribes so they can gain the respect, privileges, religious freedom, and land and water rights that they need in order to reestablish themselves within their communities.
In 1977, the American Indian Policy Review Commission identified 133 unrecognized communities throughout the United States.

The tribes are Costanoan Rumans Carmel tribe, Esselen Nation, Fernandez Tataviam, Indian Canyon Nation, Maidu Nation, Mono Lake Indian Community, Chalone Mutsan–Rumans, and Tolowa Nation.

This history is documented in Flushman & Barbieri, "Aboriginal Title: The Special Case of California," 17 Pacific Law Journal 391 (1986). The authors were both Deputy Attorneys General for the state of California.


The 1990 Reservation Field Directory of the California Indian Community, Indian Assistance Program, Department of Housing and Community Development, state of California, 1990.


C. Brown, "The Vanished Native Americans: Unrecognized Tribes," The Nation 384 (October. 11, 1993).


Information obtained in an interview with tribal member Carrie Lopez.

Interview with Son Johnson, tribal member.

Letter from Michael Anderson to Mr. Rusal Peters.


Presentation by BAR Chief Holly Reckord at UCLA, October, 1994.

The Center received seven responses from unrecognized tribes.

The following information regarding the Fernandez Tataviam tribe was gathered by project assistant Patty Ferguson from tribe leaders and community members.

Most of this aid is not directed to them by virtue of their status as tribal members, however.

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"Id. at 19.