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**United States of America**

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# THE INDIGENOUS WORLD 2006

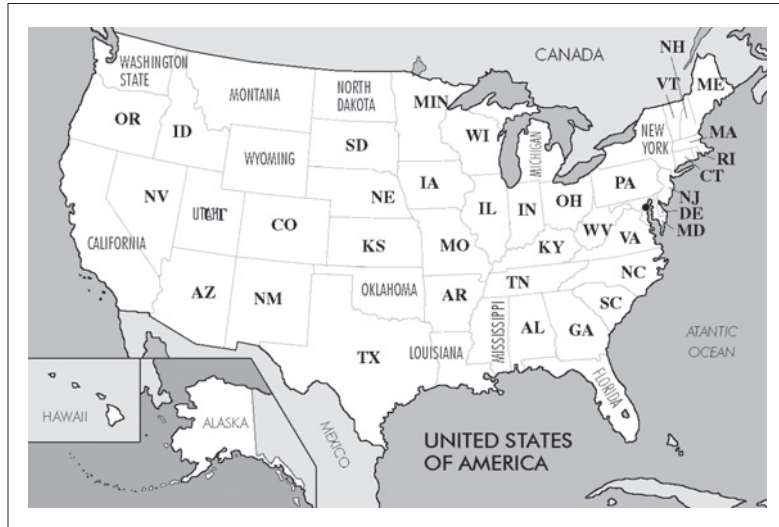
Copenhagen 2006

## UNITED STATES OF AMERICA

The year's events were marked by the background of the continuing wars in Afghanistan and Iraq. These efforts still involve many Native American soldiers. They also amount to a huge expenditure for the federal government which, in response to record national deficits, has tried to cut services it deems unessential. For some tribes, this means that Bureau of Indian Affairs (BIA) contracts are lost. BIA contracts provide resources to tribes to run social, economic, ecological, educational and other programs; cutting these resources will not only mean a loss of tribally controlled programs but also a loss of tribal employment opportunities. The Northern Cheyenne Tribe in Montana, for example, will probably lose 35 jobs because of this. Any loss of employment opportunities on small, underdeveloped reservations is a disaster. On the other hand, those tribes who are involved in manufacturing contracts for the Department of Defense are gaining employment and revenues. Sioux Manufacturing, of the Spirit Lake Nation, North Dakota, for example, which manufactures personal and vehicle armor, runs three shifts and made about US\$20 million in profits this year.

### **The economy**

The evaluation of the 2000 census data continues and, in January 2005, a Harvard University based study showed that socio-economic conditions for Native Americans had greatly improved between 1990 and 2000. Income had risen by around 20%, with tribes who operate gaming facilities seeing a higher average rise than tribes who do not. The authors emphasized that the most important reason for improvements, however, was self-determination; the abolition of colonial and bureau-



cratic processes allows tribes to act and react more quickly and efficiently, as well as culturally appropriately, to socio-economic needs. They also took note of the fact that, despite these improvements, the average income in Native America is still less than half the average for the United States overall.<sup>1</sup>

A growing number of Native-owned businesses are contributing to a better economy on the reservations. Corporate tribal casinos have increased their revenues significantly over the past years, to US\$19 billion in 2004, and it is thus not surprising that several tribes are continuing to expand gaming operations. For example, the Little Traverse Bay Bands of Odawa Indians in Michigan is planning to open a US\$197.4 million casino complex, and the Northern Arapaho Tribe in Wyoming is expanding its current casino while building a new one.

Again, as impressive and encouraging as these figures might seem, it must be emphasized that almost a third of all Native Americans live below the poverty line, as compared to about one eighth of all Americans. In comparison to all other racial or ethnic groups, Native children are the most likely to live in conditions of poverty.

## Tragedy

The sometimes extreme conditions Native children live in were highlighted on March 21, 2005, on the Red Lake Reservation, an Ojibwe reservation in northern Minnesota. A sixteen-year-old student killed nine people in Red Lake High School that day, before taking his own life. Between then and July, three more young students committed suicide, continuing an extremely alarming nationwide trend that sees increasing numbers of Native youths taking their own lives. The school shooting brought the conditions of poverty and hopelessness to brief national media attention. The Federal Bureau of Investigation (FBI) brought charges against a friend of the shooter, who is the son of the tribal chairman, as co-conspirator, and detained him under very unclear circumstances. In December, this student pleaded guilty to “threatening interstate communications” – he had been in regular e-mail contact with the shooter prior to the tragedy – after the FBI tried to charge him as if he were an adult with conspiracy to commit murder. While the media attention has all but disappeared from Red Lake, the community is still trying to heal the wounds and to put measures in place that will allow a similar tragedy to be prevented in the future. For a short while, the tragedy put conditions on some reservations in the spotlight. But many reservations are dealing with youth suicides and ways to prevent them on a daily basis, and without adequate resources.

## Sports mascots

One of the greatest controversies in Native American issues this year came from a decision made by the National Collegiate Athletic Association (NCAA), the governing body of collegiate athletics.

Ever since the 1950s, Native American and other civil rights activists have opposed the use of Indian mascots, logos and nicknames for school, university and professional sports teams. They see these practices as a continuation of colonial rule, and as an inaccurate portrayal of Native cultures, therefore perpetuating – mostly negative – stereotypes.

Hundreds of schools and universities have changed their nicknames and logos but some have decided not to do so. Following years of calls from civil rights activists, the National Congress of the American Indians, many tribal government resolutions and professional organizations, the NCAA ruled on August 5, 2005 that Native American related nicknames, mascots or logos that are deemed “hostile and abusive in terms of race, ethnicity or national origin” would no longer be tolerated at any NCAA-sponsored tournaments. Schools who continued these practices would no longer be allowed to host such tournaments. The organization published a list of eighteen schools that would fall under the new guidelines. The Florida State University “Seminoles”, the Central Michigan University “Chippewa” and the University of Utah “Utes” were subsequently exempted because they could show that tribal governments supported their use of their tribal names. However, the responses to the NCAA often showed a shocking residual racism that is normally hidden, and a widespread ignorance of Native American culture, history and contemporary situations, coupled with indifference about these issues. The debate made clear how much Native American culture has been appropriated by the dominant society, which largely assumes that it has the right to dictate the terms by which Native America can be defined.

## **Sovereignty**

Federal courts heard a host of sovereignty-related cases in 2005. As expected in the extremely complex and sometimes contradictory legal arena that is federal Indian law in the United States, the results were mixed. Sovereignty for tribes still rests on a case-by-case basis.

The Supreme Court handed a victory to the U.S. Forest Service in a sacred site case. The Forest Service has tried to protect the area around a Medicine Wheel in the Bighorn Mountains, Wyoming. The site is on National Forest land but is used for ceremonies by several tribes. The Forest Service tried to accommodate the sacred use of the site by restricting, but not barring, the economic development of 23,000 acres surrounding the site. Wyoming Sawmills sued against such restriction of economic development on federal lands on the grounds of religion but its case was

dismissed by a Court of Appeals, which ruled that the timber company lacked legal standing. The company appealed to the Supreme Court, which declined to hear the case. While this implies that the Forest Service policy stands, it is not an indication as to whether or not the Supreme Court has reversed its opinion on sacred sites on federal lands. In earlier years, it had favored economic development over tribal religious needs.

The 9<sup>th</sup> Circuit Court of Appeals ruled for the sovereignty of federally recognized tribes in determining membership. In the case, *Lewis v. Norton*, siblings sued the government in order to force the tribe to accept them as members. The tribe, the Table Mountain Rancheria of California, operates a successful casino and distributes about US\$350,000 yearly to each of its fewer than 100 members. The Lewis siblings' father had been admitted as a member, and their grandparents had been on the original enrollment list. While the court showed sympathy to the siblings' pledge, it emphasized the tribe's sovereign immunity and its right to resolve "purely intramural matters such as conditions of tribal membership" according to its own rules. This decision re-emphasizes the fact that tribes alone determine the criteria for membership, and that membership is not always based upon biological descent, nor does it have to follow federal standards for equal rights.

In October, in another development connected to tribal sovereignty, the National Labor Relations Board (NLRB) held that tribes are subject to federal labor laws. Specifically, this decision means that tribes have to allow labor unions to organize in their enterprises. This decision overturned thirty years of precedent that had exempted tribal enterprises from labor laws. State governments are already exempt from federal labor laws, and if tribes are sovereign entities, they argue, they should receive the same exemption. Tribes had used the exemption from labor laws in casinos, but it also allowed them to be more competitive in the manufacturing and service industries. The decision is expected to be challenged through the courts.

## Land cases

In March, the Supreme Court decided on the case *City of Sherill v. Oneida Indian Nation of New York* (see *The Indigenous World* 2005), and hand-

ed an astonishing defeat not only to the Oneida Nation but to Indian tribes overall. The Oneida Nation had repurchased some of the 250,000 acres that had been illegally appropriated by New York in the 19th century. The Oneida had then declared that the properties, within the city limits of Sherill, were tax exempt because they lay within the lands delineated as Indian country by the 1794 Treaty of Canandaigua, and automatically reverted into tax-exempt trust land status, owned and controlled by the reservation government, now that the injustice had been resolved. A lower court sided with the Oneida in 2003, and the U.S. Solicitor General filed a court brief in favor of the Oneida Nation.

In a surprise decision, the Supreme Court decided that while the Oneida Nation held a valid claim for the stolen lands, once these lands were purchased, even if within reservation boundaries, they were not tax exempt until expressly returned to trust status by the Secretary of the Interior. The government has been more than cautious in granting trust status to tribal lands, mostly because of fears that Indian tribes would use these plots to build casinos. More surprising than this technical decision, however, was the court's argument.

The majority decision held that because the lands had been governed by state, county and city authorities, and because the Oneida Nation had waited for so long to seek justice, "we hold that the Tribe cannot unilaterally revive its ancient sovereignty, in whole or in part, over the parcels at issue". While the court made clear that the land claim was valid, it closed one avenue of remedy; in doing so, it showed an amazing lack of understanding of the historical forces that had prevented the Oneida from seeking justice earlier. The court also established a new criterion for land cases by basing its decision on the finding that a reversion of the parcels to trust status, or in other words to tribal authority, would have "disruptive practical consequences" for the city and its citizens. It was not long before lower courts latched on to this formulation in other Indian land claim cases. In the meantime, local governments presented the Oneida Nation with a multi-million dollar bill for overdue property taxes.

In June, judges of the 2<sup>nd</sup> Circuit Court of Appeals used the *Sherill* decision to deny a Cayuga land claim, *Cayuga Nation v. New York*. Even though the judges acknowledged that the 64,000 acres in question had



been illegally acquired, they cited the *Sherill* case to argue that the Cayuga had waited too long to bring the case to court. The claim for remedy was dismissed because it was seen as too “disruptive” for non-Indian communities. New York governor Pataki (Republican) was quick to declare the decision a “tremendous victory for property owners and tax payers”. The plaintiffs, the Cayuga Nation of New York and the Seneca-Cayuga Tribe of Oklahoma, plan to appeal against the ruling. If it stands throughout the courts, then the *Sherill* decision has fundamentally changed the legal landscape and would allow for any land claims to be denied on the basis of “disruption” of the established status quo.

### **Trust fund case**

The *Cobell v. Norton* class action lawsuit (see *The Indigenous World 2005*) entered its ninth year this year. This lawsuit revolves around the mis-handling of more than US\$100 billion of Indian trust fund money by the Department of the Interior since 1887. The government, acting as a warden of Indian landowners, collected lease money for grazing and mineral exploitation but never paid the individual Indian account holders. Judge Lamberth declared in July that the case “serves as an appalling reminder of the evils that result when large numbers of the politically powerless are placed at the mercy of institutions engendered and controlled by a politically powerful few”. The case has been riddled with overt attempts by the government to destroy records and deceive the court. This year, the Bush administration asked for the replacement of the judge for alleged bias. Representing some 500,000 Native Americans, the leading plaintiff, Eloise Cobell, offered a US\$27.5 billion settlement but the case seems to be deadlocked for the moment.

### **Corruption scandal**

This year also saw the slow but steady investigation of a corruption scandal of historic proportions that started with several casino-operating tribes and has reached the highest government levels. The Saginaw

Chippewa Tribe of Michigan, the Agua Caliente Band of Cahuilla Indians of California, the Mississippi Band of Choctaw and the Coushatta Tribe of Louisiana hired lobbyist Jack Abramoff, who then convinced them to hire public relations specialist Michael Scanlon, both of whom had very close ties to House Majority Leader Tom DeLay (Republican). In 2004, the story broke that the tribes had paid the two men over US\$45 million dollars. Senator John McCain (Republican) started an investigation into these fees before the Senate Committee on Indian Affairs. The Coushatta Tribe of Louisiana alone, it turned out, had paid Abramoff US\$32 million dollars over three years; leaders of the tribe had transferred funds earmarked for housing, health care, and education programs to the lobbyist. Some of these funds had then been redirected to former Christian Coalition director Ralph Reed to lobby against other tribes' casino plans. Abramoff, Scanlon and Reed worked to shut down the Tigua Tribe of Texas' casino, and then offered the tribe their million-dollar services to reopen it. Abramoff and Scanlon also ran election campaigns for members of the Agua Caliente and Saginaw Chippewa tribes.

The corruption scandal came to engulf Tom DeLay and other high-ranking national politicians in 2005. Abramoff got tribes to contribute money to the National Center for Policy Research, a non-profit organization allied with conservative causes, which subsequently used part of the money to pay for overseas trips for the politicians, including a golfing excursion to Scotland. Abramoff also used tribal money to rent a skybox in a football stadium, which was then used by mostly Republican politicians, and funneled some money to an anti-Palestinian settler in Israel. After Abramoff was indicted for fraud charges on his own purchase of a casino operation, in October 2005, President Bush's nominee for the second highest post at the Department of Justice withdrew his nomination over ties to Abramoff. Michael Scanlon entered a plea agreement on charges of conspiracy to defraud tribes and bribe a public official, and started to cooperate with the authorities. In November, Representatives Tom DeLay and Bob Ney (Republican) became a focus of the corruption investigation, as did former Department of Interior deputy secretary Griles, former White House official Safavian, and a host of other political figures. In December 2005, Abramoff was negotiating a plea agreement on the bank fraud charges. By this time, the


sum of tribal money involved was estimated to be nearly US\$80 million. The complex web that Abramoff spun is too complicated to easily summarize but some analysts think it might become the largest political scandal in Washington since Watergate.

What the investigation clearly shows is that competition between casino-operating tribes has led some of them to campaign against others, and to use the same methods of influencing national politics as other interest groups, namely money. The investigation has also led to calls for even stricter rules within the Indian Gaming Regulatory Act (IGRA) of 1988. Tribes and the National Indian Gaming Association (NIGA) are opposed to any amendments to the IGRA because they fear that this would result in a diminution of sovereignty. Paradoxically, state governments are also opposed to such a reform, because it would take away the means of pressuring tribes to provide higher percentages of gaming revenues to the states.

### **Kennewick Man and the notion of Indigenousness**

Finally, it might be of interest to note that scientists have started to study the over 9,000-year-old human remains known as Kennewick Man, found in 1996 in the state of Washington. The remains, taken by some scientists to represent an early Polynesian or European presence in North America, led to a long court battle under the Native American Graves Protection and Repatriation Act (NAGPRA), which decided in favor of a study of the remains in 2004. Tribes had wanted to rebury the remains without study, claiming the Kennewick Man to be an ancestor of theirs. This decision has led to efforts to change NAGPRA's definition of "Native American". While currently the definition is "of, or relating to, a tribe, people, or culture that is indigenous to the United States," the new definition would read "is or was" indigenous. The court ruling in 2004, based on the old definition, determined that the remains were not Native American since no link could be established between them and contemporary Indian nations. Therefore the remains can be studied.

Senator McCain (Republican), the chairman of the Senate Indian Affairs Committee, introduced a bill to include the new definition in the law. This happened in response to the court ruling, and would support the claim of the tribes to rebury the remains without study. The bill had the support of the whole committee but, in July, the Bush administration opposed the proposed amendment and the Department of the Interior announced that it agreed with the outcome of the Kennewick Man case. This represents a change in policy. Until 2004, the government had fought in favor of the tribes, and against the scientific study, in order to uphold NAGPRA as the law of the land.

On a wider level, it remains extremely unclear how people who lived in North America 9,000 years ago cannot be indigenous to the continent, but a lawyer representing a group of scientists opposing the amendment said that they “weren’t American Indians as we know those people today”. She argued that some of the first Americans were not related to present-day Native Americans: “They’re different. Kennewick Man is different. This man walked our country and he wasn’t an American Indian as we know it today.” If one defines cultural change as representing a fundamental disruption, one would of course be hard pressed to find any indigenous peoples anywhere. But perhaps that – the denial of indigeness to contemporary peoples – is exactly what is intended. 

## Note

- 1 **Jonathan B. Taylor and Joseph B. Kalt:** *American Indian on Reservations: A Databook of Socioeconomic Change Between the 1990 and 2000 Censuses*. Available online at: <http://www.ksg.harvard.edu/hpaied/pubs/documents/AmericanIndian-sonReservationsADatabookofSocioeconomicChange.pdf>