Róbert Holló: American Indian Self-Determination: Brief History History and The Political Economy of a Policy that Works

A. Historic background

Introduction

Very little real information about Native Americans reaches Hungary, and it is also mainly taken from Hollywood films, which is far from reality. Knowledge of the history or legal history of The American Indians is important in two respects: one is how not to treat a minority, and the other is an example of how old sins can be corrected, or at least strive to do so at the state level.

The uniquely rich culture, history and special status of the Indians make them an inescapable factor both in the present and in the future. Throughout history, the white man has taken almost all of their land from them and extended his power to them, tried to assimilate them, and made thousands of decisions about them without asking them. However, they were not fully conquered, because the Indian peoples had political sovereignty in their original way, even before the advent of the United States, and they are still present as independent nations in American everyday life. The United States consists not only of 50 member states, but also of 567 federally recognized Indian tribal governments that have diversified indefinitely. They have their own language, religion, customs. They have a own territory, a government, and even a written constitution. They have legal bodies, they have jurisdiction, they have tribal police, a court, and, not incidentally, they maintain business ventures.

However, federal Indian politics has taken a 180-degree turn several times over the years, so that everything that was valid for a given day became invalid, and the next day the direction of the old one became diametrically opposed. The purpose of this writing is to briefly present these turns through the most important events.

Colonial period II – before 1776

The settlers who came to the colonies had only one goal: to conquer an area and survive. They met the natives there, they were regarded as absolute inferior peoples, savages, and treated as such. Fortunately, the area was so large that they did not often get into conflict with the Indians at first. The settlers in the 13 colonies clearly mistreated the Indians because

they did not care to settle or occupy land in such a way as to ask for the consent of the Indians who lived there. As the number of settlers increased, so did the conflicts, both in number of cases and in seriousness.

The first document dealing with the legal situation of the Indians is annex III. A proclamation by King George issued in 1773 after the British seized significant territory from the French during the seven-year Franco-Indian War. The proclamation thus drew an imaginary line on the ridge of the Appalachian Mountains and forbade whites to settle west of it, as he called it, native American territories. He also stated that no one could obtain land from the Indians without the approval of the British Crown. He set up a royal superintendent organization that centralized the acquisition and registration of Indian lands.

From the War of Independence to the Constitution (1776-1789)

When the colonies declared their independence in 1776, they included an article in the Confederate Articles, which gave Congress the exclusive right to regulate trade with Indians and all other matters. Nothing proves better that the authors of the Articles could not agree on how to treat the Indians, as they also describe in the same document that certain rights are also vested in the States over the Indians who are citizens of that state. It is mathematically and politically impossible for Congress to have 100% of the exclusive right to administer, but even member states should have rights that Congress does not have.

During the Revolutionary War, the Indians fought on the side of the British, which did not improve their relations with the now independent Americans. In the 1873 British-American Treaty of Paris, the British abandoned the Allied Indians, they were not covered by any article of the treaty, they were not asked for any rights or guarantees. The newly formed United States then treated them as unified conquered peoples, although most of them had never met. To maintain the appearance of legality, some treaties were made with tribes in the Ohio Valley, but most Native American tribes did not ask for it. The tribes were infuriated by the need to sign a deal with the federal government to surrender, so they banded together and expressed their distaste. Congress did not want war at the time, nor did it have the resources, so at the urging of George Washington and Henry Knox, the treaties were rewritten and from then on, as a *„government-to-government"*, it entered into a treaty with the Indians.

In 1787, Congress passed the *Northwest Ordinance*, which, similar to the 1773 proclamation, prohibited anyone from obtaining land from Indians in areas west of the Ohio Valley without congressional approval.

The Constitution clarified and eliminated the mathematically and legally impossible situation created by the Confederate Articles and deprived states of the right to regulate Indian affairs, delegated it to Congress by regulating trade with Indians in one of his articles. This rule had to be interpreted in an expansive way, since in addition to commercial cases, many other cases were also regulated.

1790-1834

The *Trade and Intercourse Act* of 1790 forbade non-Native American descent from entering Indian lands without federal permission and regulated trade in order to prevent Indians from being misled during the agreements and prohibited it. that non-Indians obtain from the Indians full ownership of the land *(fee simple)* without the approval of Congress.

The *Intercourse Act* did not have the desired effect because many states, most notably Georgia and New York, ignored this law and registered it. Property lawsuits are still pending for this reason.

During this early period, the U.S. Supreme Court ruled in several cases that determined the fate of the Indians for decades to come. There are three big decisions that are related to Chief Justice John Marshall's name, so they're also called the Marshall Trilogy.

1. Johnson v. M'Intosh (1823)[1]

The plaintiff, Johnson, demanded land from the defendant, claiming that the land had been purchased directly from the Indians by his testator. In contrast, the defendant claimed that he had purchased the same land from the federal government. The decision establishes two doctrines. The first is the *„Doctrine of Discovery"*, which says that the United States, expanding westwards, has discovered unknown lands, and as a result of this discovery, it has the right to extend its ownership to land! The other is the doctrine that says that Indians living on land have an original right to reside on the land on the ground on the basis of their existence, and this is recognized by the federal government, but they have no right to dispose of the land without the approval of the United States! This is the *Indian title of occupancy.*

2. Cherokee Nation v. Georgia (1831)[2]

This case was about whether the Member State had jurisdiction over Indian territories and tribe members. In this lawsuit, the legal status of the Indians, the *„domestic dependent*

nation", was defined. It is *„domestic"* that they exist only within the body of the United States, so if someone attacks Cherokee territory, they also attack the United States at the same time. *„It's disappointing"* in that if tribal laws violate federal law, then the federal will be the one to apply. And *„no"* in that its members form a separate, independent nation within the body of the United States.

3. Worchester v. Georgia (1832)[3]

The decision establishing tribal independence in the case of Samuel Worchester and co. defendants who were in Indian territory without the permission of the plaintiff, the state of Georgia. The decision states that *„the Cherokee Nation is a separate community that lives in its own precisely demarcated territory and over which the state of Georgia has no jurisdiction!"*

The main findings of the Marshall Trilogy can be summarised as follows:

(a) Indian nations have original sovereignty and right to stay on their lands

(b) The tribes independently govern and regulate the people living on their land and their living conditions, but they do not alienate land in a fee simple way without the approval of the United States.

(c) Member states have no jurisdiction over Indian lands and tribesmen

(d) The U.S. has jurisdiction over Indians at the federal level.

These items determined the official status of the Indian peoples. Indian people are considered ethnic minority instead of national minority. Looking out to the world we can see that other countries start to apply the „ethnic" minority distinction even in those countries that totally opposed to the ethnic distinction. For example, „the new law in Hungary replaces the former terminology of „minority" with „national minority", due to previous resentment about the Roma community being referred to as an ethnic minority group, as opposed to national minorities with nations of their own. „National minority" intends to signify that the group in question receives its privileges not only because it constitutes a numerically inferior group within society, but also because it is valuable to the nation".[4]

The Indian Wars and The Age of Forced Confinement to the Reservation (1835-1887)

The Marshall Trilogy also points to progressivity and tribal sovereignty from today's point of view, but there was a change in federal politics in the first third of the 19th century.

The debate over the removal and forced resettlement of Indians from their original lands began as early as the 1820s, but their organized forced settlement on reservations at the federal level is just one law, the *Indian Removal Act*. it has taken on a larger scale. It was nothing more than a state-enforced wave of migration to relocate Indians on the east coast of the country to the western side of the Mississippi, about 100 miles away. In what is now Oklahoma. Here we can talk about the almost fatal march for the Cherokee nation, known as the Trail of Tears, during which a quarter of the tribe died during a migration of almost 1,000 km. Along with the Cherokee tribe, four more tribes — the Choctaw, Muscogee (Creek), Chikasaw, Seminole – were forced to leave their ancestral lands. It is a historical irony that these five tribes were then called the „Fived Civilized Tribes".

The expansion to the Nyugat and the confrontation with the Indian peoples brought about the many decades of the Indian wars. At least six Lakota (Sioux) wars, two Nez Perce wars, the uprising of the Night Paiute nation, the Chiricahua Apache War led by Geronimo *(Go-yat-'h-lay),* the rebellion and then exodus of the Northern Cheyennes can be mentioned as the main ones. events. The constant struggle with the settlers and the American cavalry brought the Indians all the way to the point where their initial estimated population of 3.5 million, by the end of the era, was about 100,000 people in what was then Boston. It's down to 200,000. The continuous warfare not only exhausted the Indians, but the United States had no interest, so instead of acquiring land by fighting, they began to prefer contracting and buying land. They signed a separate treaty with each tribe and nation, in which, in exchange for a piece of land, they promised that the rest of the land would remain undisturbed Indian land forever. This promise, however, always lasted only until one found gold on Indian land or strayed into a well-cultivated agricultural land. At the time, the government, on the one hand, did not want, and on the other hand could not, contain the influx of settlers and fortune hunters.

No matter how much the Indians fought against the settlement of the reservations, they were all forced there in the end. The reservation meant that the once free, migratory peoples were closed down and forbidden to leave the reserve. They promised housing, medical care and food for their land, but because of negligence, corruption, looting and racism, they didn't really reach them. Starvation, disease, and depression characterized the era, but even in such a state that a group broke out of the reserve and forced the American cavalry to pursue and fight for a long time.

On December 29, 1890, the Wounded Knee massacre, when the cavalry, chasing the

warriors, came across the Lakota camp and killed more than 300 old people, children, and women, marked the end of the armed Indian resistance and the deepest, darkest point in Indian history. By this time, there were about 40 whites for every Indian in the West, and this determined their future fate!

The Allotment Period (1887-1934)

Contracting, buying land, and even resettlement on reservations pointed in the direction that the federal government sometimes viewed Indians as partners and independent nations, but in the mid-1880s Indian politics turned again. From then on, the goal was to completely eliminate the tribal culture and abolish the Indian existence.

In 1891, the federal government passed the *Compulsory Attendance Law Act*, which took Indian children over the age of 5 from their parents and forced them into compulsory boarding schools, where the goal was to convert to Christianity and eliminate Indian culture and language. About the life and circumstances there, a journalist at the time cynically said, „It's bigger than a bullet!"

The final blow to tribal creation was the *Allotment Act*, also known as the *Dawes Act*, passed in 1887. According to this law, the Indians no longer exist as a unified, collective nation, but must be regarded as one, individuals, without belonging to the tribe or nation. Therefore, 160 hectares of farmland, or 320 hectares of pasture, and the rest of the tribal land were declared remnants, surpluses, and distributed to the whites. More than 90 million hectares of tribal land have been lost in this way!

In 1885, a special court for Indian cases, the *Courts of Indian Offenses*, was established to punish the ghost dance that was spreading at the time, the still very frequent use of language, and the indian religious practice.

In 1883, Crow Dog, a Lakota Sioux chief, killed another Indian. Since the case took place in Indian territory, neither the state nor federal courts would have had the jurisdiction to rule on the perpetrator. The tribal court conducted the proceedings and determined the punishment, which consisted of a ceremony of judgment and reparation conducted by the community, followed by a ceremony of healing and forgiveness. This procedure and the sanction imposed outraged the surrounding white population because they considered it barbaric and uncivilized that the Indian judgment did not know the sanction for imprisonment or execution, so they took the case to the point where it was referred to the Supreme Court, which explained in the *ex parte Crow Dog's* decision that the tribal judgment was not

recognized. The court does not have the right to decide in criminal cases. Ez’s decision provided the basis for the complete abolition of tribal jurisdiction in criminal cases by the *Major Crime Act* of 1885.

In 1888, in *United States v. Kagama*, the Supreme Court upheld the *ex parte Crow* Dog’s decision, so there was no longer any question that instead of a tribal court, the federal court had jurisdiction for crimes where both the perpetrator and the victim were both Indian and the act took place on Indian territory.

In 1903, Lone *Wolf v. Hitchcock* sued the United States, claiming that the tribe had been deceived and that the later owners had illegally obtained Indian land. The Supreme Court’s decision in this case is one of the most outrageous in Indian legal history. He says that the treaty with the Indians is not a private matter, but a political one. The United States has full power over the Indian peoples, the Indian peoples are not entitled to constitutional protection, that is, they are not entitled to any compensation if they take their land, and the treaties concluded by the Indians and whites have binding power only for the Indians, not for the white man!

The *Indian Citizenship Act* of 1924 granted U.S. citizenship to Indians, but with the restriction that although it stated that everyone born in the United States should be considered equal citizens, it does not apply to Indians. Therefore, for example, they were not allowed to vote in local elections until 1948.

The Indian Reorganization Period (1934-1943)

This era is marked by the *Indian Reorganization Act*, another backlash to federal Indian politics in previous decades. Instead of eliminating the indian and tribal culture, the aim is now to revive tribal culture. This law is also known as the Indian New Deal.

They revived tribal self-government, supported the use of language, research of tribal culture, history, and the revitalization of traditions. They encouraged the tribes to adopt their own constitution but did not make it mandatory. Some tribes even had written constitutions, but the Navajos, for example, refused because they could not reconcile it with their traditions.

They allowed tribes to start doing business, legalized gambling in tribal areas, and granted them exclusivity in this area. This helped create casinos in Las Vegas.

They allowed tribal areas lost by the *Allotment Act* to be returned or eligible for compensation with certain restrictions.

The Reorganization Act became the law for which the Supreme Court was most often asked to examine the constitution. In practice, cases of this law are still brought before the courts today, typically in inheritance cases.

Indian terminology (1943-1961)

The era of reorganization did not last long, because after World War II, the United States began to loosen the relationship between the federal government and Indian municipalities. Just as in the case of past changes of direction, it is not known why this new turn in federal politics occurred.

The turnaround is illustrated by the *Tee-Hit-Ton Indians v. United States* case from 1955, where he applied for tribal compensation for tree fellings on the territory of Alaskan Indians, citing the 5th Amendment to the Constitution. However, the Supreme Court dismissed the action because the tribe did not have federal recognition and therefore, according to the ruling, was not entitled to constitutional protection, meaning that the state could take away its property without compensation.

The era of self-determination (1961 to the present)

The term was not long either, and new change was brought about by the *Indian Civil Rights Act* in 1968. This law extended most of the provisions of the First 10 Amendments to the Constitution, the Bill of Rights, to include Indians.

The law regulates jurisdiction in criminal and civil law cases, the relationship between the tribal government and the federal government. It’s about the rights of tribal government, the need for equality in terms of employment and access to housing. It provides for constitutional rights, hate crimes, legal representation. In fact, it is a framework law that must be supplemented by other specific laws.

The *Indian Self-Determination and Education Assistant Act*, passed in 1975, allows tribes to directly contract with various federal funds organizations in order to receive funding directly for the development of areas defined by law without the involvement of the federal government.

Since 1978, the *Indian Child Welfare Act* gives the tribal government full jurisdiction to place children in foster care if necessary.

The *Violence Against Woman Act (VAWA),* passed in 2013, is a general law against domestic violence to protect women, so it is not written specifically for Indians, but in one provision it still gives the tribal court jurisdiction to act against a non-Native American person who abuses women in Indian territory. This is important because the criminal jurisdiction was taken away from the tribes in 1885, but now a small part of it has been returned.

As a conclusion regarding the ups-and-downs of the federal legislation, the federal government is determined to fill in the autonomy, and sovereignty of the Indian nations with content. The United States does not recognize national minorities unlike other countries in Europe but provide similar right and even more. In some countries in Europe e.g „national minorities have the right to access and relay information in their own language, whether it be through traditional press or modern mass-communication and media services. The state is obligated to provide access for recurring national minority-language broadcasts in both radio and audiovisual format in a way that enables full access to such services in all relevant regions inhabited by the respective national minority”.[5] There is no such thing in the USA, but maintaining a government-to-government relation with them.

B. Models of tribal self-government, self-determination

Introduction to the Indian Self-Determination and Education Assistance Act

ISDEAA largely focuses on strengthening tribal governments and tribal organizations of indigenous peoples living on Indian reservations by giving it to the management of the tribal administration and putting it under the control of Indian programs initiated and established by the federal government. At, the various services. Besides this it encourages various activities and provides the necessary funds in whole or in part.

The law currently consists of five chapters:

- Title I. – Self-determination contract program provided by the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS);
- Title II – Education and aid programs;
- Title IV – Continuous municipal program within the framework of the Department of Interior (DOI), both for BIA and non-BIA programs;

- Title V. – permanent municipal program within the framework provided by the Department of Health and Human Services (DHHS);
- Title VI – a feasibility study examining the possibility of participating in local government projects within DHHS and within DHHS to involve organizations not operating within the framework of HIS.

Initial models

The earliest models of self-government and self-determination can be found in laws restoring the statuses of previously defunct tribes, as well as important efforts by the Kennedy, Johnson, and Nixon administrations, all of which provided a political backdrop for president Nixon's policy of self-determination. In a message to Congress, President Nixon explained that BIA has begun a policy of concluding service agreements with tribes to help run BIA programs. These efforts were treated with an aversion to bureaucracy, it was not clearly communicated that it had the necessary legal authority, so they quickly bled to death in the fight. For example, in 1970, the Miccosukee tribe in South Florida submitted a proposal to BIA to conclude a contract by BIA's Miccosukee Agency and to provide related activities. BIA's lawyers initially rejected the proposal for a contract based on the view that BIA had no legal authority to conclude a contract with the tribe. After lengthy, multi-round negotiations between the tribe, BIA's legal representation, and the House and Senate committees, it was established that the tribe could set up private companies that would give BIA the legal authority to conclude service contracts. onto. However, miccosukee has faced objections each time in its negotiations with BIA about the specific content of its contract proposal, saying that „existing laws are not designed to facilitate an Indian municipality to buy into a program that the Bureau (BIA) is already carrying out".[6]

In short, the experience of the Miccosukee tribe showed that BIA's efforts to advance the self-determination capacity of the Indian population were hindered by all kinds of legal methods by the existing authorities. Separate legislation was needed in order to develop the concept of Indian self-determination and then to implement it in different ways.

Despite President Nixon's „fish-for-the-Native American-people" rhetoric, the self-determination law was drafted primarily by federal bureaucrats with little Indian tribal contributions. Perhaps that's why the legislative proposal did not generate any noticeable support among the Reservation Indians, and it received a cold reception from Congress. Senate Bill 3157 began with the following statement: „If the legitimacy of all governments is obtained by the consent of the governed, maximum Indian participation in the governments of the Indian peoples must be a national goal."[7] Although this bill was flawed and ultimately

not passed, tribal self-government was based on declaring the basic democratic principle of „governing consent" to guide the following legislation. Five years after Nixon's experiment, in 1975, Congress passed ISDEAA. The political declaration at the head of the Statute expresses a break with past politics, while acknowledging the need for self-determination in the federal government's special and ongoing relationship with the Indian peoples, and expressed it in the following ways:

(a) Congress has recognized the obligation of the United States to take a positive approach to the realization of the self-determination and self-determination of the Native American peoples and to do so by ensuring maximum Indian participation of Native American communities in the educational and other services provided by federal programs, with a view to ensuring that they are better suit the needs and desires of these communities.

(b) Congress has declared its commitment to maintain continuous contact with the Indian peoples, has taken on the responsibility of maintaining this relationship, and has undertaken to create a feasible Indian self-determination policy with the involvement of individual Indian tribes and the Indian people as a whole, which can be filled with real legal and political content which allows for an orderly transition from the federal dominance of Indian programs and services to the effective and meaningful participation of the Indian people in planning and in the conduct and administration of these programs and services.

Congress sought to achieve these goals by giving Native American tribes and tribal organizations the right to negotiate with federal agencies that have the responsibility to finance and manage operational programs for the benefit of eligible Native Americans and Alaska Natives. In fact, the goal was for tribes- tribal governments – to replace the federal government by taking responsibility for running programs previously provided by federal agencies. After much congressional debate, the tribes finally got what they wanted: the right to run programs, provide services, and distribute funds to finance them through contracts.

Overview of self-determination contracts

The purpose of the contracts was to enable tribes to build organizations that could perform tasks better than federal non-Native American institutions, as well as improve programs by better responding to local tribal needs. For example, by giving the tribes that run a health clinic with a self-determination contract with a much more accurate local view within themselves, they have a better knowledge of needs and flexibility for tribe members, so they can better serve their health needs. Programs under local tribal administration are more effective than programs run by federal agencies many miles away, and at the same time

develop leadership skills and administrative capacity. Since the adoption of the Law in 1975, Title I has been amended as follows: Title 1 contracts provided one of the primary mechanisms for Native American tribes to exercise their right of self-determination by helping the tribes build their governmental organs in a way that best serves the local needs of tribal members. Title I is replaced by the following: However, it was very difficult to achieve the full implementation of the principles embodied in Title 1, because both federal bodies responsible for implementing the law – DHHS and DOI – were at best reluctant to cooperate with the tribes. Federal bureaucrats repeatedly used their discretion to prevent congressional intent from fully implementing it, leading to a series of amendments.

The first such amendment – Section 106(a) of Proposition 93-638 -, provided that the contracts with tribal organizations were in accordance with the federal laws and regulations governing the conclusion of contracts, but the Secretary could invalidate the provisions of those contracts if it is considered to be inappropriate. Thus, contracts that fulfill and provide the right to self-determination with content have essentially been reduced to public contracts managed by federal officials. The law has since been amended so that federal laws and regulations do not apply to self-determination contracts, unless these laws explicitly state that they also apply to Native American tribes.

Section 103 (c) of Bill 93-638 authorized the minister to require the tribe requesting the contract to provide adequate financial security to the federal government to ensure the fulfilment of his contractual obligation. The Congress then forced tribal businesses and contractors to take out compulsory insurance under the Federal Tort Claims Act; FTCA), however, it did not extend it to non-Native American businesses and entrepreneurs contracting with federal agencies. As tribal contractors replaced federal agencies, Congress argued that it would not be fair to tribes or others to allow agencies to use the self-determination process as a tool to get rid of potential liability.

Title I. grants all federally recognized Native American tribes and tribal organizations the right to contract programs, functions, services, and activities provided by the DOI or DHHS to Indians and Alaska Natives, together with the associated funds and responsibilities. Title I. contracts are special government-to-government contracts and are not similar to those concluded by the federal government with other organizations, because here the party to the contract with the federal state is not an organization, but an independent Indian nation.

After submitting the contract proposal, the law provides for a strict procedure and timetable for examining the offer. The Law I. The federal agencies and ministries are required to conclude contracts unless one of five narrowly defined legal exceptions exists. This section

also specifies the appeal rights of the participating tribes. If an agency or minister rejects a tribe's contract proposal, the federal organization should help the tribes overcome the obstacles that cause rejection and give the tribe the right to redress. The law also authorizes each federal organization to award grants to itself, independently, or to assist participating tribes in developing programs that they can eventually contract under Title I chapters of az. Once a proposal has been approved, it is mandatory for institutions and agencies to sit down with the team wishing to conclude the contract within a reasonable period of time, to work out the details and to conclude an agreement on a term of at least one year on services and financing.

A certain section of the law also gives the parties a model agreement, with provisions that must be included in all contracts. The legislature, Congress, imposed these mandatory provisions to strike a balance between promoting tribal self-determination and maintaining federal oversight of tribal contracts. In addition to the mandatory provisions, according to the classical contract rules, the contract may contain all other provisions adopted by both parties. The mandatory provisions of the model treaty laid down in the act ensure that the special relationship between the tribes and the United States is maintained: to ensure that tribal sovereignty and immunity do not prevail over the obligation of the federal state to conclude a contract, that federal resources cannot be diverted, and that, that the responsibility of the United States towards the tribes cannot be eliminated, that is, the federal state cannot withdraw from its historical responsibility.

How do you do that? E.g. the contracts of Title I. shall contain a provision requiring that tribes responsible for the resources of each Indian nation must provide the same level of service as the United States would provide if that resource were to fall under its jurisdiction. On the other hand, with the DOI and DHHS having general oversight of how tribes perform their duties under Title I contracts, the law limits the discretion of federal agencies. For example, the only reporting requirement that participating tribes are required to provide agencies with is the annual financial report. In limited circumstances, the DOI and DHHS have the right to take unilateral steps to ensure that the Contracting Parties perform coordinated tasks. For example, agencies have the right to withdraw any contractual service from the tribe if there is a violation or threat to the health, safety or well-being of any person, or if the contact person performs his duties as a trustee on the assets or land entrusted to him. Agencies have the right to delay, suspend or withhold contract payments for a period of 30 days if it is established that the tribal service provider has not fulfilled the contract and has no good reason for non-performance. Following unilateral actions by federal organizations, tribes always have remedies available. Contracting tribes also have the right to propose a redesign

of the contracted programmes after the conclusion of the contract, so that, after awarding them, they are better suited to local needs not known before the conclusion of the contract.

The law requires agencies to evaluate redesign proposals based on criteria identical to new contract proposals. The tribes also have the right to transfer the funds awarded, provided that the redistribution does not have a detrimental effect on the performance of the contract.

Tribes are treated as federal agencies when they are federal agencies in order to achieve certain goals, when they are classified in Title I. They shall carry out contractual tasks under Title I. In such cases, for example, the right to use the surplus generated during the service, or the right to access specific federal resources (databases), the right to access federal reserves. These provisions all reflect the fact that Native American tribes and tribal organizations replace the federal government when they undertake program tasks under ISDEAA.

On the other hand, there are provisions for Title I. The difference between Indian tribes and the United States. For example, participating tribes have the right to set rules for tribal employment preference when selecting their coworkers. Tribal contractors are also exempt from the Davis-Bacon Act, which requires most federal contractors to pay the locally dominant wage level set by the Labor Department.

The Supreme Court has acknowledged that Title I contracts are as legally binding as any other contract – „Congress, in terms of the binding nature of the promise, treats equally the promises made in the [ISDEAA] Act and ordinary contractual promises (such as those made in public contracts)”.[8]

This does not mean, of course, that ISDEAA contracts are ordinary public contracts. Title I is replaced by the following: The contracts referred to in Title I. of this Regulation shall be the specific inter-governmental agreements. Title I is replaced by the following: The treaty provisions of Title I. therefore reflect a delicate balance between competing interest groups: it serves the interests of the tribes to fill their self-determination objectives with real content , while ensuring that the responsibility of the United States to them remains intact, and that while the It is in the interest of the United States to pursue a policy that promotes tribal self-determination, yet to retain some control and supervision over the contracting tribal contractors.

Title I rule-making

The process of fully drafting the law and creating rules for its implementation was a confusing and complex undertaking. As passed in 1975, the law granted only a minimum legal authority to the responsible ministry to draw up the rules. Title I is replaced by the following: The first group of implementing regulations for Title I. of this Regulation was deemed unacceptable by the tribes because BIA and IHS would have been given too broad control over the provision of tribal contracts and services. Ironically, an early report by the Government Accountability Office (GAO) found the opposite, namely that the United States had not fully complied with the control of the use of contracts and grants awarded under the law. These needs and events illustrate the difficulties and delicateness of maintaining the balance intended to be established by law. In response to previous objections from the participating tribes, the amendments of 1994 made a number of important changes to Title I. e.g. based on tribal and congressional reactions to proposals published in 1994, according to one of the amendments, a section of the az requires that the legislative process follows a so-called legislative process that applies only to this law. Negotiated Rulemaking Act. (Act establishing agreed implementing rules) This Act requires tribal representations to be involved in the drafting of the rules.

After extensive negotiations, tribal and federal negotiators reached a consensus on the vast majority of the regulations, their language, and az I. The final implementing regulation for the contracts referred to in Title I. of 1996 entered into force on 23 August 1996 by agreement of the parties.

C. Conclusion

Looking back 300 years, the history of the Indians is rather sad, filled with so much suffering and injustice. However, if we look at the events of the last 50 years, and especially the 21st century, we can say that modern Indian history can be a success story.

Of course, the community is currently struggling with a lot of problems. Fragmentation, lack of uniform action and legal protection remain a problem. Az Indian communities have high unemployment, alcoholism and still a problem of identity search. However, it seems that in overcoming these problems, the federal government has now found an honest partner.

We hope that there will be no more turnaround and that indigenous peoples will find their place and peace.

In the second part of the paper the emphasis in the legislation was on the federally

recognized tribes' inherited right to self-government, in order to promote and control Native American participation in federal programs according to their own priorities. The Act, along with a number of agreements and treaties over the years, facilitated a move towards tribal autonomy and away from pervasive federal control. However, the acts of the federal legislature are only one aspect of a broader push towards tribal self-determination, even in an economic and political context. Undoubtedly, federal policy, which first allowed and then generally facilitated self-determination, has played a significant role in empowering tribal governments and communities in recent decades. The contracting and compacting of federal programs bring jobs to tribal communities and increases tribal administrative capacity, but tribes also exercise self-determination through economic development, cultural activity, linguistic revitalization, and other aspects of nation-building. As tribes experience increasing success in exercising their sovereignty in a wide variety of contexts, this greater movement is expected to spur changes in the 2000s in the areas of amendments and the study of future self-governance. The political context within tribal self-governance itself is largely outside the control of indigenous peoples. At present, traditional bipartisan support for Native American self-determination in the federal legislature is largely intact, but some observers see that bipartisanship as melting away as conservative party distance themselves from the liberal principles expressed in President Nixon's 1970 speech. If tribal self-governance is treated as a liberal issue that is merely tied to one party (the Democratic Party), achieving the legislative reforms and progress discussed above becomes much more difficult. One thing is certain: whatever legislative and administrative form and means tribal self-government takes in the future, it is and will remain a fundamental right under U.S. law.If tribal self-governance becomes identified merely as a liberal cause, the legislative reforms and advances discussed above will become much more difficult to achieve. One thing is certain: whatever particular legislative and administrative forms and vehicles tribal self-governance takes in the future, it is, and will remain, a fundamental right under United States' law.

Literature used

Brown, Dee: Bury My Heart at Wounded Knee: An Indian History of the American West

New York, NY, Holt Publisher Inc. – 2001

Cservak, Csaba – Farkas, György Tamas: Development of the Nationality Law in Hungary, *Journal on European History of Law*, Vol. 4 / 2013 No. 2

Spitzer, Elianna: Cherokee Nation v. Georgia: The Case and Its Impact, ThoughtCo., 2020

Suagee, Dean B.: The Consent of of the Governed – The New Concept in Indian Affairs, *North Dakota Law Review*, Vol. 48, No. 4, 1972.

Treueur, David: *The Heartbeat of Wounded Knee: Native America from 1890 to the Present*, New York, NY, Penguin Random House, 2019.

Blackhawk, Ned: *Violence over the Land: Indians and Empires in the Early American West*, Boston – Cambride, MA, Harvard University Press, 2008.

References

1. Description of the case: https://www.lexisnexis.com/community/casebrief/p/casebrief-johnson-v-m-intosh ↑
2. Elianna Spitzer: Cherokee Nation v. Georgia: The Case and Its Impact, ThoughtCo., 2020, https://www.thoughtco.com/cherokee-nation-v-georgia-4174060 ↑
3. Description of the case: https://www.oyez.org/cases/1789-1850/31us515 ↑
4. Csaba Cservak – György Tamas Farkas: Development of the Nationality Law in Hungary, *Journal on European History of Law*, Vol. 4 / 2013 No. 2 ↑
5. Cservák–Farkas: *Development of the Nationality Law in Hungary.* ↑
6. Dean B. Suagee: The Consent of of the Governed – The New Concept in Indian Affairs, *North Dakota Law Review*, Vol. 48, No. 4, 1972. ↑
7. S. 3157, 92d Cong. § 1(a)(1). ↑
8. Cherokee Nation v. Leavitt, 543 U.S. 631, 639 (2005) ↑