

American Indian Tribal Sovereignty Primer

American Indian Policy Center

Many of us have not had an opportunity to learn the facts about the unique relationship between the United States and the American Indian tribes. Sovereignty is the foundation upon which this relationship is built. The purpose of this document is to provide the reader with a basic understanding about the sovereign status of American Indian tribes.

What is Sovereignty?

Sovereignty is an internationally recognized concept. A basic tenet of sovereignty is the power of a people to govern themselves.

Tribal Sovereignty

American Indian tribal powers originate with the history of tribes managing their own affairs. Case law has established that tribes reserve the rights they had never given away.¹

American Indian Tribes Possess a "Nation-within-a-Nation" Status

Treaties

Treaties formalize a nation-to-nation relationship between the federal government and the tribes.

Trust Responsibility

In treaties, Indians relinquished certain rights in exchange for promises from the federal government. Trust responsibility is the government's obligation to honor the trust inherent to these promises and to represent the best interests of the tribes and their members.

The U.S. Constitution

The U.S. Constitution recognizes Indian tribes as distinct governments. It authorizes Congress to regulate commerce with "foreign nations, among the several state, and with the Indian tribes."²

Court Precedence

Three 19th century Supreme Court opinions serve as a cornerstone to understanding the sovereign status of Indian nations. The cases are the most widely cited with respect to tribal sovereignty.

Johnson v. McIntosh concerned the validity of a tribal land grant made to private individuals³.

* Provided that tribes' rights to sovereignty are impaired by colonization but not disregarded.

* Held that the federal government alone has the right to negotiate for American Indian land.

Cherokee Nation v. Georgia involved an action brought against the state of Georgia by the Cherokee Nation, which sought relief from state jurisdiction on tribal lands.⁴

* Described Indian tribes as "domestic dependent nations.

* Maintained that the federal-tribal relationship "resembles that of a ward to his guardian."

Worcester v. Georgia concerned the application of Georgia state law within the Cherokee Nation.⁵

* Held that tribes do not lose their sovereign powers by becoming subject to the power of the U.S.

* Maintained that only Congress has plenary (overriding) power over Indian affairs.

* Established that state laws do not apply in Indian Country.

Some Modifications in the Nation-to-Nation Relationship

In 1953, congress modified the federal-tribal relationship in five states through the passage of Public Law 280. More recently, the Indian Child Welfare Act and the Indian Gaming Regulatory Act modified the relationship.

Public Law 2806 (1953)

Provides for five states, including Minnesota (with the exception of the Red Lake reservation), to assume general criminal⁷ and some civil⁸ jurisdiction over Indian reservations within the state. Tribes retain

limited criminal and general civil jurisdiction⁹, but because of a lack of resources have generally not fully assumed these responsibilities.

Indian Child Welfare Act¹⁰ (1978)

Establishes procedures state agencies and courts must follow in handling Indian child custody matters. Creates dual jurisdiction between states and tribes that defers heavily to tribal governments.

Indian Gaming Regulatory Act¹¹ (1988)

Should a tribe decide to engage in casino gaming, this act requires the state to negotiate in good faith with the tribe to form a compact setting forth games, limits and other terms.

Tribal Sovereignty as a Paradox

While the U.S. government recognizes American Indian Tribes as sovereign nations, the U.S. congress is recognized by the courts as having the right to limit the sovereign powers of tribes. However, Congress must do so in definite terms and not by implication.

What Does This Mean?

- * Tribes remain sovereign nations and possess self-government.
- * Tribes have a nation-to-nation relationship with the U.S. federal government.
- * Only Congress has plenary (overriding) power over Indian affairs.
- * State governance is generally not permitted within reservations.

For Further Reference

This is only a general framework for understanding the unique relationship between the American Indian tribes, the federal government and the states. Further references see the following:

- * National Convergence of State Legislatures, States and Tribes Building New Traditions (James B. Reed and July a. Zelio eds., 1995)
- * Federal Indian Law (David H. Getches et al., 3rd. ed. 1993)
- * The Rights of Indians and Tribes (Stephen L. Pevar, 2nd. ed. 1992)
- * Indian Tribes as Sovereign Governments (American Indian Resources Institute, 1988)
- * Handbook of Federal Indian Law (Felix A. Cohen, 1988)

Endnotes

1. U.S. v. Winans, 198 U.S. 371 (1905);
Lac Court Oreilles v. Voigt, 700 f. 2d 341 (1983);
Lac du Flambeau v. Stop Treaty Abuse, 991 F. 2d 1249 (1993)
2. U.S. Constitution, Art. 1, sec. 8, clause 3.
3. Johnson v. McIntosh, 21 U.S. 543 (1823).
4. Cherokee Nation v. Georgia, 30 U.S. 1 (1831).
5. Worcester v. Georgia, 31 U.S. 515 (1832).
6. 18 U.S.C. Sec. 1162; 28 U.S.C. Sec. 1360.
7. Provides for general state jurisdiction over law enforcement, juvenile justice and courts.
8. Permits state courts to resolve private disputes that occur upon reservations.
9. Bryan v. Itasca, 426 U.S. 373 (1976).
10. 25 U.S.C. sec. 1901-1963.
11. 25 U.S.C. sec. 2701-2721 (Supp. 1994).

Credits

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