



Miss Menominee Nation 2022 fancy dances during the Neenah-Menasha Inter-Tribal Pow Wow. Photo by Sadie Cheyenne Wilson, ©2022 Sadie Cheyenne Photography

BY KRIS GOODWILL

# Menominee Termination and Restoration



**Because of changing federal policy regarding Indian tribes, federal statutes directed at specific tribes or all tribes, and ever-evolving case law, federal Indian law is very complex. This article focuses on the Menominee Indian Tribe’s termination and restoration against the backdrop of federal governmental policy toward all tribes in the United States.**

**T**he Menominee Indian Tribe of Wisconsin is one of the present-day tribes in Wisconsin whose origin story indicates tribal members lived on land that is now Wisconsin and the upper peninsula of Michigan for thousands of years. The Tribe originally inhabited northern, central, and southern areas of Wisconsin. The Tribe entered into several treaties ceding vast areas of its original territory. The Treaty of 1854 between the Tribe and the U.S. government reserved 276,480 acres of its original territory in northeastern Wisconsin, currently known as the Menominee Reservation.<sup>1</sup>

Since the treaty-making period between tribes and the U.S. government, the Tribe has been subject to federal Indian policy as determined by the federal government and subject to cases decided by the U.S. Supreme Court. Federal Indian policy plays a major role in the exercise of tribal sovereignty. It is important for legal professionals to understand or familiarize themselves with federal Indian policy when working with tribes. Unfortunately, to this day, Wisconsin school children are not taught very much about the tribes in Wisconsin despite many tribes being the largest employer in many areas of the state.

### Federally Recognized Tribes

Wisconsin is home to 11 federally recognized tribes. In the U.S., there are 574 federally recognized tribes; 229 are in Alaska. According to the 2020 Census, the population of American Indians in the U.S. is 9.7 million. According to a report by the House Committee on Ways and Means from 2020, yearly per capita income of Native Americans was \$17,584 compared to \$31,106 for the U.S. population as a whole. Financial poverty and other social ills continue to plague most tribal communities in the U.S.

## MENOMINEE TRIBE ORIGIN STORY

Long ago, as the Great White Underground Bear arose from under the mouth of the Menominee River, the Great Spirit took pity on the Underground Bear and turned him into a human being. The other Spirit animal beings joined and were also turned into human beings, creating the Menominee Tribe. The Menominee were given many gifts, including maple trees, sturgeon, and wild rice. We were gifted sustenance and a responsibility regarding stewardship and teachings regarding our relationship with all other living beings. Our ancestors knew us as “the Ancient Ones,” never having a migration story, but always living here sustainably in our ancestral lands. The Ojibwe and French traders called us “Omaeqnomenewak” or “People of the Wild Rice.”

- Abbreviated version **WL**

Language revitalization and revival of traditional practices are contributing to stronger tribal communities, and tribal traditional ecological knowledge is sought out by governmental agencies, environmental groups, and others in response to climate change. In Wisconsin, there are positive examples of the state government and environmental groups working with tribes to restore wild rice, use controlled burns and other methods to contain wildfires, preserve native and medicinal plants, restock fish in the state (on and off reservations), and learn a different worldview.

### Federal Indian Policy

**1787-1828.** Federal Indian policy since the establishment of the U.S. can be described as full



of ups and downs. From 1787 to 1828, after the U.S. gained its independence from Great Britain, the federal government continued to recognize tribes as independent nations and entered into treaties with them.

The U.S. Constitution did not extend citizenship to Native Americans because they were deemed citizens of their own nations. In the late 1790s, Congress passed laws prohibiting non-Indians from obtaining Indian land without the consent of the federal government. The tribes, at the time, continued to govern themselves. However, settlers were moving west and demanding, often stealing, Indian land.

**1828-1887.** From 1828 to 1887, Native Americans were pushed westward on the North American continent. President Andrew Jackson, who was very hostile to the tribes, assured colonists that he would authorize removal of Indians from the eastern states and open all Indian land to settlement. The Indian Removal Act authorized the president to move tribes to areas west of the Mississippi River.<sup>2</sup> At the time, Native Americans were seen as too “wild and savage” to remain in the east. Treaties relinquished tribal homelands, and many tribes were removed more than once.



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As the gold rush drew people to western North America, there were many treaty violations, buffalo were slaughtered, and many Native Americans were massacred. In 1871, the U.S. Congress enacted a law that ended treaty making with tribes. This symbolized that members of Congress no longer considered tribes independent nations and felt free to pass laws affecting tribal land guaranteed by treaty.

Through the establishment of Indian boarding schools, Indian children were separated from their families and severely punished for speaking their native languages or exercising traditional ways. The goal of boarding schools, like the Carlisle Indian Industrial School in Carlisle, Penn., was to “kill the Indian and save the man.” Many Indian boarding schools throughout the U.S. were still in operation in the 1970s and 1980s. Wisconsin was home to several boarding schools that did not allow Indian children to go home year-round.

### Allotment and Assimilation

**1887-1934.** The period 1887-1934 marked the era of allotment and assimilation. This was a shift in policy from removal and segregation. There were efforts by the federal government to acquire more Indian land and by perhaps well-meaning reformers to assimilate Native Americans so as to address abject poverty. Both forces were integral in the passage of the General Allotment Act.

This legislation, also known as the Dawes Act, authorized the federal government to create allotments or land parcels within reservations and issue 25-year patents of the parcels to tribal member heads of households before becoming taxable. Any remaining land within a reservation was sold to non-members in fee status as surplus land.

The hope was that tribal members who received an allotment would become farmers and ranchers and assimilate into the larger society. The U.S. Supreme Court, in *Yakima v.*

*Confederated Tribes*, noted that the goal of the Dawes Act was to end tribal sovereignty, erase reservation boundaries, and ensure assimilation, all without tribal consent.<sup>3</sup> The result was the loss of huge tracts of lands within reservation boundaries, making it difficult for tribal members who wished to maintain their traditional lifestyles.

The Dawes Act has had a lasting effect, resulting in checkerboard jurisdiction on Indian reservations and making land-use planning and zoning difficult at best. To this day, as a result of the allotment era, tribes are still attempting to get their “land back.”

### Indian Reorganization

**1934-1953.** From 1934 to 1953, the federal government focused on Indian reorganization, a policy that favored tribal sovereignty. The 1928 Meriam Report concluded that the General Allotment Act was a dismal failure.<sup>4</sup> The conditions on reservations and the growing criticisms of federal Indian policy led to sentiment favorable to restoring tribal independence and sovereignty.

The intent of the Indian Reorganization Act, passed in 1934, was to strengthen tribal sovereignty and self-sufficiency.<sup>5</sup> Allotment of tribal lands ended. Tribes were encouraged to adopt their own constitutions and become federally chartered corporations. This era was also considered paternalistic because tribes were not consulted and were encouraged to adopt constitutions provided by the Bureau of Indian Affairs (BIA) that reflected the structure of community organizations controlled by the federal government rather than tribal governments with traditional values. But this period is still recognized as a giant step forward toward rejuvenating tribal governments.

### Termination

**1953-1968.** From 1953 to 1968, the pendulum swung back to a policy of termination. There were attempts to abolish



Indian reservations and terminate inherent rights reserved by tribes due to their identity as legally independent Indian Nations. It was a return to a policy of assimilation to “improve” the lives of Native Americans and for the federal government to “get out of the Indian business.” Termination meant the end of the federal government’s trust relationship with tribes and services to tribes. During this period, Congress terminated 109 tribes. The tribes were directed to cease governmental operations and distribute all land and property to individual tribal members.

Termination was a dismal failure. Because of the experience of the Menominee Indian Tribe of Wisconsin (see discussion below), many tribes rejected termination. Congress enacted Public Law 280<sup>6</sup> in 1953. Five states (California, Minnesota, Nebraska, Oregon, and Wisconsin) gained criminal jurisdiction on Indian reservations even if the state did not want it. The law allowed additional states to pass their own laws expanding criminal jurisdiction on reservations. Relocation programs were also implemented. Those programs promised housing assistance and job training to Indians who left their reservations and moved to urban areas. Many of the promises did not materialize, and many tribal members returned to reservations.

## Self-Determination

**1968-Present.** Starting in 1968, the federal government shifted toward encouraging Native Americans to exercise their rights and self-determination of tribal governments. The policy, as articulated by President Ronald Reagan, was to “restore tribal governments to their rightful place among the governments of this nation and to enable tribal governments ... to resume control over their own affairs.”<sup>7</sup> This era has resulted in numerous federal statutes favorable to tribal governments. For example, Congress passed the Indian Child Welfare Act in 1978, placing legal restrictions on the

removal of Indian children from their homes and establishing placement preference with family or foster homes licensed by tribal governments.<sup>8</sup>

In 1968, Public Law 280 was limited by requiring the consent of the affected tribe. The Indian Health Care Improvement Act provides tribes with greater control of health care provided on reservations.<sup>9</sup> Other examples of favorable federal statutes include the Indian Gaming Regulatory Act of 1988, the Indian Arts and Crafts Act of 1990, the Native American Graves Protection and Repatriation Act of 1990, the Violence Against Women Act (VAWA) of 1994, and the Native American Housing Assistance and Self-Determination Act of 1996.<sup>10</sup> All but one U.S. president in this period promoted a government-to-government relationship between federal agencies and tribes. Many states, including Wisconsin, have passed their own consultation policies with tribes located in their respective states. Wisconsin’s consultation policy was reaffirmed by Gov. Tony Evers in 2021.

## Case Study of Menominee Termination and Restoration

The Menominee Indian Tribe of Wisconsin has several treaties with the U.S. The Treaties of 1854 and 1856 reserved the current reservation located in northeastern Wisconsin. Before 1854, as with other tribes, the federal government attempted to move the Tribe west of the Mississippi River to Minnesota. The Tribe resisted, and the current reservation was negotiated by Chief Oshkosh on behalf of the Menominee people. The federal government, pursuant to the treaties, promised to hold Menominee assets in trust (mostly from forestry) and supply basic community services because the Tribe was not able to sustain itself by traditional means of hunting, fishing, and gathering on a much smaller land base.<sup>11</sup>

The Menominee Forest is known worldwide for its sustained-yield

forestry practices. Even after 1854, the forest became the basis of a modest lumbering operation. In 1908, for the first time, a federal statute delegated responsibility to the U.S. Forest Service for administering sustained-yield harvest of the Menominee Forest. At the same time, the lumber mill on the Menominee reservation began in Neopit. It was controlled and managed by the BIA in cooperation with the U.S. Forest Service and became a source of employment for Menominee community members. The Tribe asserted its right to review the federal government’s operation and management of forestry assets and discovered that the BIA had engaged in clear cutting and gross mismanagement.

The Tribe obtained Congressional permission to sue the trustee (the BIA) for mismanagement of trust assets and was in court for 16 years. In 1951, the U.S. Court of Claims awarded the Tribe \$8.5 million because of the mismanagement of trust assets. The money was placed in the U.S. Treasury for the Tribe, but the Tribe could not spend the money without Congressional approval.

The Menominee Tribe was one of the 109 tribes slated for termination and was first on the list because of forestry assets, the lumber mill, and, arguably, the Court of Claims award from 1951. Once the realities of termination became known, other tribes refused termination, but the policy remained in effect until 1968.

## Court of Claims Distribution and Termination

In 1953, Menominee tribal members were living in financial poverty. Incomes, housing, health, and education all fell below national and state standards. Because of tribal members’ financial needs, the tribe decided to distribute a portion of its 1951 Court of Claims judgment in the amount of \$1,500 per tribal member. The distribution required Congressional approval.



The U.S. House of Representatives approved the distribution, but Sen. Arthur Watkins (R-Utah), who was also the chair of the Senate Committee on Indian Affairs, submitted an amendment calling for the termination of the Menominee Tribe before the distribution. In 1953, Watkins visited the Menominee Reservation. He reported to the Tribe that Congress had decided to terminate the Tribe within three years and tribal members would not receive the \$1,500 payments until after termination. This led to confusion, deception, and misunderstanding between the Tribe, tribal members, and the federal government.

Watkins reported to Congress that the Tribe voted in favor of termination. But many tribal members thought they were voting in favor of the distribution and that termination had already been decided. Congress passed the Menominee Termination Act in 1954,<sup>12</sup> believing it was approved by the tribal membership.

Tribal members received the \$1,500 payments, but tribal enrollment rolls were closed, the Tribe had to submit a “termination plan” to provide for future control of assets, federal services

ended, and tribal lands became subject to tax. The termination plan took seven years to complete.

The Tribe had to pay for studies, meetings, and designs as part of the planning process. There were discussions about whether the reservation would now become its own “county” or whether former tribal lands would become a part of a neighboring county such as Shawano, Oconto, or Langlade. The reservation became Menominee County.

As a result of termination, the reservation hospital and sewage systems were deemed below state standards, condemned, and closed. The BIA high school closed, and students were bused to Shawano High School. Dropout, expulsion, and truancy rates soared.

Tribal assets were turned over to Menominee Enterprises Inc. (MEI). “Former” tribal members received corporate shares in the business, but ownership of shares required knowledge of complicated, corporate style terms such as par value stocks, voting trusts, income bonds, and shareholder rights. The Menominee land base was significantly reduced, and MEI’s operating income went to pay taxes.

The lumber mill lacked money to

modernize or diversify its operations. MEI and “former” tribal members were forced to sell corporate shares and land to pay county and state taxes. In addition, some land was bought by developers who destroyed sites that had religious or cultural significance.

### Restoration

In 1968, the U.S. Supreme Court ruled that Menominee treaty rights to hunt, fish, gather, and engage in other activities survived termination.<sup>13</sup> Grassroots organizations started to form. One of these was DRUMS (Determination of Rights and Unity of Menominee Shareholders). Through lawsuits, DRUMS forced a restructuring of MEI so that shareholders (former tribal members) had more say and started to control MEI land sales, especially around Legend Lake and other large lakes. At the time, realtors would attract potential buyers to the area with free boat tours and \$10 steak dinners.

In 1971, DRUMS worked with attorneys Joseph Preloznik of Wisconsin Judicare and Charles Wilkinson and Yvonne Knight of the Native American Rights Fund (NARF) to help draft a restoration bill. The two-year bill-drafting process included community meetings with “former” tribal members in Menominee County, Milwaukee, and Chicago.

The restoration bill was introduced in Congress on April 20, 1973. DRUMS members paid close attention to the Congressional record. Three members of Congress, Sen. Edward Kennedy, Rep. David Obey, and Rep. Lloyd Meeds (who was also chair of the Indian Affairs subcommittee of Interior and Insular Affairs), were supporters and sponsors of the bill. Field hearings were held in Keshena in May 1973. All “former” tribal members who testified at the hearings were in favor of restoration. In June 1973, three busloads of tribal members traveled to Washington, D.C. to show their support for the restoration bill.

On Sept. 17, 1973, four Senators, Gaylord Nelson, William Proxmire,

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Edward Kennedy, and Henry Jackson, testified in favor of the bill at a Senate subcommittee hearing, which started with a moving address by tribal elder Ernest Neconish. Seven “former” Menominee tribal members testified in favor of the bill: Sylvia Wilber, chair of MEI; Theodore Boyd, vice president of MEI; Ben Miller, chair of the Menominee County Board; Ada Deer, chair of the Menominee Common Stock and Voting Trust; Robert Deer, vice-chair of the Menominee Common Stock and Voting Trust; Carol Dodge, Menominee County Education Committee member; and Shirley Daly, prominent member of DRUMS.

On Oct. 16, 1973, the restoration bill passed the U.S. House of Representatives with a vote of 404-3. The U.S. Senate approved the Restoration Act on Dec. 7, 1973. President Richard Nixon signed the bill on Dec. 22, 1973.<sup>14</sup>

The Menominee Restoration Act provides for “maximum Menominee Indian self-determination.” The law placed the Menominee Forest back into trust status, reinstated all treaty rights, and restored services, including health and education. The tribal membership passed a new tribal constitution, and the Menominee tribal member enrollment roll was restored. The tribal government-regulated

hunting and fishing “treaty rights” on the reservation and Menominee County remain in existence.

Grassroots community involvement, including that of DRUMS members such as Ada Deer, Sylvia Wilber, Shirley Daly, and James White, was especially important to passage of the Restoration Act. Many people who did not reside on the reservation also pushed for passage of the Restoration Act. Families from Milwaukee and Chicago protested against termination and the sale of land within the exterior boundaries of the reservation. The grassroots efforts also included a march from Keshena to Madison (220 miles) to bring attention to the devastating effects of termination and the push for restoration. As a member of the Menominee Tribe, I feel deep appreciation for and am indebted to those tribal members who were dedicated to this vital cause.

## Conclusion

Restoration continues for the Menominee Indian Tribe of Wisconsin, but there are many bright spots including language and culture revitalization, the continuation of sustained-yield forestry practices, wild rice restoration efforts, and operation of the College of the Menominee Nation (one of two tribal colleges in Wisconsin). Unfortunately,

social ills remain, including historic trauma from boarding schools, alcohol and drug abuse, fentanyl deaths, poverty, and high rates of unemployment.<sup>15</sup>

The Menominee termination and restoration story is not well known, and it is still a challenge to get Native American education included in school curriculums on a consistent basis. Indian tribes in the U.S. are doing better and have more authority and economic power than at any time in the past two centuries. However, tribes still face some of the same challenges as developing nations: poverty, lack of infrastructure, and lack of investment.

Because of changing federal policy regarding Indian tribes, federal statutes directed at specific tribes or all tribes, and ever-evolving case law, federal Indian law is very complex. The good news is that there are measures in place to address the complexity and shortfalls holding back development and economic prosperity on tribal lands. A determined effort must be made to educate the public on the importance of honoring commitments the U.S. government and state governments made to Indian tribes. **WL**

## ENDNOTES

<sup>1</sup>The Treaty of 1856 ceded approximately 46,000 acres for the Stockbridge-Munsee Reservation.

<sup>2</sup>Indian Removal Act, 25 U.S.C. § 174 (1830).

<sup>3</sup>*County of Yakima v. Confederated Tribes & Bands of Yakima Indian Nation*, 502 U.S. 251, 254 (1992).

<sup>4</sup>Nat'l Indian L. Lib., *Meriam Report: The Problem of Indian Administration (1928)*, <https://narf.org/nill/resources/meriam.html> (last visited May 16, 2024).

<sup>5</sup>Indian Reorganization Act, 25 U.S.C. § 5101 (1934).

<sup>6</sup>Pub. L. No. 83-280, 67 Stat. 588 (1953) (codified at 18 U.S.C. § 1162, 28 U.S.C. § 1360, and 25 U.S.C. §§ 1321-1326).

<sup>7</sup>Pres. Ronald Reagan, *Statement on American Indian Policy* (1983), <https://www.reaganlibrary.gov/archives/speech/statement-indian-policy>. See also Pres. Richard Nixon, *Special Message to the Congress on Indian Affairs* (1970), <https://www.presidency.ucsb.edu/documents/special-message-the-congress-indian-affairs>, for a similar message.

<sup>8</sup>Indian Child Welfare Act, Pub. L. No. 95-608, 92 Stat. 3069 (1978) (codified at 25 U.S.C. §§ 1901-1963).

<sup>9</sup>Indian Health Care Improvement Act, Pub. L. No. 94-437, 90 Stat. 1400 (1976) (codified at 25 U.S.C. §§ 1601-1603).

<sup>10</sup>Violence Against Women Act, Pub. L. No. 103-322, 108 Stat. 1941 (1994) (codified at 34 U.S.C. §§ 12291-12514).

<sup>11</sup>Accounts and information from Nicholas C. Peroff, *Menominee DRUMS, Tribal Termination 1954-1974*, and Native American Rights Funds archives.

<sup>12</sup>*Menominee Tribe v. United States*, 391 U.S. 404 (1968).

<sup>13</sup>Menominee Restoration Act, Dec. 22, 1973, Pub. L. No. 93-197, 87 Stat. 770 (1973) (formerly codified at 25 U.S.C. §§ 903-903g).

<sup>14</sup>Dec. 22, 2023, was the 50th anniversary of passage of the Menominee Restoration Act.

<sup>15</sup>See, e.g., Menominee Indian Tribe of Wis., *Brief History - About Us*, <https://www.menominee-nsn.gov/culturepages/briefhistory.aspx> (last visited May 17, 2024); Indian Health Serv., *Behavioral Health* (March 2023), <https://www.ihs.gov/newsroom/factsheets/behavioralhealth/>; Bokie Muigai, *Claradina Soto, PhD, Testifies on Growing Fentanyl Crisis in Native American Communities*, Keck Sch. of Med. of USC (March 15, 2024), <https://keck.usc.edu/news/claradina-soto-phd-testifies-on-growing-fentanyl-crisis-in-native-american-communities/>. **WL**