

# AN INDIAN TRUST FOR THE TWENTY-FIRST CENTURY

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The trust responsibility has served as the source of federal authority to wreak all manner of harm on tribal communities. The responsibility that the United States has assumed to protect Indian wellbeing has created the "plenary power" that the United States exercises in Indian affairs. This power has been employed often to the enormous disadvantage of Indians. This power arose from two key assumptions among the three branches of the federal government: (1) Indians were incompetent to deal with the complex political and economic systems of white Americans and required federal protection and (2) Indian Tribes would disappear within one or two generations. These assumptions were understandable at the beginning of the twentieth century because Indians had been deprived entirely of their traditional means of sustenance and had virtually no economic system. Moreover, the purpose of federal policy at the time was the destruction of the Tribes, leavened by a humane belief that individual Indians could be saved through immersion into white culture.

These assumptions shaped the trust responsibility at its beginning, and its effects reside in the current administration of the trust. Legal doctrine governing the trust responsibility and federal plenary power has changed little in the past century, even while Indian communities have undergone profound change. In the past 40 years, Indian Tribes have demanded and gained fundamental changes in the way that the United States relates to and delivers services to them. More importantly, though Indians still lag behind the general population in educational attainment, the gap has closed considerably and new generations of college-educated experts are entering tribal government. Tribes have not disappeared, and they are not incompetent. The assumptions underlying the trust are invalid, and it necessarily follows that the specifics of the trust hold little value in the making of modern Indian policy. The trust responsibility must be modernized to meet the new reality.

The concept of a federal responsibility for Indian property arose in the nineteenth century as a means of protecting Indians from intrusions by outsiders. By the end of that century, it had evolved into an intrusive means of denying Tribes control of their lands through the exercise of an unconstrained federal power to manage Indian property regardless of the desires of the Indians. Congress's exercise of this "plenary power" deprived the Tribes of two-thirds of the lands to which the Tribes held recognized title in less than 50 years. The concept of the trust responsibility and the nature of federal power over Indian lands that was born in this era may still be found in modern administration of the trust.

These devastating losses were followed by inconsistent federal policies that swung wildly from policies supporting tribal selfgovernance and federal protection of tribal resources to policies literally disestablishing tribal governments and forswearing any further federal responsibility for tribal resources. As a result, the problems of trust administration that emerged early in the twentieth century festered into the collapse of the trust administration system at the century's end. Further, this history of traumatic shifts in policy leaves tribes deeply wary of any federal policy initiative to restore tribal resources to tribal control.