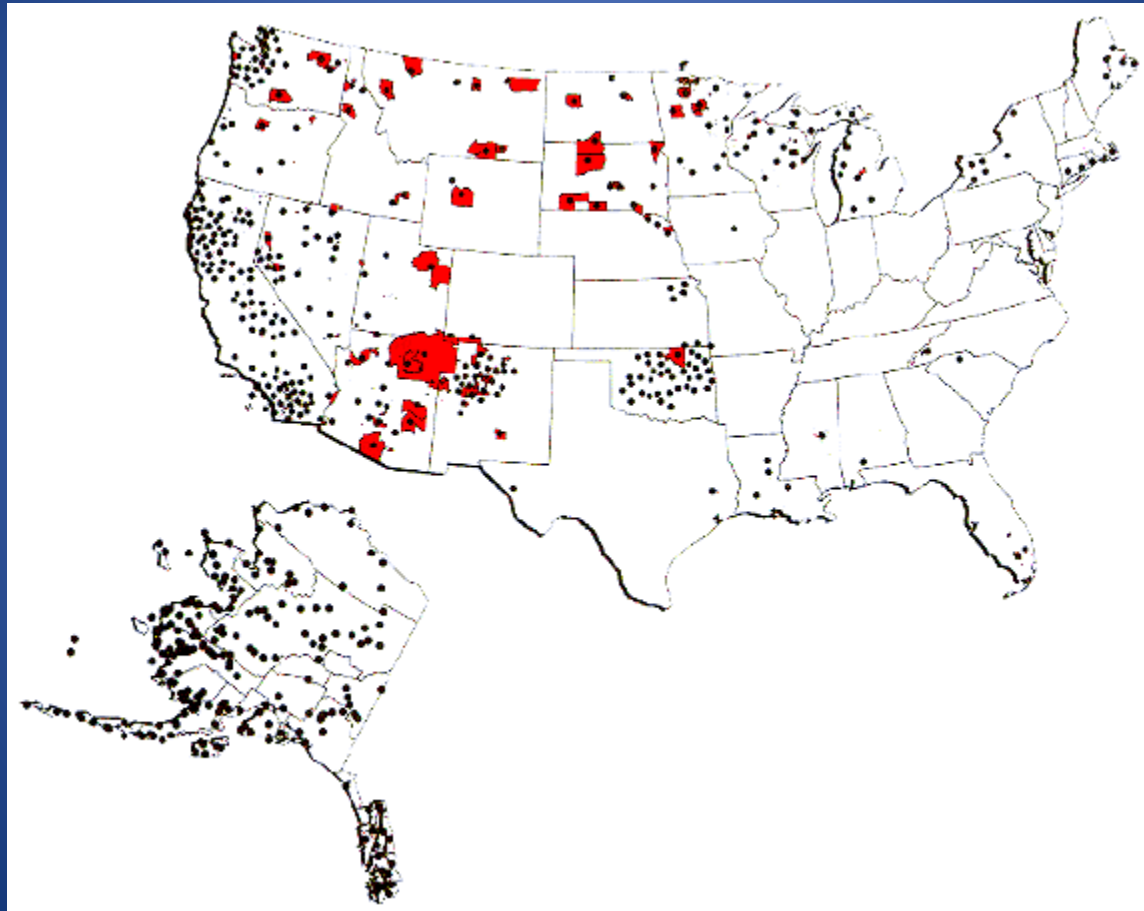


Federal Indian Law: Overview

Matthew L.M. Fletcher
Michigan State University
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Indian country



Indian Lands: 56 Million Acres in Tribal Control



Three Foundational Principles

1. Plenary Federal Power
2. States Excluded
3. Inherent Tribal Sovereignty

Sources of Indian Law

1. Indian Commerce Clause
2. Indian Treaties
3. Federal Common Law

Eras of Federal Indian Law (and Related Legal Doctrines)

Treaty Era



United States v. Winans

- The right to resort to the fishing places in controversy was a part of larger rights possessed by the Indians ... and which were not much less necessary to the existence of the Indians than the atmosphere they breathed.
- 198 U.S. 371, 381 (1905)

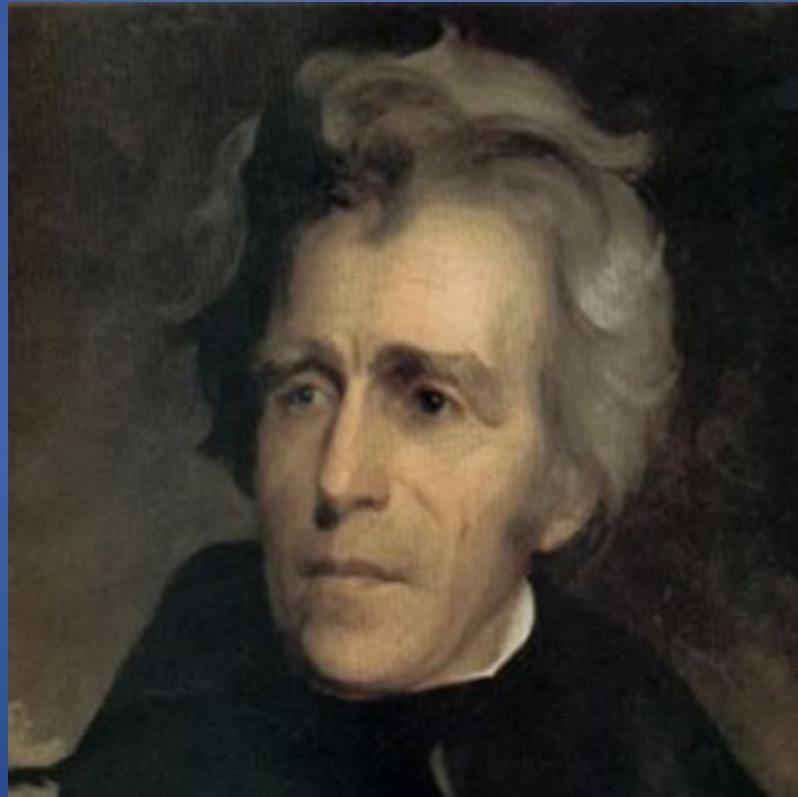
Washington v. Fishing Vessel Assn.

[I]t is the intention of the parties, and not solely that of the superior side, that must control any attempt to interpret [Indian] treaties. ... [T]he United States, as the party with the presumptively superior negotiating skills and superior knowledge of the language in which the treaty is recorded, has a responsibility to avoid taking advantage of the other side. "[T]he treaty must therefore be construed, not according to the technical meaning of its words to learned lawyers, but in the sense in which they would naturally be understood by the Indians."

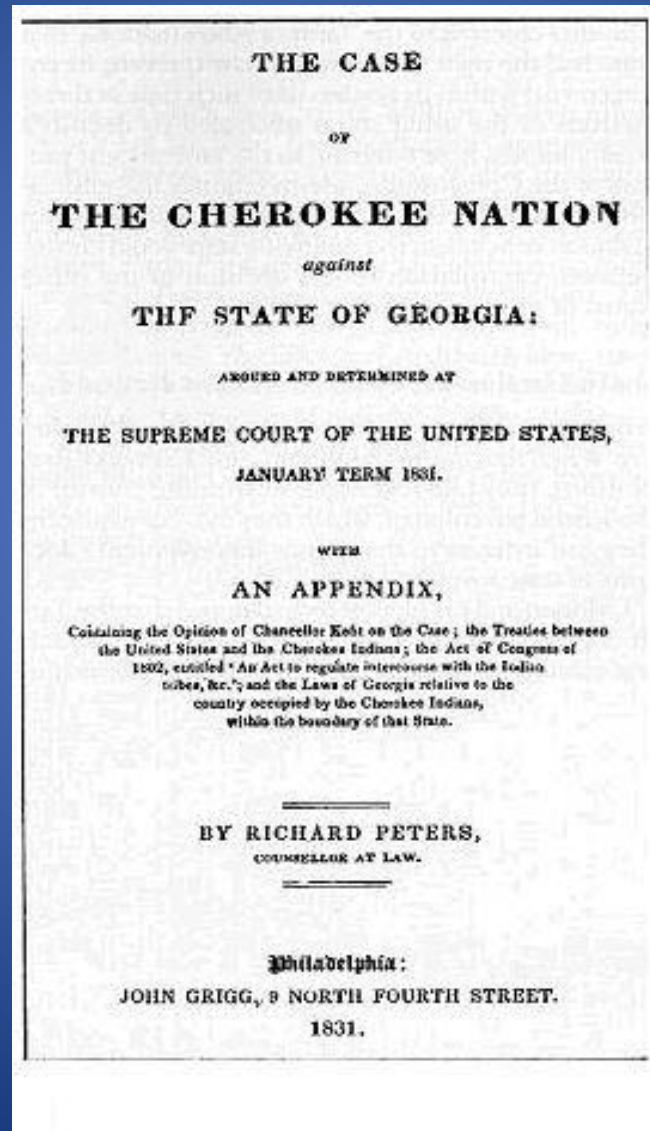
Indian Treaty Rights



Removal and Reservation Era



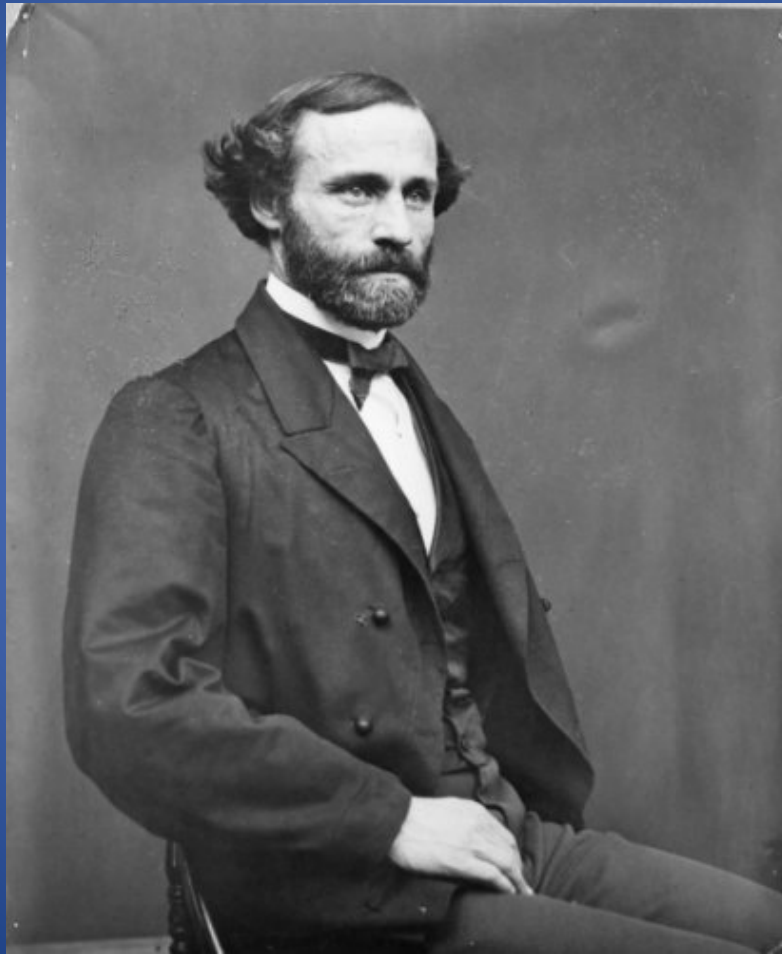
The Cherokee Cases



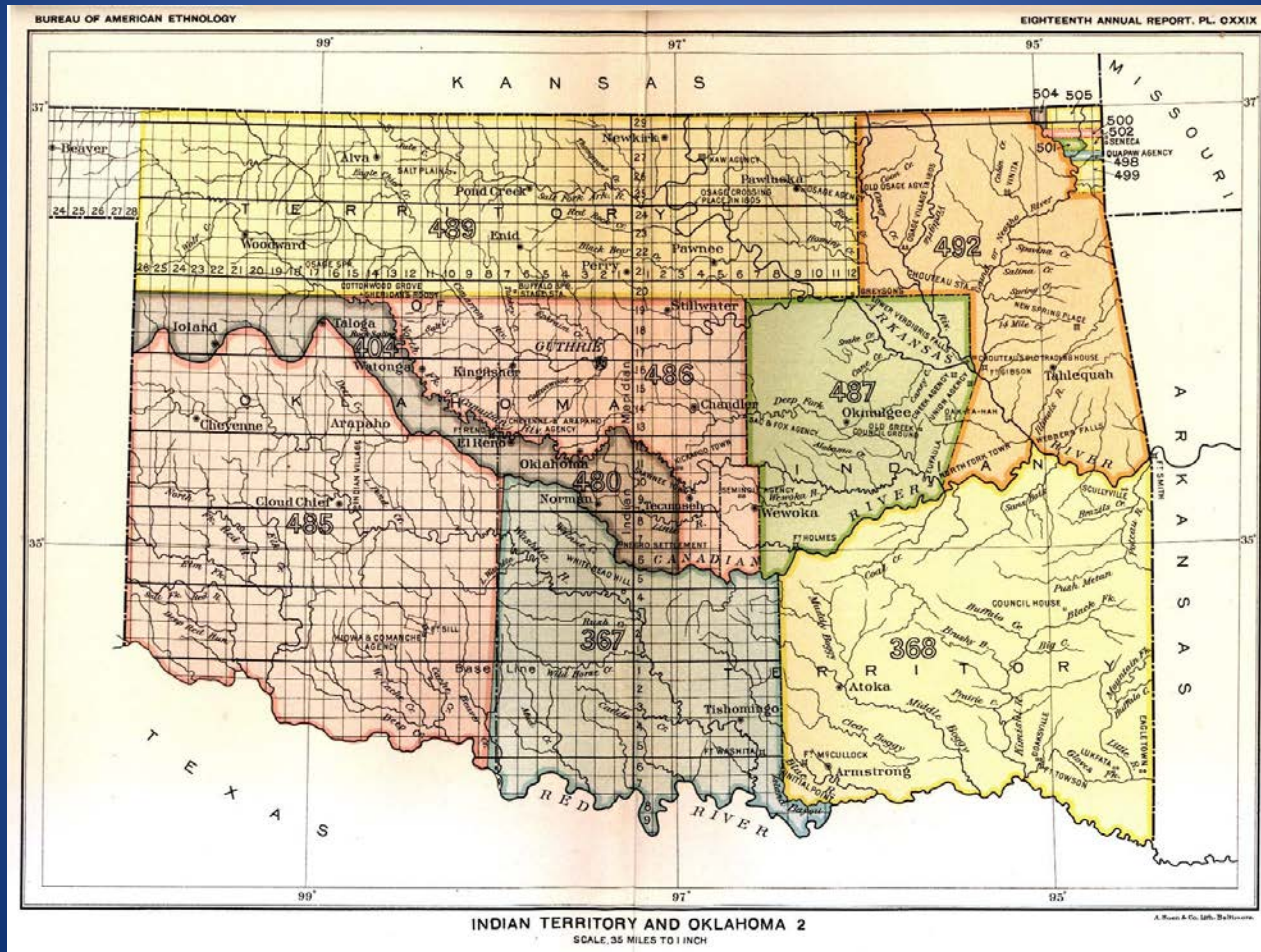
Worcester v. Georgia

The Cherokee Nation ... is a distinct community occupying its own territory ... in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter but with the assent of the Cherokees themselves, or in conformity with treaties and with the acts of Congress.

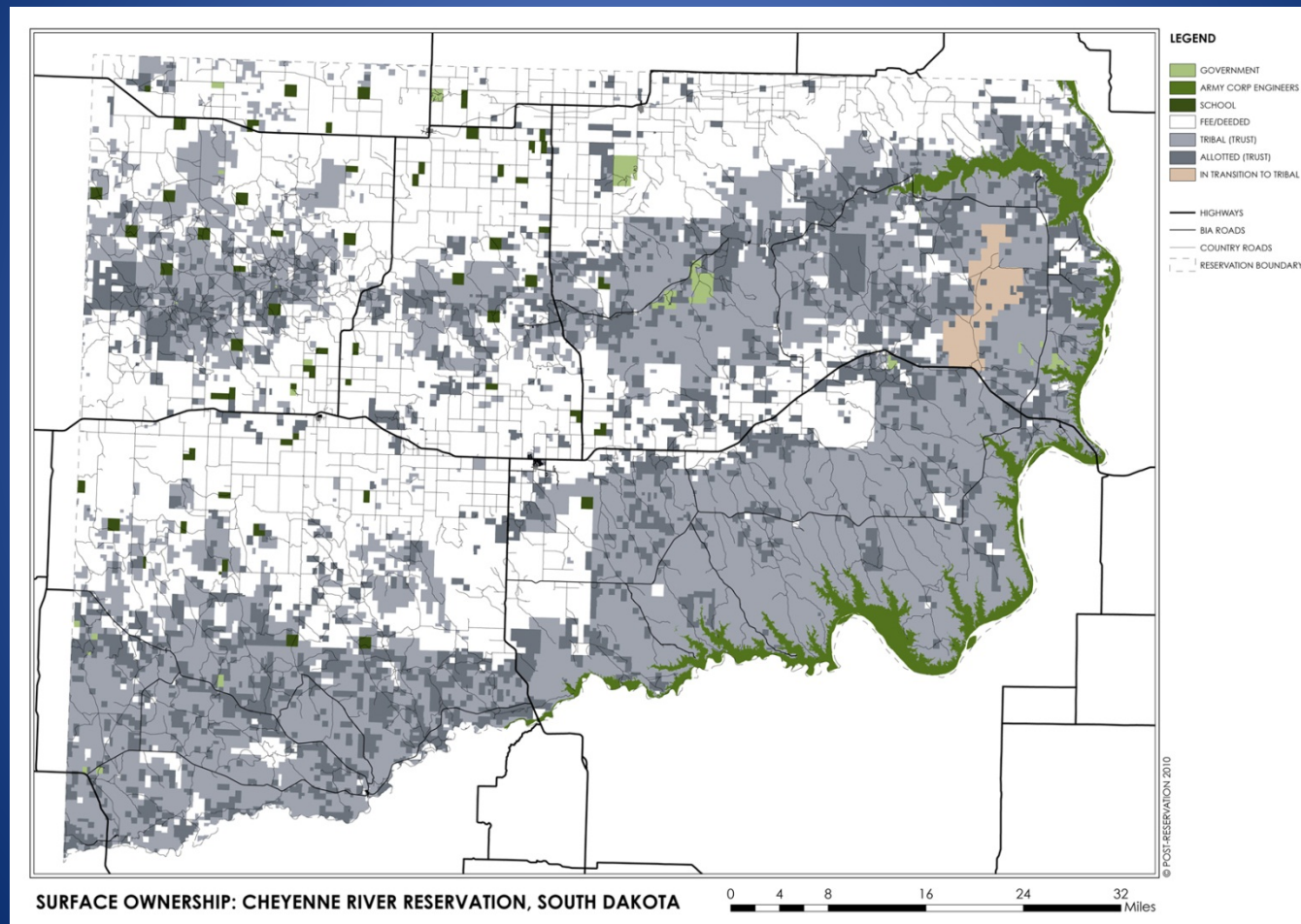
Assimilation and Allotment Era



Indian Country Establishment and Disestablishment



Checkerboarded Reservations



Reorganization Era



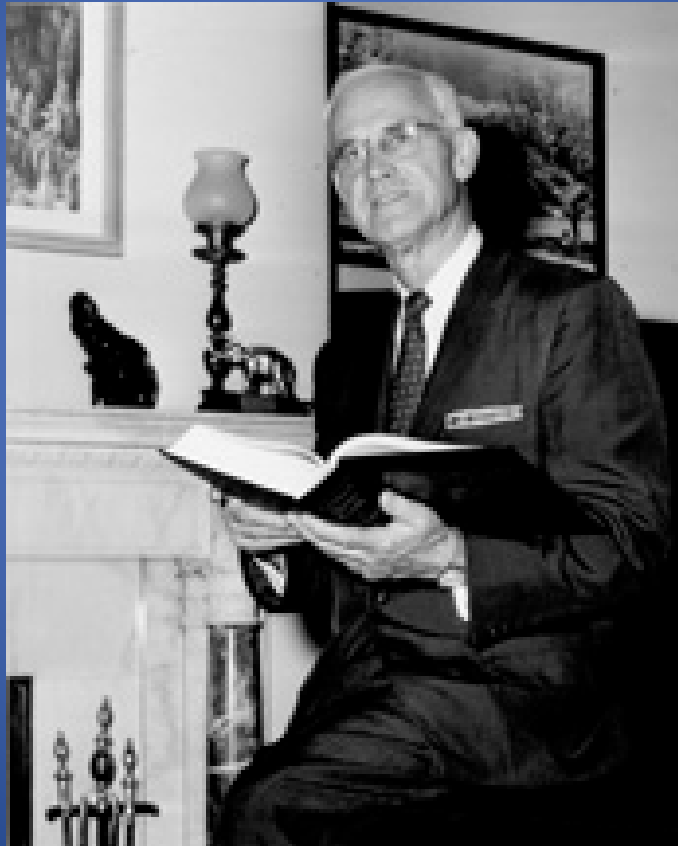
The Federal Trust Responsibility to Indian Nations



Seminole Tribe v. United States

Congress ... has charged itself with moral obligations of the highest responsibility and trust. Its conduct ... should therefore be judged by the most exacting fiduciary standards.

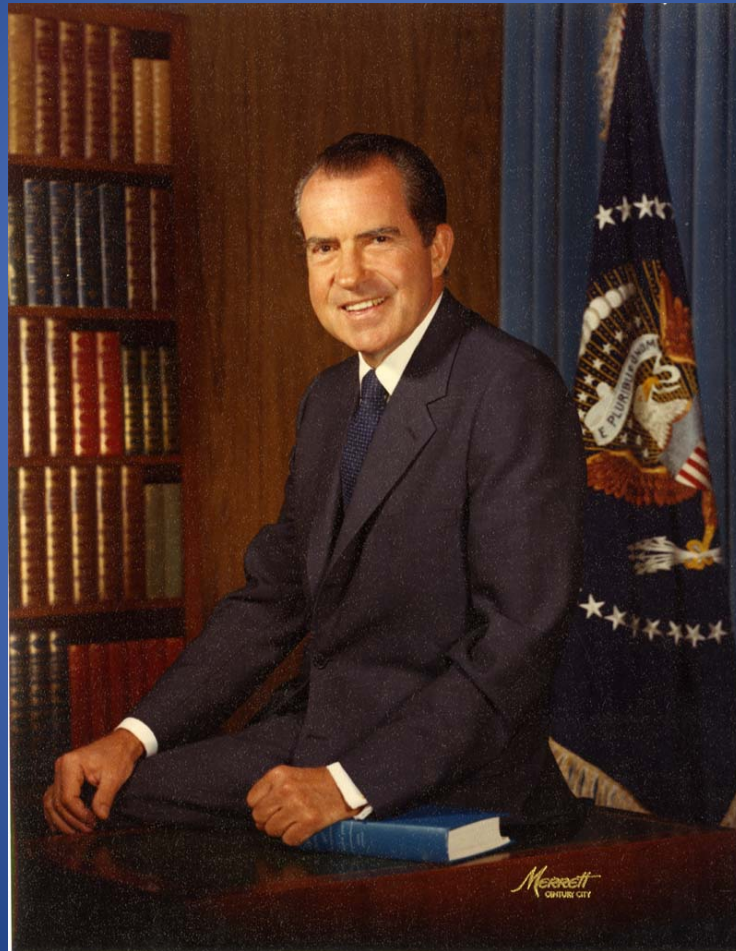
Termination Era



Menominee Tribe v. United States



Tribal Self-Determination Era



Inherent Tribal Authority



Williams v. Lee

[State law is preempted if it interferes with] the right of reservation Indians to make their own laws and be ruled by them.

359 U.S. 217, 220 (1959)

Santa Clara Pueblo v. Martinez

Although no longer "possessed of the full attributes of sovereignty," [Indian tribes] remain a "separate people, with the power of regulating their internal and social relations." ... They have power to make their own substantive law in internal matters, [including] ... membership ...; inheritance rules ...; ...domestic relations..., and to enforce that law in their own forums....

436 U.S. 49, 55-56 (1978)

Self-Determination Acts



Indian Gaming



Key Topics in Indian Law

American Indian Law Deskbook
Fourth Edition
Conference of Western Attorneys General

COHEN'S HANDBOOK OF

FEDERAL
INDIAN
LAW



2005 EDITION



LexisNexis

Tribal Authority over Nonmembers



Tribal Economies

