

# Federal policy toward minorities: 1787–1980

by Gary D. Sandefur

---

This material is taken from Sandefur's conference paper, "Group-Specific Programs and Policies: Lessons from the Native American Experience."

---

A review of the actions of the executive, legislative, and judicial arms of the federal government over time indicates that there was never a consistent "minorities" policy, nor in fact was there a consistent policy toward any particular group. The principal policies and laws affecting minorities are listed in Table 1.

The U.S. Constitution recognized the special status of American Indians and assigned the federal government rather than state governments the responsibility for dealing with them. Black slaves were accorded no rights in the Constitution, and there was no Hispanic population to deal with. When the Constitution was drawn up and during the early 1800s, the U.S. government was preoccupied with Indians. At that time the American Indian population was almost one-quarter the size of the white population and occupied land which the U.S. government wanted to open to white settlement.

The eventual solution arrived at for dealing with American Indians was removal. During the 1830s, removal focused on moving as many Indian groups as possible from east of the Mississippi to west of it. The cases handled by the John Marshall Supreme Court in 1831 affirmed the principle of limited Indian sovereignty (i.e., Indian tribal governments could operate in a fashion similar to state governments; although Indians were required to obey all federal laws, they were not required to follow state laws on Indian land). Mid-nineteenth-century removal was directed at opening up areas west of the Mississippi by confining tribes to small, isolated reservations, several of which were located in Oklahoma. At that time, Oklahoma was designated as Indian Territory.

During the 1800s U.S. policy toward blacks underwent major changes. That black slaves had no civil rights was affirmed in the famous *Dred Scott v. Sanford* decision of 1857. However, the Civil War brought about the end of

slavery and the rights of blacks were institutionalized through the Thirteenth, Fourteenth, and Fifteenth Amendments to the U.S. Constitution.

In 1848, the Treaty of Guadalupe Hidalgo granted citizenship to individuals of Mexican descent who decided to remain in the new parts of the United States which had belonged to Mexico.

After the Civil War then, both blacks and Mexican Americans had the legal rights of citizens in principle, but of course not in practice. American Indians, on the other hand, could become citizens only through renouncing their status as Indians. Citizenship in a tribe was seen as incompatible with citizenship in the United States.

During the 1890s several governmental actions altered the way in which the United States dealt with minority groups. In 1891 the Court of Private Land Claims was established, largely to deal with the claims of Hispanos (individuals of Mexican descent living in areas formerly part of Mexico) who had lost land after the 1848 treaty. This action emphasized the rights of Hispanic citizens. The Treaty of Paris in 1898 shifted control of Puerto Rico from Spain to the United States.

The last Indian treaty was signed in 1871. During the 1890s, the U.S. government took the position that its policy of treating Indians as a distinct group was incorrect and began to advocate the assimilation of Indians into mainstream American life. The major mechanism for doing so was the Dawes Act of 1887, which instituted allotment policy. It provided that first, communally owned Indian land would be divided up among individual Indians; the excess land would be purchased by the federal government and opened up to white settlement. Second, Indian tribes would cease to exist, and Indians would become citizens of the United States. Allotment policy was not administered consistently. Its major impact was in Oklahoma, where all land was allotted; Oklahoma ceased to be Indian Territory. While American Indians were thus being integrated into American society, blacks were being accorded a "separate but equal" status through *Plessy v. Ferguson*.

The first half of the twentieth century was a time of relative consistency (but not fairness) in the treatment of blacks and Puerto Ricans, and inconsistency in the treatment of American Indians and individuals of Mexican descent. "Separate but equal" guided most federal policies toward blacks. The

**Table 1**  
**Major Laws, Federal Policies, and Supreme Court Decisions**  
**regarding American Indians, Blacks, and Hispanics, 1787–1980**

		Event				
		American Indians	Blacks	Mexican Origin	Puerto Ricans	Cuban Origin
1787	U.S. Constitution					
1830	Indian Removal Act					
1831	Marshall's Supreme Court: <i>Cherokee Nation v. Georgia</i> , <i>Worcester v. Georgia</i>					
1848				Treaty of Guadalupe Hidalgo		
1857			<i>Dred Scott v. Sanford</i>			
1863			Emancipation Proclamation			
1868			Fourteenth Amendment			
1871	Last treaty; legislative era begins					
1887	Dawes Act (allotment policy)					
1891				Court of Private Land Claims		
1896			<i>Plessy v. Ferguson</i>			
1898					Treaty of Paris	
1917				First Bracero Program		
					Jones Act (citizenship)	
1921	Snyder Act					
1924	Citizenship Act			_____ Immigration Act (no restrictions on Western Hemisphere immigration) _____		
1929–34				"voluntary repatriation"		
1934	Indian Reorganization Act; Johnson-O'Malley Act					

(continued on opposite page)

Jones Act, which granted citizenship to Puerto Ricans, and the commonwealth status granted to Puerto Rico in 1948 guaranteed free movement of Puerto Ricans between the island and the mainland.

The Snyder Act of 1921 authorized the federal government to provide special services to Indians. All American Indians were granted U.S. citizenship in 1924, regardless of whether they lived on tribally or privately owned land. However, in 1934, Congress passed the Indian Reorganization Act, which ceased allotments and reinstitutionalized tribal governments. Under reorganization, it was possible to be a tribal citizen as well as a U.S. citizen. In addition, Congress passed the Johnson-O'Malley program, which authorized

the federal government to contract with state and local governments to provide services to American Indians. One of the important consequences of this program was that American Indians in Oklahoma and other areas were integrated into white schools long before blacks and Hispanic Americans. This integration was facilitated by the money given to local school districts for each Indian student, and by the relatively small size of the population of Indian students in most school districts. School districts continue to receive per capita payments for American Indian students, though the present administration has proposed eliminating this program.

Table 1, continued

	Event				
	American Indians	Blacks	Mexican Origin	Puerto Ricans	Cuban Origin
1942			Second Bracero Program		
1948				Commonwealth status	
1953	House Concurrent Resolution 108: Termination				
1954		<i>Brown v. Board of Education</i>	Operation Wetback		
1961					Cuban Refugee Program
1964		Civil Rights Act	Immigration Act (hemispheric restrictions)		
1965		Voting Rights Act		Bilingual education	
1967			Migrant Education Program		
1968		Fair Housing Act			
1974	<i>Morton v. Mancari</i>				
1975	Indian Self-Determination and Educational Assistance Act			Bilingual ballots	
1978		<i>UC v. Bakke</i>			
1979		<i>United Steelworkers v. Weber</i>			
1980		<i>Fullilove v. Klutznick</i>			

**Sources:** Haywood Burns, "From Brown to Bakke and Back: Race, Law and Social Change in America," *Daedalus*, 110 (1981), 219-232; L. F. Estrada, F. Chris Garcia, Reynaldo Flores Macias, and Lionel Maldonado, "Chicanos in the United States: A History of Exploitation and Resistance," *Daedalus*, 110 (1981), 103-132; U.S. Congress, Office of Technology Assessment, *Indian Health Care*, OTA-H-290 (Washington, D.C.: U.S. GPO, 1986); F. P. Prucha, *The Great Father: The United States Government and the American Indians*, vols. 1-2 (Lincoln, Neb.: University of Nebraska Press, 1984).

For Mexican Americans, the early part of the twentieth century saw the first contract labor (bracero) program, in 1917, and the Immigration Act of 1924, which placed no restrictions on Western Hemisphere immigration. This was followed by "voluntary repatriation" during the Great Depression, and a second contract labor program during the 1940s. Although "voluntary repatriation" was directed toward Mexicans rather than Mexican Americans, many Mexican Americans were illegally forced to move to Mexico. In sum, during the first half of this century, the actions of the federal government reinforced the "differences" between minority groups and the white majority, although its actions toward Mexican Americans and American Indians were very inconsistent.

Federal actions since 1950 have largely been designed to eliminate racial and ethnic differences in treatment, with a few exceptions and several reversals of position. In 1953, the House of Representatives and the Senate passed House Concurrent Resolution 108, which called for the termination of the special legal relationship between the federal government and tribal governments. The major principles underlying termination were that the federal government would end its special relationship and tribes would give up their rights and privileges as governments. This would have ended the unique legal status of Indians and made them "just another minority group" in the United States. A number of tribes were terminated under this resolution. Another part of the termination program was relocation, which provided assistance to Indians who wished to relocate from isolated rural

areas to urban areas with better opportunities for housing and jobs. The ending of their "special status" was not well-received by Indian leaders.

In 1954, the U.S. Supreme Court ruled in *Brown v. Board of Education* that the "special status" of blacks was unconstitutional. The ending of that status was applauded by black leaders, since it had been used to deny them rights and privileges, whereas the special status of Indians had been used to grant them rights and privileges.

Operation Wetback, designed to apprehend and deport undocumented Mexican workers, was also initiated in 1954. Although it was directed at illegal Mexican immigrants rather than legal arrivals, the title and spirit of the Immigration and Naturalization Service actions offended the Mexican American community.

In 1959 Castro gained control of Cuba, and in 1961 the U.S. government began the Cuban Refugee Program to assist "political" refugees from Cuba at the same time that it was seeking to limit the flow of "economic" refugees from Mexico.

The 1960s brought major civil rights legislation that was directed toward blacks, but which also applied to American Indians and Hispanic Americans. The Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Housing Act of 1968 were all designed to ensure that race and ethnicity did not prevent individuals from enjoying basic rights that were guaranteed to all citizens.

The Immigration Act of 1964 placed hemispheric limits on immigration. In 1965, bilingual education, which was directed primarily at Hispanic Americans, was initiated in the public schools, and in 1967 the Migrant Education Program was developed to establish and improve programs to meet the special educational needs of migratory workers. Also, the enforcement of other basic rights began to take race and ethnicity into account. That is, not only did the federal government commit itself to ensuring that blacks, Indians, and Hispanics would not be discriminated against in the future, it also committed itself to efforts to overcome the effects of past discrimination. This, of course, required the use of race and ethnicity to determine who had suffered from past discrimination.

In the *Morton v. Mancari* decision of 1974, the Supreme Court ruled that special Indian programs are not racial in nature but based on a unique political relationship between Indian tribes and the federal government. In 1975, the federal government further institutionalized the use of race and ethnicity in programs and policies through the Indian Self-Determination and Educational Assistance Act and legislation requiring that bilingual ballots be available in areas with concentrations of bilingual or non-English speakers. Indian self-determination was designed to replace termination as official federal policy. Self-determination reaffirmed the role of tribal governments in dealing with Indian issues and

problems and provided mechanisms through which programs previously administered by the federal government through the Bureau of Indian Affairs were turned over to tribal governments.

The late 1970s and 1980s have seen the Supreme Court rule in favor of the special status of American Indians and in the use of race and ethnicity in overcoming past discrimination. There were several landmark decisions during this period. In the *Bakke* case, the Supreme Court ruled that it was acceptable under certain circumstances to take race into account, but that numerical quotas of the kind used at the University of California at Davis were unconstitutional. In *United Steelworkers of America v. Weber*, the Court in 1979 upheld a voluntary affirmative action plan that gave blacks priority for training over white workers with more seniority. And in *Fullilove v. Klutznick* (1980), the Court upheld the minority set-aside program that required 10 percent of public construction funds to go to minority contractors.

So we are at a peculiar point in American history. On the one hand, we as a society have decided that neither race nor ethnicity should be used to deny access to opportunities. On the other hand, we, or at least the three branches of the federal government, have decided that race and ethnicity must be used as criteria to overcome the effects of past discrimination. The United States still has no consistent policy for dealing with minority groups, and it is unclear whether it could or should have such a policy. ■

### Institute Publications

The subscription form at the back of this issue is for papers printed in fiscal year 1987-88. Subscriptions for the year 1986-87 include Discussion Papers no. 807-86 through 830-87 and Reprints 546 through 558. A complete set of these papers can be obtained from the Institute for \$35.00. Our booklet *Recent Publications* lists the papers currently available from the Institute. The booklet is free upon request. Individual Discussion Papers cost \$3.50. Reprints cost \$2.00.