

The Indian New Deal to Tribal Termination

Allotment weakened tribal governments and forced Indians to assimilate into the white world.¹ Nevertheless, even Indians who assimilated faced staunch discrimination because of their race. For example, John Elk was born a tribal Indian, but he severed all ties with his tribe and adopted white ways. He was denied the right to vote in a state election. Elk argued this violated his rights; however, the Supreme Court held he could not vote in state elections because he was an Indian. Indians could only acquire United States citizenship through treaty or statute, and neither applied to Elk.² Against this backdrop, tribes and their citizens struggled economically and culturally. Over the ensuing years, the United States bestowed citizenship upon all Indians and sought to reverse allotment in order to preserve tribal governments and culture. However, by the 1950s, the United States returned to eliminating tribes altogether again.

9.1 JIM THORPE

The American public generally paid little heed to Indian rights because Indians were largely out of sight; indeed, it was assumed they would finally disappear in a matter of generations.³ However, Jim Thorpe proved Indians were still here and could thrive. Jim and his twin brother, Charlie, were born in 1887 to a half-Irish and half-Sac and

¹ *DeCoteau v. Dist. Cnty. Ct. for Tenth Jud. Dist.*, 420 U.S. 425, 462 (1975) (Douglas, J., dissenting); *Mattz v. Arnett*, 412 U.S. 481, 496 (1973).

² *Elk v. Wilkins*, 112 U.S. 94, 103 (1884).

³ *The Life of Jim Thorpe, Ch. 1, Teacher Guide*, JIM THORPE, THE WORLD'S GREATEST ATHLETE, www.jimthorpefilm.com/guide/guide01.pdf [<https://perma.cc/P8P5-JR7T>].

Fox father, Hiram, and mother, Charlotte, who was half-French and half-Potawatomi.⁴ Hiram enrolled the boys in the Sac and Fox Agency Boarding School when they were six years old.⁵ In 1897, Jim's brother died during a disease outbreak at the school.

Charlie's death increased Jim's distrust of the school, so Jim ran away from the institution. His dad proceeded to enroll him in the Haskell Institute for Indians in Lawrence, Kansas. Jim absconded from Haskell when the authorities would not let him leave to visit his ailing father. It took Jim two weeks to complete the 270-mile journey to his Oklahoma home on foot. When Jim arrived at his destination, his father had recovered.⁶ While home, Jim attended a local school, Garden Grove, and excelled as an athlete. A superintendent of the Carlisle Indian School visited Garden Grove to recruit for its sports teams. A Garden Grove teacher advised Jim that Carlisle was a better institute for promising athletes than Garden Grove, so Jim decided to attend. As he departed for Carlisle in 1904, Hiram told Jim, "Son, you are an Indian. I want you to show other races what an Indian can do."⁷

Carlisle did not begin as Jim hoped. Hiram passed soon after Jim transferred to Carlisle,⁸ and rather than practicing sports, Jim was ordered to work as a farmhand for \$2 a week. This farmwork was supposed to ingrain white values into Jim and other Indian lads. But three years after his arrival at Carlisle, Jim caught the eye of the school's athletic director, the legendary Glenn "Pop" Warner, when he casually broke the school's high jump record while wearing his work clothes.⁹ Jim quickly achieved track and football acclaim. Since Carlisle profited from sports ticket sales, Jim's quality of life drastically improved. He was upgraded to the athletic dorm and received better rations. Furthermore, Jim and the other athletes were given expense accounts at local stores. Jim also made money playing minor league baseball, as college athletes commonly did during the era.¹⁰

⁴ Jim Thorpe, BIOGRAPHY (updated Oct. 14, 2020), www.biography.com/athlete/jim-thorpe [<https://perma.cc/2Z2K-DHYH>].

⁵ *The Life of Jim Thorpe*, *supra* note 3, at 7.

⁶ *Id.*

⁷ JOSEPH BRUCHAC, JIM THORPE: THE WORLD'S GREATEST ATHLETE STUDY GUIDE 8 (2006), www.jimthorpefilm.com/guide/WebGuide.pdf [<https://perma.cc/YU9F-ASN5>].

⁸ *Id.* at 8.

⁹ BIOGRAPHY, *supra* note 4.

¹⁰ DAVID MARANISS, PATH LIT BY LIGHTNING: THE LIFE OF JIM THORPE 216–17 (2022); *The Life of Jim Thorpe*, *supra* note 3, at 9.

While Jim dominated college sports, his greatest glory came during the 1912 Olympics. Jim competed in both the decathlon and pentathlon, earning gold in both with an impressive margin of victory. He prevailed in four of the five pentathlon events and was equally dominant in the decathlon. Despite running on a rain-soaked track, Jim's time in the 100-meter dash would not be equaled for a quarter-century. His time in the 1,500 meter would not be matched by an Olympic decathlete until 1972.¹¹ Jim's dominance was all the more remarkable considering someone stole his shoes during day two of the decathlon. A shoe was fished out the trash can for Jim. Unsurprisingly, the shoe did not fit, so Jim had to double up on socks.¹² Still, he delivered one of the most transcendent performances in sports' history.

Although no one questioned Jim's victories, he was stripped of his gold medals in 1913. No performance-enhancing drugs or other malfeasance was alleged. Instead, the International Olympic Committee (IOC) learned Jim received money while playing minor league baseball. This violated IOC rules. While Jim was indisputably guilty, countless other Olympians were paid to play sports. Nonetheless, Jim was the only person the IOC prosecuted under this rule. The IOC also brought the claim after the IOC's statute of limitations expired. The only plausible explanation for the IOC's selective enforcement was Jim's Indian blood.¹³ Even those who wished Indians would disappear recognized the injustice foisted upon Jim. To the American public, stripping Jim of fairly won gold medals became a vivid illustration of the discrimination Indians endured.¹⁴

9.2 INDIAN CITIZENSHIP AND THE GREAT WAR

Perhaps the most bizarre aspect of Jim Thorpe's Olympic bid was that Jim was not an American citizen when he won two gold medals for the United States.¹⁵ Jim was not an anomaly on this front as approximately two-thirds

¹¹ MARANISS, *supra* note 10 at 179–80; Sally Jenkins, *Why Are Jim Thorpe's Olympic Records Still Not Recognized?*, SMITHSONIAN MAG (July 2012), www.smithsonianmag.com/history/why-are-jim-thorpes-olympic-records-still-not-recognized-130986336/ [<https://perma.cc/8YXY-CQQQ>].

¹² MARANISS, *supra* note 10, at 172–73.

¹³ *Id.* at 200–18; Jenkins, *supra* note 11.

¹⁴ *Jim Thorpe: All-Around Athlete and American Indian Advocate*, SMITHSONIAN NAT'L MUSEUM OF AM. HIST., <https://amhistory.si.edu/sports/exhibit/champions/thorpe/index.cfm> [<https://perma.cc/KX3L-G87B>].

¹⁵ Bill O'Driscoll, *New Biography Chronicles the Triumphs and Struggles of Native American Athlete Jim Thorpe*, 90.5 WESA (Aug. 22, 2022), www.wesa.fm/

of Indians were not American citizens at the time. This presented a quandary when the United States entered World War I and implemented a draft. Despite not being citizens, Indians were required to register for the draft. However, Indians were able to claim an exemption from service on the grounds they were not citizens. Many tribes viewed this compulsory process as a violation of their sovereignty. Notwithstanding, Indians volunteered to fight for the United States at higher numbers than the general population, roughly 30% of all Indian men versus 15% of other American men. And to compensate for concerns about their sovereignty, the Oneida and Onondaga entered declarations of war against Germany.¹⁶

Owing to stereotypes about Indians' innate martial prowess, Indians were highly sought-after soldiers.¹⁷ Indians were portrayed as good at running, crawling, and adapting to their environment. Indians' ability to solve military-related problems was not "a conscious process of reasoning" but a matter of Indians' warrior instincts. One such caricature contended an Indian:

[P]roves to be a good athlete, shows remarkable sense of direction, goes about his duties uncomplainingly, does not get lost, is a good runner, has unlimited patience and reserve, is a good shot, crawls habitually on night patrols, has non-light reflective countenance at night, is silent at work, stoical under fire, and grasps the significance and makes free use of signals.¹⁸

These views were not just held by Americans; indeed, German troops held Indian soldiers in particularly high esteem.¹⁹

Indians made a significant contribution to the United States' success in the Great War. Indians volunteered for dangerous missions; consequently, Indians died for their homeland at five times the rate of other American troops. Additionally, Indigenous languages proved impossible to decipher. So while the United States was actively trying to exterminate Indigenous languages, it was simultaneously using Indigenous languages

arts-sports-culture/2022-08-22/new-biography-chronicles-the-triumphs-and-struggles-of-native-american-athlete-jim-thorpe [https://perma.cc/B3YB-M7RV].

¹⁶ Matthias Voigt, *Indigenous Experiences of War (USA)*, 1914-1918 ONLINE, INT'L ENCYC. OF THE FIRST WORLD WAR (updated Dec. 9, 2019), https://encyclopedia.1914-1918-online.net/article/indigenous_experiences_of_war_usa [https://perma.cc/N4D5-H4XK].

¹⁷ *Id.*

¹⁸ Diane Camurat, *The America Indian in the Great War: Real and Imagined*, Part II: WWI and Its Consequences, Chap. IV (1992) (Master's Thesis, Inst. Charles V of the U. of Paris VII), <https://net.lib.byu.edu/estu/wwi/comment/cmrt8/Cmrt8.html> [https://perma.cc/AP6M-QFN3].

¹⁹ Voigt, *supra* note 16.

to coordinate American military strategy. On the home front, Indians volunteered for the Red Cross, grew victory gardens, and purchased more than \$25 million in bonds to support the United States.

Indians believed their service would result in better treatment. They were wrong as discrimination continued postbellum. While the United States expressed no opposition to Indians purchasing war bonds, it would not allow Indians to redeem the bonds on the grounds they were incompetent.²⁰ Healthcare providers were diverted from reservations as part of the war effort and were not immediately replaced after the war's conclusion.²¹ The United States also used the war as justification to seize Indian land and resources on the rationale that the land could be better used by whites.²² Plus, the war increased the price of food, making whites even hungrier for Indian lands due to higher agricultural profits.²³

Nonetheless, Congress passed legislation in 1919 enabling Indians who served in World War I and were honorably discharged to become United States citizens.²⁴ Many Indian veterans welcomed United States citizenship, but some Indians did not want this status because they viewed citizenship as part of the federal government's long-running assimilatory push.²⁵ Thus, Indians often did not apply for United States citizenship.²⁶ But as usual, Indian personal preferences were disregarded. The Indian Citizenship Act was passed in 1924, granting all Indians within the United States' borders citizenship.²⁷ The Indian Citizenship Act specifically preserved Indian treaty and property rights; however, many Indians were skeptical. Tuscarora Chief Clinton Rickard explained:

United States citizenship was just another way of absorbing us and destroying our customs and our government. How could these Europeans come over and tell us we were citizens in our country? We had our own citizenship. We feared

²⁰ *Id.*

²¹ Jeff Sanders & Reno Charette, *American Indian Involvement in WWI*, PowerPoint Presentation, MONT. ST. U. BILLINGS, www.msubillings.edu/lectures/ww1/pdf/American_Indian_Involvement_in_WWI.pdf [<https://perma.cc/5BK7-C86R>].

²² Camurat, *supra* note 18, at Part II, Chap. II, <https://net.lib.byu.edu/estu/wwi/comment/cmrt6/Cmrt6.html> [<https://perma.cc/C9LY-5PUM>]; *Native Americans*, U.S. WORLD WAR ONE CENTENNIAL COMM'N, www.worldwar1centennial.org/index.php/edu-home/edu-topics/588-americans-at-war/4994-native-americans.html [<https://perma.cc/G3SD-7J8E>].

²³ Camurat, *supra* note 18, at Part II, Chap. IV.

²⁴ *Id.*

²⁵ Voigt, *supra* note 18.

²⁶ Camurat, *supra* note 18, at Part II, Chap. IV.

²⁷ Indian Citizenship Act, Pub. L. No. 68-175, ch. 233, 43 Stat. 253 (codified as amended at 8 U.S.C. 1401(b) (2024)).

citizenship would also put our treaty status in jeopardy and bring taxes upon our land. How can a citizen have a treaty with his own government? To us, it seemed that the United States was just trying to get rid of its treaty obligations and make us into taxpaying citizens who could sell their homelands and finally end up in the city slums The Citizenship Act did pass in 1924 despite our strong opposition. By its provisions all Indians were automatically made United States citizens whether they wanted to be so or not. This was a violation of our sovereignty. Our citizenship was in our nations. We had a great attachment to our style of government. We wished to remain treaty Indians and preserve our ancient rights.²⁸

In addition to the points enumerated by Chief Rickard, state citizenship could be used to justify greater assertions of state authority over tribes. After all, states could claim exercising authority over tribal lands was necessary to protect the rights of their Indian citizens. Accordingly, Rickard and other members of the Haudenosaunee unsuccessfully contested the Indian Citizenship Act in federal court.²⁹

9.3 THE INDIAN NEW DEAL

Citizenship did not improve life for Indians. Indeed, the Institute for Government Research published a report in 1928 with the infamous opening line, “An overwhelming majority of the Indians are poor, even extremely poor”³⁰ The report, now referred to as the Meriam Report because it was authored by Lewis Meriam, laid bare the horrendous conditions Indians were living in. The report described the poverty, lousy housing, and crummy educational facilities; in fact, the report noted Indians’ precontact abodes were cleaner and superior to the housing provided on reservations during the 1920s. Significantly, the report concluded Indian poverty was not due to Indian cultural or racial inferiority but a consequence of “[s]everal past policies adopted by the government in dealing with the Indians have been of a type which, if long continued, would tend to pauperize any race”³¹ Federal officials seemed to agree with Meriam as they responded by slowing down allotment and increasing the number of Indians working within the Bureau of Indian Affairs (BIA).³² More significantly, the Meriam Report provided an impetus

²⁸ Camurat, *supra* note 18, at Part II, Chap. IV.

²⁹ *Id.*

³⁰ LEWIS MERIAM, THE INST. FOR GOV'T RSCH., THE PROBLEM OF INDIAN ADMINISTRATION 3 (1928).

³¹ *Id.* at 7.

³² Keith Richotte, Jr., Federal Indian Law and Policy: An Introduction 162 (2020).

to include tribes in President Franklin Roosevelt's New Deal, and John Collier was eager to draft the legislation.

Collier was born in Atlanta, Georgia in 1884. After graduating from college, he became a social worker and was heavily involved in progressive causes. In 1919, Collier accepted a job directing an adult education program in California. His supposed communistic beliefs caused trouble, and he left his post within a year. From California, he migrated to Taos, New Mexico where he quickly became enamored with tribal culture. He believed traditional tribal cultures had something valuable to offer the world and passionately fought to preserve them. Thus, Collier led a successful campaign to prevent the further diminishment of tribal lands in New Mexico in 1922. Soon after, he helped found the American Indian Defense Association and regularly advocated for tribes in Washington, DC.³³ Owing to his efforts on behalf of tribes, he was appointed Commissioner of Indian Affairs in 1933.

With the Meriam Report and New Deal as his guides, Collier immediately began working to transform federal Indian policy. Ending allotment was his primary goal. Collier knew if allotment continued, tribal governments would be dissolved into the surrounding state. In order to preserve tribal cultures, Collier believed tribes needed formalized governing structures akin to their state counterparts.³⁴ Collier's initial proposal failed, but a slimmed-down version passed in 1934, known as the Indian Reorganization Act (IRA).³⁵ The IRA is the first legislation in the United States' history designed on the premise that tribal governments should exist. According to a 1934 House Report, the IRA's purpose was "to rehabilitate the Indian's economic life and to give him a chance to develop the initiative destroyed by a century of oppression and paternalism."³⁶

The IRA had many benefits for tribes. First and foremost, the IRA ended allotment, thereby preventing further loss of tribal land bases. Likewise, the IRA extended the trust period on lands within Indian control and authorized the Secretary of the Interior to expand tribal land bases as well as establish new reservations. The IRA authorized tribes to adopt formal governments by crafting their own constitutions and laws.

³³ FRANCIS PAUL PRUCHA, *THE GREAT FATHER: THE UNITED STATES GOVERNMENT AND THE AMERICAN INDIANS* 275 (abr. ed. 1986).

³⁴ Wilcomb E. Washburn, *A Fifty-Year Perspective on the Indian Reorganization Act*, 86 *AM. ANTHROPOLOGIST* 279, 280 (1984).

³⁵ Indian Reorganization Act of 1934, Pub. L. No. 73-383, ch. 576, 48 Stat. 984 (codified as amended at 25 U.S.C. §§ 5101-5144 (2024)).

³⁶ H.R. REP. NO. 73-1804, at 6 (1934).

To promote tribal economic development, the Secretary of the Interior was authorized to make loans to Indian corporations. Tribal economic development was also furthered by creating federally chartered corporations with the power to purchase and sell land. The IRA increased funding for Indian education and created hiring preferences for Indians within the BIA. Additionally, the IRA was optional. One hundred and eighty-one tribes voted to adopt the IRA and seventy-seven rejected IRA governments.³⁷

Although the IRA was a positive step for tribes, it had many critics. The IRA's keystone provision achieved its goal of preserving tribal land bases; however, the lands were locked in perpetual trust status. Many Indians wanted to own their land privately and accused Collier of being a communist for foisting trust land upon tribes.³⁸ Moreover, inalienable trust lands were exceedingly difficult to mortgage, making access to capital difficult for Indians who reside on trust land. Federal ownership of trust land was accompanied by extreme federal oversight of the activities occurring on trust land; in fact, the BIA claimed the IRA granted it the power to set Indian bedtimes.³⁹ Thus, these federal impositions infringed upon tribes' ability to design their own laws.

Similarly, the IRA governing structures the federal government encouraged tribes to adopt were often inconsistent with traditional, Indigenous governance institutions. While it is true that governance institutions evolve over time, the IRA governments reflected what Collier thought was best for tribes rather than the tribes' own preferences.⁴⁰ Collier's IRA ideals may have been practical, but they failed to recognize the diversity of tribal cultures.⁴¹ And despite tribes being allowed to vote for the IRA, many of the elections were dubious. In fact, the federal government counted abstentions as votes for the IRA.⁴² For example, the IRA was approved

³⁷ *Tribal Self-Government and the Indian Reorganization Act of 1934*, 70 MICH. L. REV. 955, 972 (1972).

³⁸ Collier, John, Encyclopedia.com (updated May 14, 2018), www.encyclopedia.com/people/social-sciences-and-law/sociology-biographies/john-collier [https://perma.cc/QFM8-UFRL].

³⁹ Felix S. Cohen, *The Erosion of Indian Rights, 1950–1953: A Case Study in Bureaucracy*, 62 YALE L. J. 349, 360 (1953).

⁴⁰ Washburn, *supra* note 34.

⁴¹ *Indian Reorganization Act*, Encyclopedia.com (updated June 11, 2018), www.encyclopedia.com/history/united-states-and-canada/north-american-indigenous-peoples/indian-reorganization-act [https://perma.cc/B5YA-5APU].

⁴² KEITH RICHOTTE, JR., *FEDERAL INDIAN LAW AND POLICY: AN INTRODUCTION* 171 (2020).

in an election on the Santa Ysabel reservation by a vote of seventy-one to forty-three though only nine people cast ballots in favor of the IRA.⁴³

The IRA was ultimately less about tribal welfare and more about what federal bureaucrats thought tribes should be. One critic described the IRA as a “glass case policy” intended to keep tribal cultures static, so they could serve “as museum specimens for future generations to study and enjoy.”⁴⁴ While the IRA remains controversial, non-Indian IRA supporters were acting in what they believed to be the best interest of the Indians. As Harold Ickes, Secretary of the Interior from 1933 to 1946,⁴⁵ declared, “The whites can take care of themselves, but the Indians need some one to protect them from exploitation.”⁴⁶

9.4 WORLD WAR II

Congress passed additional legislation designed to benefit tribes during the 1930s,⁴⁷ but events around the globe pulled the United States’ attention away from Indian country. Germany had been preparing for war against the United States since the conclusion of World War I by sending agents disguised as social scientists to Indian reservations. A major motivation for this espionage effort was Germany’s inability to decipher the Choctaw language, and Germans also respected the valor Indian soldiers demonstrated during World War I. Due to the historic and ongoing abuses perpetrated against Indians by the United States, Germany believed an Indian revolt could be fomented, and tribes would ally with the Nazis. At minimum, Germany thought performing social work on reservations would dissuade Indians from registering to fight against Germany.⁴⁸

⁴³ Andrew Boxer, *Native Americans and the Federal Government*, HIST. TODAY (Sept. 2009), www.historytoday.com/archive/native-americans-and-federal-government [https://perma.cc/KUH6-NPY4].

⁴⁴ MERIAM, *supra* note 30, at 87; D. S. MYER, U.S. DEP’T OF THE INTERIOR, THE PROGRAM OF THE BUREAU OF INDIAN AFFAIRS 12 (1953), www.google.com/books/edition/The_Program_of_the_Bureau_of_Indian_Affairs/TFOAQAAIAAJ?hl=en&gbpv=1&bsq=museum [https://perma.cc/43FS-CZUK].

⁴⁵ Harold Ickes (1874–1952), LIVING NEW DEAL, <https://livingnewdeal.org/glossary/harold-ickes-1874-1952/> [https://perma.cc/7KGU-6TTE].

⁴⁶ PRUCHA, *supra* note 33, at 317.

⁴⁷ Adam Crepelle, *Finding Ways to Empower Tribal Oil Production*, 22 WYO. L. REV. 25, 35 (2022) (providing additional statutes passed in the 1930s, including An Act of June 26, 1936, Pub. L. No. 74–816, ch. 831, 49 Stat. 1967 and Indian Mineral Leasing Act of 1938, ch. 198, 52 Stat. 347 (codified at 25 U.S.C. §§ 396a–396g (2024))).

⁴⁸ Thomas D. Morgan, *Native Americans in World War II*, ARMY HIST.: PRO. BULLETIN OF ARMY HIST., Fall 1995, at 22, 23, <https://history.army.mil/armyhistory/>

Germany's calculus was wrong – the plan likely motivated Indians to take up arms against Germany.⁴⁹ Not that any inspiration was needed. As far as the Haudenosaunee were concerned, the war against Germany never ended because Germany had not made peace with the Haudenosaunee.⁵⁰ Other tribes entered formal declarations of war against Germany.⁵¹ Indians enlisted to defend the United States as well as their traditional homelands. If the general population volunteered to serve at the same rate as Indians, the United States would not have needed a draft. And the United States was glad to have them, as the Indian warrior stereotype carried into World War II.⁵²

Indians played a vital role in the United States' success during World War II. As in World War I, the Indigenous languages of more than a dozen tribes served as a code that could not be decrypted.⁵³ Indigenous languages saved countless lives. As one marine stated, "Were it not for the Navajos, the Marines would never have taken Iwo Jima."⁵⁴ Indians did more than transmit messages, as American officers regarded Indians as superior soldiers,⁵⁵ and they performed countless feats of heroism. Ira Hayes, of the Gila River Indian Community, served as a paratrooper and famously helped raise the Old Glory on the shores of Iwo Jima.⁵⁶ Joe Medicine Crow, of the Crow Tribe, completed the four tasks needed to become a Crow war chief while in the European theater: He led a successful war party, stole an enemy horse, disarmed an enemy, and

AH35newOCR.pdf [https://perma.cc/ZK7R-66YK]; *The Role of Native American's [sic] during World War II*, ARMED FORCES HIST. MUSEUM (Dec. 17, 2013), www.lhschools.org/Downloads/Native%20Americans%20in%20WWII.pdf [https://perma.cc/9AGG-YAU5].

⁴⁹ *Native Americans in the Military – World War II*, FOREST CTY. POTAWATOMI (Feb. 15, 2015), www.fcpotawatomi.com/news/native-americans-in-the-military-world-war-ii/ [https://perma.cc/S7B3-CXPD].

⁵⁰ *Native American's [sic] During World War II*, *supra* note 48.

⁵¹ Blake Stilwell, *Why Native American Nations Declared War on Germany Twice*, WE ARE THE MIGHTY (Feb. 28, 2021), www.wearethemighty.com/mighty-history/native-americans-twice-war-germany/ [https://perma.cc/N4LD-CZ7F].

⁵² David La Vere, *North Carolina's American Indians in World War II*, NCPEDIA (Jan. 1, 2005), www.ncpedia.org/history/20th-Century/wwii-american-indians [https://perma.cc/Z6U3-C68L].

⁵³ *National Indian Code Talkers*, NAT'L WWII MUSEUM NEW ORLEANS, www.nationalww2museum.org/war/articles/american-indian-code-talkers [https://perma.cc/74RQ-6AKQ].

⁵⁴ *Id.*

⁵⁵ *Native Americans in the Military*, *supra* note 49.

⁵⁶ Roy Cook, *Ira Hayes USMC Airborne Warrior*, AM. INDIAN SOURCE.COM, www.americanindiansource.com/ira/hayesairborne.html [https://perma.cc/X3AK-AHKB].

touched an enemy without killing him.⁵⁷ Jim Thorpe's daughter, Grace Thorpe, earned the Bronze Star for her courage during the Battle of New Guinea.⁵⁸ On the home front, Indians joined the war industry.⁵⁹ Indians also attempted to purchase war bonds but were sometimes prevented from doing so by federal bureaucrats within the BIA.⁶⁰

9.5 THE TRIBAL TERMINATION ERA

Following World War II, the United States' desire to promote tribal self-government crumbled. Ironically, Indians' willingness to fight for the United States was used as a justification to end their unique status as citizens of both the United States and their tribes.⁶¹ More significantly, the United States had just fought against the National Socialist German Workers' Party – better known as the Nazi Party – and was now engaged in a Cold War against the communist Union of Soviet Socialist Republics. Elected officials used erroneous stereotypes about tribal cultures to claim tribes were communist,⁶² and Indians needed to be “Americanized” – missing the irony of Americanizing the original Americans. Therefore, the United States once again marched down the path of eliminating tribes.

The federal termination policies of the 1950s were allegedly fueled by a desire to free Indians from the shackles of federal oversight and provide Indians with the same rights as other Americans. A House Concurrent Resolution in 1953 explained, “[I]t is the policy of Congress ... to make the Indians within the territorial limits of the United States subject to the same laws and privileges and responsibilities as are applicable to other citizens of the United States, to end their status as wards of the United States”⁶³ Indians universally wished to be freed from the fetters of

⁵⁷ Alex Johnson, *Revered Indian Leader Joe Medicine Crow, Last Crow War Chief, Dies at 102*, NBC NEWS (updated Apr. 4, 2016), www.nbcnews.com/news/us-news/revered-indian-leader-joe-medicine-crow-last-crow-war-chief-n550046 [https://perma.cc/M77H-2UTK].

⁵⁸ *Life Story: Grace Thorpe (1921–2008)*, WOMEN & THE AM. STORY, N.Y. HIST. SOC'Y, <https://wams.nyhistory.org/confidence-and-crises/world-war-ii/grace-thorpe/> [https://perma.cc/3TP6-BCZZ].

⁵⁹ *Native Women and World War II*, NAT'L MUSEUM OF THE AM. INDIAN, <https://americanindian.si.edu/static/why-we-serve/topics/native-women-and-world-war-2/> [https://perma.cc/3JPA-YSJH].

⁶⁰ La Vere, *supra* note 52.

⁶¹ ROBERT ANDERSON ET AL., *AMERICAN INDIAN LAW: CASES AND COMMENTARY* 139 (4th ed. 2020).

⁶² *Id.* at 140.

⁶³ H.R. CON. RES. 108, 83d Cong., 67 Stat. B132 (1953).

wardship;⁶⁴ however, they were immensely distrustful of the United States given its past record.⁶⁵ As one Blackfeet Indian testified to Congress in 1952, the feds had promised to shrink the BIA for nearly a century, but the BIA kept growing while Indian lands kept shrinking. This history had left Blackfeet and other tribes fearful that termination would diminish their governments and cast Indians into deeper poverty.⁶⁶

Indian fears soon came true. Congress and the Department of Interior terminated more than 100 tribes. Termination meant tribes no longer existed as sovereigns in the eyes of the United States; accordingly, tribes lost their reservations and access to federal services designed specifically for Indians.⁶⁷ Although termination of their tribal status was supposed to empower individual Indians and reduce the cost of the BIA, termination actually resulted in increased constraints on Indian liberty. Termination prevented Indians from accessing lawyers, restricted Indian land use, and further infringed upon tribes' ability to govern themselves.⁶⁸ Furthermore, the BIA's administrative termination machinations were nightmarishly complex and not finalized until years after tribes had already been terminated.⁶⁹

Not all tribes were terminated, and Congress sought to assimilate remaining tribes into the surrounding states. Thus, Congress enacted Public Law 83-280 (PL 280) in 1953, requiring five states and the Alaska Territory to extend their state criminal laws and civil adjudicatory authority over the reservations within their borders. Other states were allowed to unilaterally impose their jurisdiction over tribes. The assertion of state law over reservations was designed to compel Indians into adopting mainstream American culture, and according to President Dwight Eisenhower, eliminate Indians' unique treatment as "'second class' citizens."⁷⁰ PL 280 was also supposed to improve law and order on reservations. However, tribal lands remained exempt from state taxation and no federal funds were provided to supplement states' newly increased law enforcement responsibilities. As a result, PL 280 states haphazardly

⁶⁴ Kenneth R. Philp, *Dillon S. Myer and the Advent of Termination: 1950-1953*, 19 W. HIST. Q. 37, 40 (1988).

⁶⁵ DAVID H. GETCHES ET AL., *CASES AND MATERIALS ON FEDERAL INDIAN LAW* 232-33 (7th ed. 2016).

⁶⁶ Cohen, *supra* note 39, at 387-88 n.154.

⁶⁷ RICHOTTE, *supra* note 42, at 181.

⁶⁸ ANDERSON ET AL., *supra* note 61, at 140.

⁶⁹ GETCHES ET AL., *supra* note 65, at 236.

⁷⁰ Statement by the President Upon Signing Bill Relating to State Jurisdiction Over Cases Arising on Indian Reservations, 1 PUB. PAPERS 564, 565 (Aug. 15, 1953).

provided law enforcement to reservations that often resulted in laws being selectively enforced to the detriment of Indians.⁷¹

In addition to injecting state law into reservations, the United States coerced Indians into leaving their reservations with the Indian Relocation Act of 1956.⁷² The United States assumed Indians would remain on reservations forever if conditions improved; consequently, the United States reduced its already minimal expenditures on reservation schools and healthcare.⁷³ The federal government promised Indians a better life once they left the reservation: quality jobs, improved education for their children, and access to all the United States had to offer.⁷⁴ In reality, Indians were given one-way bus tickets to major cities such as Los Angeles, Chicago, and Dallas. No job or training was provided upon arrival. Moreover, racial covenants often prevented Indians from even being eligible for decent housing.⁷⁵ Relocation caused immense hardship for more than 100,000 Indians.⁷⁶

Interestingly, the person in charge of the Indian relocation, as well as many other termination policies, was Dillon S. Myer.⁷⁷ Prior to this role, Myer was head of the War Relocation Authority (WRA) during World War II, the agency responsible for rounding up approximately 120,000 Japanese-American inhabitants of the west coast and placing them in internment camps.⁷⁸ Some of the internment camps were located on reservations in Arizona notwithstanding the protest of tribal governments.⁷⁹ In a further twist of irony, Myer noted internment camps and reservations had similar effects, stating they are “an institutionalized environment, which in turn produces frustration, demoralization, and a feeling

⁷¹ GETCHES ET AL., *supra* note 65, at 562.

⁷² Indian Relocation Act of 1956, Pub.L. No. 84-959, ch. 930, 70 Stat. 986.

⁷³ Max Nesterak, *Uprooted: The 1950s Plan to Erase Indian Country*, APM REP. (Nov. 1, 2019), www.apmreports.org/episode/2019/11/01/uprooted-the-1950s-plan-to-erase-indian-country [<https://perma.cc/8PBE-YNP7>].

⁷⁴ *Id.*

⁷⁵ Nesterak, *supra* note 73.

⁷⁶ *Id.*; Adam Crepelle, *Decolonizing Reservation Economies: Returning to Private Enterprise and Trade*, 12 J. BUS. ENTREPRENEURSHIP & L. 413, 441 (2019).

⁷⁷ Philp, *supra* note 64, at 59.

⁷⁸ *Japanese Internment Camps*, HIST. (updated Oct. 29, 2021), www.history.com/topics/world-war-ii/japanese-american-relocation [<https://perma.cc/E8UZ-3VPL>].

⁷⁹ *Id.*; RICHARD DRINNON, KEEPER OF CONCENTRATION CAMPS: DILLON S. MYER AND AMERICAN RACISM 42, xxiii, 8, 30, 39 (1987); Robert K. Elder, *Dillon Myer: Our Father of Forced Assimilation*, Chi. Tribune (Mar. 4, 2004, 12:00 AM), www.chicagotribune.com/news/ct-xpm-2004-03-04-0403040048-story.html [<https://perma.cc/7WE9-L8VM>].

of dependency among the residents.”⁸⁰ During World War II, Myer relocated more than 50,000 Japanese-Americans from internment camps to major cities.⁸¹ Myer forbade more than three Japanese-American families from relocating in the same area to prevent the formation of “Little Tokyos” and promote assimilation.⁸²

Myer’s tenure as head of the WRA was controversial,⁸³ and controversy followed him to the Indian Bureau. Though Myer may have been well-intentioned, he had no regard for tribal sovereignty. In fact, Myer thought tribal governments made no sense because Indians were now state citizens. Myer believed tribal governments hindered Indian assimilation and economic advancement. Although he intended to liberate Indians from federal paternalism, Myer ignored Indian opinions on his policies,⁸⁴ and he proposed regulations to further restrict Indian autonomy.⁸⁵ Secretary of the Interior Harold Ickes described Meyer as “a blundering and dictatorial tin-Hitler”⁸⁶ Ickes also noted, “So far as our American Indians are concerned, Commissioner Dillon Myer of the Bureau of Indian Affairs is a Hitler and Mussolini rolled into one.”⁸⁷

9.6 “EVERY AMERICAN SCHOOL BOY KNOWS ...”

The termination era reached the Supreme Court in 1955 with *Tee-Hit-Ton Indians v. United States*.⁸⁸ The case arose when the United States seized the Tee-Hit-Ton clan of the Tlingit Tribe’s timber and land without providing the Tee-Hit-Ton just compensation as mandated by the Fifth Amendment of the United States Constitution. Reverting to the Doctrine of Discovery and *Johnson v. M’Intosh*, the Supreme Court ruled the United States was not obligated to provide the Tee-Hit-Ton with compensation. The Court asserted the Tee-Hit-Ton’s property rights had never been recognized by the United States. The Court averred tribes merely had “permission from the whites to occupy” land;⁸⁹ thus,

⁸⁰ DILLON S. MYER, *UPROOTED AMERICANS: THE JAPANESE AMERICANS AND THE WAR RELOCATION AUTHORITY DURING WORLD WAR II* 294 (1971); *id.* at 132.

⁸¹ Philp, *supra* note 64, at 38.

⁸² DRINNON, *supra* note 79, at 50–61.

⁸³ Philp, *supra* note 64, at 38.

⁸⁴ *Id.* at 56–57.

⁸⁵ *Id.* at 56.

⁸⁶ DRINNON, *supra* note 79, at 194.

⁸⁷ *Id.*

⁸⁸ *Tee-Hit-Ton Indians v. United States*, 348 U.S. 272 (1955).

⁸⁹ *Id.* 279.

the Tee-Hit-Ton could only seek compensation “as a matter of grace, not because of legal liability.”⁹⁰ Elaborating on this concept, the Court explained:

Every American schoolboy knows that the savage tribes of this continent were deprived of their ancestral ranges by force and that, even when the Indians ceded millions of acres by treaty in return for blankets, food and trinkets, it was not a sale but the conquerors’ will that deprived them of their land.⁹¹

Tee-Hit-Ton misrepresented tribal property rights and sovereignty. In *Johnson v. M’Intosh*, the Court recognized aboriginal title as a bona fide property interest.⁹² And nine years before *Tee-Hit-Ton*, the Court declared, “Something more than sovereign grace prompted the obvious regard given to original Indian title.”⁹³ Additionally, the Court’s reasoning in *Tee-Hit-Ton* is premised on the idea that tribes are not – and never were – real governments.⁹⁴ The Court’s crude reasoning and blunt language are particularly noteworthy considering a year earlier the Court issued its opinion in *Brown v. Board of Education*, the landmark civil rights victory. But with *Tee-Hit-Ton*, the Court gutted Indian civil rights.⁹⁵ Thus, rather than enhancing Indian liberty, termination denied Indians fundamental freedoms, like property rights and freedom of association.



For nearly fifty years after the General Allotment Act, the United States sought to eliminate tribal governments, land bases, and cultures in an effort to coerce Indians into white society. The IRA of 1934 saved tribes from eventually being allotted out of existence. Though the IRA was far from perfect, it was superior to termination. Termination ended tribal sovereignty for many tribes and greatly weakened the sovereignty of others. At any point, Indians could have abandoned their tribal governments. But they endured. Their perseverance would soon be rewarded.

⁹⁰ *Id.* at 282.

⁹¹ *Id.* 289–90.

⁹² Joseph William Singer, *Erasing Indian Country: The Story of Tee-Hit-Ton Indians v. United States*, in *INDIAN LAW STORIES* 229, 244–45 (Carole Goldberg et al. eds., 2011).

⁹³ *United States v. Alcea Band of Tillamooks*, 329 U.S. 40, 48 (1946).

⁹⁴ Singer, *supra* note 92, at 240–41.

⁹⁵ *Id.* at 229 (“[T]he Supreme Court arguably committed one of the worst blows to civil rights in United States history.”).