

# TRIBAL SOVEREIGNTY | SELF-GOVERNANCE | SELF-DETERMINATION

Adapted from excerpts from:  
TM 112 online curriculum <http://tribalmgmt.uaf.edu/tm112/>  
<http://blog.nativepartnership.org/what-is-tribal-sovereignty/> by Murray Lee  
Wikipedia

**Sovereignty - the inherent authority to govern Tribal Government affairs and citizens; existing as nations that have recognized control over their own affairs;** to live unencumbered by the yoke of an outside power determining and re-determining their fate.

For the federal government, **U.S. tribal sovereignty means that Native American tribes are "domestic dependent nations"** that exist within the boundaries of the U.S. and that they are wards of the U.S., even though they may operate and manage some internal tribal affairs. From the U.S. viewpoint, tribes do not exist as truly sovereign and independent nations.

## **Sovereignty and the United States Constitution**

- Article I, Section 2, Clause 3 states that "Representatives and direct Taxes shall be apportioned among the several States ... excluding Indians not taxed."
- Article I, Section 8 of the Constitution states that "Congress shall have the power to regulate Commerce with foreign nations and among the several states, and with the Indian tribes, "and
- The Fourteenth Amendment, Section 2 amends the apportionment of representatives in Article I, Section 2 above.

These Constitutional provisions, and subsequent interpretations by the Supreme Court (see below), are today often summarized in three principles of U.S. Indian law:

- **Territorial sovereignty:** Tribal authority on Indian land is organic and is not granted by the states in which Indian lands are located.
- **Plenary power doctrine:** Congress, and not the Executive Branch or Judicial Branch, has ultimate authority with regard to matters affecting the Indian tribes. Federal courts give greater deference to Congress on Indian matters than on other subjects.
- **Trust relationship:** The federal government has a "duty to protect" the tribes, implying (courts have found) the necessary legislative and executive authorities to affect that duty.

Tribal Governments **inherent right to govern themselves** is at the foundation of their constitutional status — the power is not delegated by congressional acts. Congress can, limit tribal sovereignty. Unless a treaty or federal statute removes a power, the tribe is assumed to possess it. Current federal policy in the United States recognizes sovereignty and the government-to-government relationship.

**Myth** Native Americans as "super citizens" receiving "special rights."

**Reality** Historically, Native Americans have had to fight tooth and nail for recognition and to compel the United States to live up to its treaty obligations.

## TRIBAL SOVEREIGNTY IN PRACTICE - Self-Determination & Self-Governance

**Ideal** When Tribal Governments operate as truly sovereign nations, practicing governance and authority held prior to colonization. **Proven to lead to social, cultural, physical, and economic wellness.**

**Reality** Centuries of conflict, relocation, removal, and assimilation, has limited Tribal Government rights to steward their traditional territories. Most Indian land is held in trust by the United States, and federal law often regulates the political and economic rights of tribal governments. Tribal jurisdiction over persons and things within tribal borders are often at issue. While tribal criminal jurisdiction over Indians is reasonably settled, Tribes are still striving to achieve criminal jurisdiction over non-Indian persons who commit crimes in Indian Country.

Tribal Nations within the United States practice their sovereignty within a spectrum, some with established tribal laws and courts, some actively stewarding tribal lands, some actively governing tribal education, and others having not yet reclaiming tribal governance. The levels of experience tribes have in independently managing their affairs varies greatly due to unique histories, extreme economic and social injustices.

### Self-Determination

- Native American **self-determination** refers to the social movements, legislation, and beliefs by which the Native American tribes in the United States exercise self-governance and decision making on issues that affect their own people.
- Self-determination is defined as the movement by which the Native Americans sought to achieve restoration of tribal community, self-government, cultural renewal, reservation development, educational control, and equal or controlling input into federal government decisions concerning policies and programs.
- In the 1970s Native American self-determination replaced Indian termination policy as the official United States policy towards Native Americans.
- Congress passed the **Indian Self-Determination and Education Assistance Act (ISDEAA)** in 1975, providing authority tribes and tribal organizations to run their own programs and deliver the services created through the federal trust responsibility such as health, education, social services, justice, roads, and housing.
- The Act is also referred to as P.L. 638 and tribes may assume programs from the Indian Health Service and the Bureau of Indian Affairs through 638 contracts or compacts.
- The federal Self-Determination Act programs are administered through the BIA and IHS **Offices of Self-Governance.**
- Today, Self-Governance allows Tribes maximum flexibility to use and redesign Federal dollars associated with assumed PSFAs to meet local community service needs and Tribally-driven priorities.
- Services provided under the ISDEAA bring in around one billion dollars annually to Alaska.

### **Alaska Native Claims Settlement Act (ANCSA) 1971**

- Largest land claims settlement in U.S. history.
- Extinguished aboriginal land and resource claims.
- Placed indigenous lands under the ownership of Alaska Native corporations with Alaska Native shareholders.

### **Indian Child Welfare Act (ICWA) 1978**

- Stop the separation of American Indian and Alaska Native children from their families and communities, by being adopted out into non-Native homes.
- Requires the child's tribe is notified and allowed to intervene in state cases. Requires preference be given to placing children in Native homes.
- Passage of ICWA that encouraged Alaska tribes to organize tribal courts in the 1980s to protect their own children.

### **Indian Self-Determination and Education Assistance Act (ISDEAA) 1975**

#### **Alaska National Interest Lands Conservation Act (ANILCA) 1980**

- Title VIII gave a preference for subsistence hunting and fishing to rural residents of Alaska
- Declared unconstitutional by the Alaska Court system.
- Dual Management - federal government manages subsistence on federal lands and waters, while the State manages it on State lands and waters. Subsistence for Alaska Native people remains not adequately protected as hunting and fishing resources dwindle, and competition for them increases.

### **Tribal Recognition in Alaska 1993**

- Bureau of Indian Affairs under Assistant Secretary Ada Deer specifically listed Alaska tribes on the List of Federally Recognized Tribes, and Congress confirmed the list in 1994.
- 229 federally recognized tribes in Alaska.
- Federal recognition tribes means that tribes have 'sovereignty', the authority to govern.

### **Tribal Jurisdiction**

- Jurisdiction is the authority to make and enforce laws, and tribes in Alaska have jurisdiction over internal affairs and which is generally membership based.
- Tribal jurisdiction in Alaska has been the subject of debate for the past several decades, and will continue to be well into the future.
- Tribes in Alaska operate tribal courts and have jurisdiction over their internal affairs and membership based jurisdiction particularly in the area of domestic relations such as adoptions, child custody and protection, and domestic violence.

**How does a Tribal Nation that has become dependent on federal assistance now enact sovereignty, becoming self-sufficient and self-determining in all aspects of tribal governance?**