

Constitutional Provisions--

Indians were recognized as having a separate legal status in Article I, Section 2, paragraph 3 (untaxed Indians not included in count to determine apportionment of U.S. House of Representatives) and Article I, Section 8, clause 3 (Indian commerce clause).

Indians were not deemed to be citizens of the United States nor were they eligible to become naturalized at first (later treaties contemplated the possibility of naturalization of Indians who left their tribes)

Early Cases--

**Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1
(1831)(describing Indian tribes as "domestic dependent
nations" and stating that "[t]heir relation to the United
States resembles that of a ward to his guardian")**

**Worcester v. Georgia, 31 U.S. (6 Pet.) 515
(1832)(ruling that Georgia could not enforce its state
laws within the Cherokee lands)**

Assimilation Period (about 1865 to 1970)--U.S. sought to reduce the number of tribes and refused to recognize new ones (no special status given to the natives when Alaska and Hawaii were acquired by the United States) *After 1871 - no new treaties*

Current Approach--Recognizing the Validity and Importance of a Separate Legal Status for Native People--federal recognition given to many tribes previously denied this status; significant land settlements reached with a number of tribes

Morton v. Mancari, 417 U.S. 535 (1974)(upholding an employment preference for Indians in the Bureau of Indian Affairs under a "rational basis" level of judicial scrutiny, and ruling that preferences for members of federally recognized tribes are "political" rather than "racial" in nature)

Other U.S. Supreme Court cases consistently apply the "rational basis" test and defer to the decisions of Congress regarding preferential programs for natives, even when one native group is preferred over another

Livingston v. Ewing, 455 F.Supp. 825 (1978), aff'd, 601 F.2d 1110 (1979)(upholding the exclusive right of New Mexican Indians to sell their crafts at the portal of the publicly owned Museum of New Mexico and the Palace of the Governors in Santa Fe)

Policy Reasons Explaining Why a Special Status for Native Peoples Is Justifiable:

**** Unlike most other ethnic groups who migrated voluntarily to the United States, and implicitly agreed to participate in a multi-ethnic society, native people never made such a commitment.**

**** Native American groups are "peoples" under international law principles and are entitled to self-determination, autonomy, and self-government.**

**** Unlike other ethnic groups, natives have no "mother culture" elsewhere where their historical and cultural traditions are maintained. If they are not permitted to maintain some unique and special status here, their culture and traditions will be lost forever.**

**** Native peoples have a distinctive and frequently unfortunate political and historical relationship with the U.S. government, and in the case of Native Hawaiians have strong unresolved claims to reparations and land. The special status accorded to natives is justified because of the obligations owed to these peoples. = political status**

INDIAN LANDS AND COMMUNITIES

LEGEND:

- FEDERAL INDIAN RESERVATIONS
- ▲ STATE INDIAN RESERVATIONS
- OTHER INDIAN GROUPS

0 100 200 300 400 500 MILES

E BUREAU OF INDIAN AFFAIRS U.S. CONGRESSIONAL REPORTS AND HEARINGS

- **FEDERAL INDIAN RESERVATIONS**
- ▲ **STATE INDIAN RESERVATIONS**
- **OTHER INDIAN GROUPS**

Article I, Section 8, Clause 3

The Congress shall have Power...

To regulate commerce with foreign nations,
and among the several States, and with the
Indian tribes.