

Tribal Sovereignty and Harm Reduction

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NORTHWEST PORTLAND AREA
INDIAN HEALTH BOARD
Indian Leadership for Indian Health

Agenda

- **Tribal Sovereignty: History, Law & Policy**
- **Harm Reduction Legal Tools**
- **NPAIHB Policy Team**



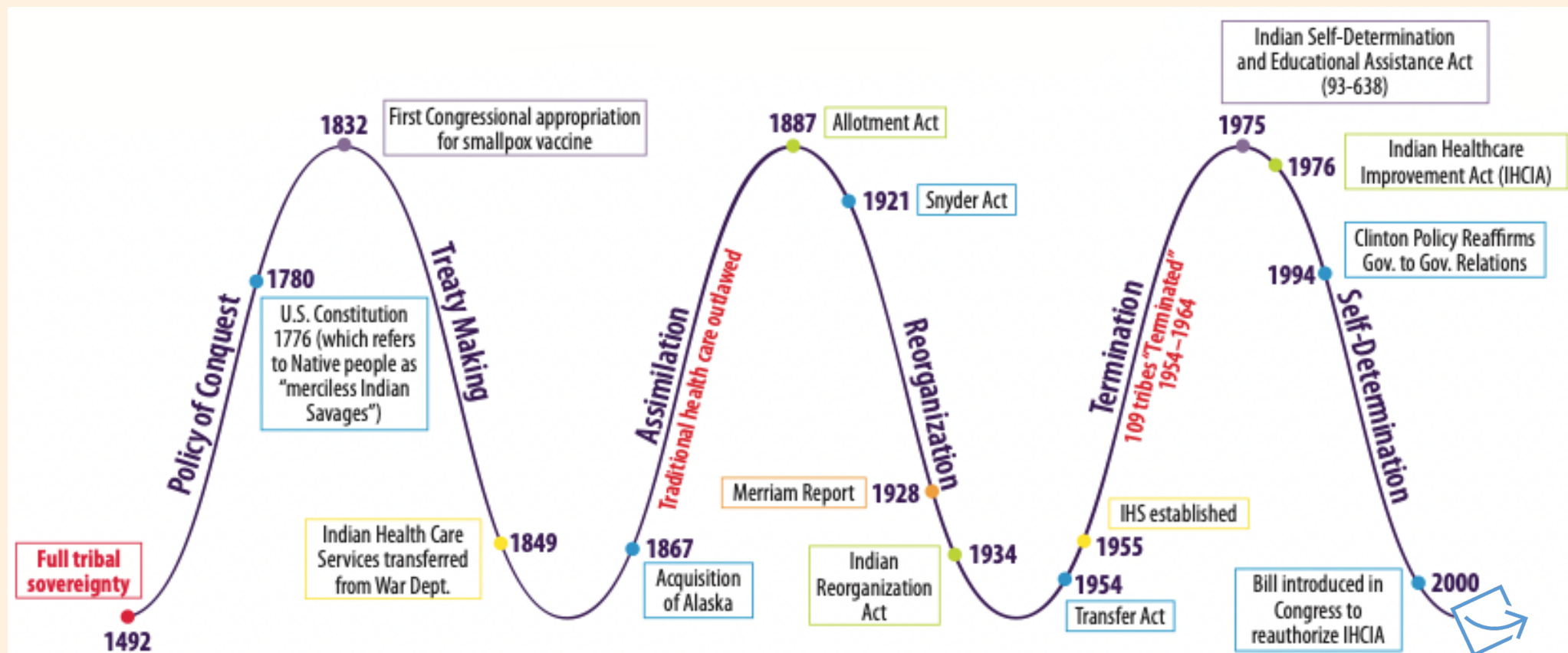
Tribal Sovereignty: History, Law & Policy



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Historical Timeline of Major Events in Indian Health Care

This graphic was created by staff members at the Center for Health Equity at the American Medical Association . It was adapted from: Shelton, B . L . (2004, February). [Legal and historical roots of health care for American Indians and Alaska Natives in the United States \(Issue brief\)](#) . Kaiser Family Foundation, pp 2 .



Current:

**Nation to Nation
2010 IHICA permanently
reauthorized**



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Indian Policy Periods

- **There have been at least eight policy periods from first contact to present:**
 - Colonial Period (1492-1828)
 - Removal, Reservation and Treaty Period (1828-1887) Allotment Period (1887-1934)
 - Indian Reorganization Period (1934-1945)
 - Termination Period (1945-1965)
 - Self Determination Period (1965-2000)
 - *Nation to Nation Period (2000-present)**
- **Each period has impacted health and well-being of tribes and**



*Referenced by NCAI

Tribal Nations are Sovereign

- **The U.S. and other countries recognized the sovereignty of Tribal Nations by negotiating treaties and leaving the Tribal Nations to regulate their own affairs**
- **Of the 56 million acres of land held in trust for Tribal Nations and AI/AN people, about 9.5 million of which is guaranteed by treaty**
- **The U.S. Supreme Court first acknowledged and affirmed Tribal Nations' inherent right to self-government in 1832**
 - Worcester v. Georgia (1832) : Tribes also have an inherent right to self-government, which is not handed from the federal government but retained from their existence prior to colonization and essentially the formation of the United States. 31 U.S. 515, 581 (1832).



Treaties

- **Treaty-making captures the first negotiations between the federal government and tribes**
- **Contracts between the United States and tribes**
- **Commonly for the purpose of:**
 - Ceasing hostilities
 - Guarantee of peace
 - Acquisition of land
 - Hunting and fishing rights
- **Also, education, housing, health care, and more**
- **Article IV, U.S. Constitution recognizes Indian treaties as supreme law of the land**



Foundation of Federal Indian Law: Marshall Trilogy

- ***Johnson v. McIntosh* (1823):** The Supreme Court ruled that **Tribal Nations only have a “right of occupancy” and hold no title to the land**

“Discovery of lands in the new world, said the Court, gave the discovering European sovereign a title good against all other Europeans, and along with it the sole right of acquiring the soil from the natives.” 21 US at 573

- ***Cherokee Nation v. Georgia* (1831):** **domestic dependent nations**

- “Their relation to the United States resembles that of a ward of his guardian.” 30 U.S. at 16.

- ***Worcester v. Georgia* (1832):** **right of self-government**

- States cannot exercise their regulatory or taxing jurisdiction in Indian Country.



McGirt v. Oklahoma (Sup. Ct. 2020)

- **“On the far end of the Trail of Tears [were] promise[s]. Forced to leave their ancestral lands in Georgia and Alabama, the Creek Nation received assurances that their new lands in the West would be secure forever . . . [the Creek Nation] shall be allowed to govern themselves.” 591 U.S. _____ (2020)**
- **“Today we are asked whether the land these treaties promised remains an Indian Reservation . . . Because Congress has not said otherwise, we hold the government to its word.” Id.**



Federal Trust Responsibility

- **Collectively defined by:**
 - Treaties
 - Presidential Executive Orders
 - Extensive Court decisions
 - Statutes
 - Regulations
 - Department and agency policy statements
 - Ongoing relations with Indians have collectively defined the federal trust relationship
- **Recognized by all branches of the federal government**



Legal Tools for Harm Reduction



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Data Sharing Agreements

- **Tribal Nations have the inherent authority to access and control their data.**
- **Entering into agreements with local counties or fire districts that are first responders.**
- **Quicker and more streamlined access to patient information.**
- **Harm reduction programs can use this information for their own outreach or for data purposes to inform policy and programmatic decisions.**



Harm Reduction Code Revisions

- **Good Samaritan Laws**

- Example: RCW 69.50.315 (1) A person acting in good faith who seeks medical assistance for someone experiencing a drug-related overdose shall not be charged or prosecuted for possession of a controlled substance pursuant to RCW [69.50.4013](#), or penalized under RCW [69.50.4014](#), if the evidence for the charge of possession of a controlled substance was obtained as a result of the person seeking medical assistance; (2) A person who experiences a drug-related overdose and is in need of medical assistance shall not be charged or prosecuted for possession of a controlled substance pursuant to RCW [69.50.4013](#), or penalized under RCW [69.50.4014](#), if the evidence for the charge of possession of a controlled substance was obtained as a result of the overdose and the need for medical assistance. (3) The protection in this section from prosecution for possession crimes under RCW [69.50.4013](#) shall not be grounds for suppression of evidence in other criminal charges



Code Revisions Contd.

- Example: VA § 32.1-45.4(G) The provisions of §§ [18.2-250](#), [18.2-265.3](#), and [54.1-3466](#) relating to possession of a controlled substance, drug paraphernalia, and controlled paraphernalia shall not apply to any person receiving services from a comprehensive harm reduction program established pursuant to this section, when (i) such controlled substance is a residual amount contained in a used needle, used hypodermic syringe, or used injection supplies obtained from or returned to a comprehensive harm reduction program established pursuant to this section, or (ii) such paraphernalia is obtained from a comprehensive harm reduction program established pursuant to this section, as evidenced by the verification required pursuant to clause (vii) of subsection B.



Code Revisions Contd.

- **Decriminalizing possession of injection-related drug paraphernalia**
 - D.C. Official Code § 48-1103. It shall not be unlawful for a person to use, or possess with the intent to use, drug paraphernalia for the personal use of a controlled substance.
- **Important to remember-- Any code revision should be driven by the community and include feedback from community members—elders, commissions, boards, committees, prosecutors/public defenders, police departments, community members.**



NPAIHB Policy Team

- **Liz Coronado, JD**
 - Medicare, Medicaid, CHIP
 - Indian Health Service
 - Budget and appropriations
 - Washington and Idaho

- **Candice Jimenez, MPH**
 - HHS entities: SAMHSA, CDC, NIH
 - Indian Health Service - Behavioral/Public Health
 - Maternal Health, BH/MH/SUD
 - Oregon (SB 770, CCOs - Health Share, IMCE)



NPAIHB Policy Team Role

- **NPAIHB is focused on ensuring:**
 - Tribal sovereignty is honored, and
 - Trust and treaty obligations are upheld
- **Our role is to:**
 - Keep tribes updated on new or changing policy
 - Support Tribal leaders, Tribal Health Directors, and IHS/Tribal health program staff in Indian Health policy issues, arising through IHS, CMS or other federal agencies
 - Work with states or CMS Tribal Affairs Group representatives to resolve issues
 - Bring issues forward through Portland Area Tribal Advisory Committees (TAC) and Prepare Tribal representatives for TAC meetings



Questions?

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