

Mending a Trail of Broken Treaties

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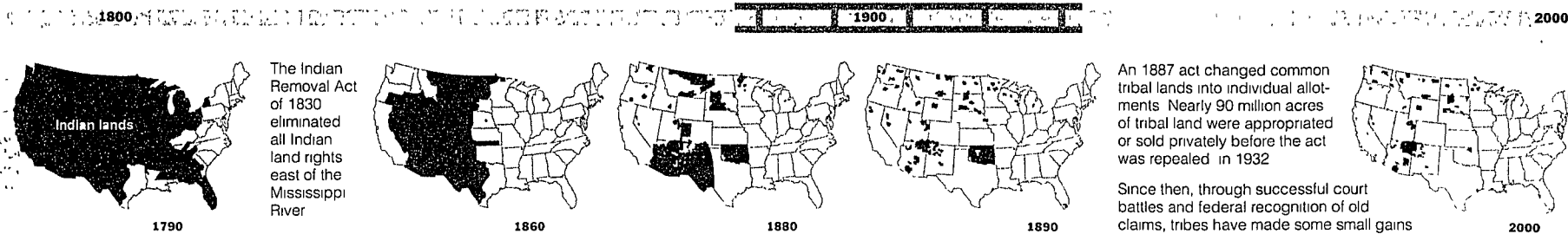
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Diminishing Tribal Lands

Two centuries ago, American Indians controlled three-quarters of the United States' eventual land mass. Today the 358 federally recognized Indian reservations make up barely 2 percent.



Sources: Bureau of Indian Affairs; Smithsonian Institution

William McNulty/The New York Times

By TIMOTHY EGAN

THE last of the Mohicans, as it turns out, were not the doomed stalwarts of 18th-century New York in James Fenimore Cooper's classic novel. A band of the tribe, now living in Wisconsin, has laid claim to more than 6,000 acres between Syracuse and Utica, promising to wait another century if that is what it will take to regain the land.

And in New Mexico, one of the first places that Europeans cut real estate deals with the native people, a 252-year-old promise from the king of Spain to Indians living along the Rio Grande is at the center of a struggle over who will control Sandia Mountain on the suburban edge of Albuquerque.

Written off as powerless and invisible 50 years ago, American Indians have been winning back small but significant chunks of land during a time of general renaissance for many of the tribes. For the last 30 years, a new generation of tribal lawyers has blown the dust off old treaties to find that the deeds signed by kings and presidents still have remarkable power in court.

Ever since the first broken treaties at the dawning of the Republic, Indians have tried to use the courts and what little political leverage they could muster to reclaim lost lands. But these efforts mostly failed until late in the 20th century, when much of Indian Country was revived by gambling revenue, cultural rebirth and newly educated leaders with a fine-tuned political sense.

In the most combustible of these land claims, the effort by members of the old Iroquois confederation to reclaim nearly 250,000 acres of upstate New York, an attempt at mediation broke down last week, although the federal and state governments had agreed to contribute \$250 million each to a settlement fund to be divided by Oneidas in New York, Wisconsin and Canada.

The historic roles have been reversed in upstate New York. The white landowners now say they are

victims of greedy property grabs by Indians, backed by the federal government. "Too many people are looking at this as some sort of historic correction," said Leon T. Koziol, an attorney representing the property owners. "What we're really seeing is a land conquest."

But if it is a conquest, the tribes are far from where they were when the Indian wars ended in the 19th century. Between 1778, when the Delawares ceded their land, and 1871, when the Nez Percé signed with the government, Congress ratified 371 treaties setting up hundreds of "nations within a nation," as the reserva-

Tribes are going to court to reclaim lands lost to America's 'manifest destiny.'

tions were legally constituted. Indians then owned about 140 million acres.

Since then, Indian lands have shrunk considerably, with big reservations in the West perforated by squares of private land, and specks in the East dwindling to even smaller dots. Today, Indians control 56 million acres — barely 2 percent of the United States. Tribes lost nearly two-thirds of their property through private sales under a policy designed to make farmers and capitalists out of them. Termination, a policy of the Eisenhower era, paid Indians to dissolve their tribal units. Both approaches were deemed failures, but not until they had had a devastating effect on tribal holdings.

"I don't know how anyone could say the Indians have the upper hand," said Don Miller, a senior attorney with the Native American Rights Fund, an Indian legal group based in Boulder, Colo. "Whenever Indians get

any leverage at all, people start to scream and yell. The predominant attitude seems to be 'We stole it fair and square. Now go away.'"

What Indians do have, for the first time, is money. Twelve years after Congress enabled them to open casinos, nearly a third of the 554 recognized tribes run some sort of gambling operation. The revenues, up to \$6 billion a year, have tipped the balance of power in many communities. The Oneidas of Wisconsin, with their hotel, convention center and casino, are the largest employer in the Green Bay area. In Connecticut, Washington, California, South Carolina and elsewhere, Indians have become major players in politics and business.

Beginning about 1970, even before the casinos, the first wave of Indian lawyers were demanding more than a check for land lost in broken treaties. They wanted the land returned.

"At the time, the idea of returning land to Indians was unthinkable," said Tim Coulter, a Citizen Potawatomi tribal member and lawyer who is the director of the Indian Law Resource Center in Helena, Mont. "My generation tended to view things a lot differently. We thought you could give land back to the Indians."

AND as Indian claims moved from federal property, usually in the West, to more populated areas, a loud backlash ensued. Foremost among tribal opponents is Senator Slade Gorton, Republican of Washington, who has been a critic of Indian legal rights and land claims for more than 30 years. "Making a case out of what happened to your grandfather is not the best way to decide public policy," Mr. Gorton has said.

But it is precisely the blood link to ancestors who signed treaties with long-dead presidents that has provided Indians with their best path for a string of legal victories. Held up as the highest law of the land, the treaties can only be altered by Congress, numerous Supreme Court decisions have said that the states are

largely powerless in Indian Country.

The Oneidas, who once occupied six million acres in New York, treated with President Washington himself. But over the next century, state officials bought and sold their land, in violation of laws and court cases requiring federal approval of Indian land transfers. By 1919, the tribal land had shrunk to 32 acres. With recent gambling revenues, the Oneidas bought back 11,000 acres, and hired top legal talent to regain the 250,000 acres lost from the reservation. The 20,000 non-Indians who own some of that land say they should not have to pay the price for a failure by the state to follow the law — nor should they have to fight their own government to hold onto their cabins, farms and houses.

In New Mexico, the Sandia Pueblo dates its claim to 10,000 acres just outside Albuquerque to a handwritten land grant from the king of Spain in 1748. They interpret the grant to cover the western flank of one of the most popular hiking areas in the Southwest, and parts of a residential neighborhood. Opponents say the grant includes only the top of the first foothill. A negotiated settlement broke apart last month.

Most of the major Indian claims have been filed, lawyers for tribes say. The coming fights are over water or sovereignty, and the effect of casino-rich tribes over their non-Indian neighbors.

And the tribes say that people who think money and greed are the motives for the Indian land claims should consider the case involving the Black Hills of South Dakota, which is the longest unresolved Indian land claim in the country. Promised to the Lakota Sioux in a treaty from 1868, the land was opened to white settlement after gold was discovered, leading to the Battle of the Little Big Horn.

More than a century later, the Lakota won a settlement that would have given them \$106 million in 1980. But for 20 years, the Indians living in the poorest county in America have refused it, holding out for the return of their sacred hills.

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