

FREQUENTLY ASKED QUESTIONS

CONCERNING AMERICAN INDIANS AND ALASKA NATIVES

Indian Nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil . . . The very term "nation," so generally applied to them, means "a people distinct from others." -- John Marshall, 1832 Worcester v. Georgia.

What Is the Legal Status of American Indian and Alaska Native Tribes?

Article 1, Section 8 of the Constitution of the United States vests the federal government with the authority to engage in relations with the tribes, and thereby, firmly places tribes in the Constitutional family of our nation. When the governmental authority of tribes was first challenged in the 1830's, Chief Justice John Marshall articulated the fundamental principle that has guided the evolution of federal Indian law to the present -- tribes possess a nationhood status and retain inherent powers of self-government.

What Are the Inherent Powers of Tribal Self-government?

Tribes possess all powers of government, except those, which Congress has expressly extinguished or which the Supreme Court has ruled are inconsistent with overriding national interests. Tribes, therefore, possess the right to form their own government; to make and enforce laws, both civil and criminal; to tax; to establish membership; to license and regulate activities; to zone; and to exclude persons from tribal territories.

Limitations on tribal powers of self-government are few, and include the same limitations applicable to states; e.g., neither tribes nor states have the power to make war, engage in foreign relations, or coin money.

How Are Tribes Organized?

Tribes have the inherent right to operate under their own governmental systems. Many have adopted constitutions, while others operate under Articles of Association or other bodies of law, and some still have traditional systems of government. The chief executive of a tribe is generally called the tribal chairperson, but may also be called principal chief, governor, or president. The chief executive usually presides over what is typically called the tribal council. The tribal council performs the legislative function for the tribe, although some tribes require a referendum of the membership to enact laws.

What Does the Term "Federally Recognized Tribe" Mean?

"Recognition" is a legal term meaning that the United States recognizes a government-to-government relationship with a tribe and that a tribe exists politically in a "domestic dependent nation status." A federally recognized tribe is one that was in existence, or evolved as a successor to a tribe at the time of original contact with non-Indians.

Federally recognized tribes possess certain inherent rights of self-government and entitlement to certain federal benefits, services, and protections because of the special trust relationship.

What is the Jurisdiction of Tribal Courts?

Tribal courts have civil jurisdiction over Indians and non-Indians who either reside or do business on the reservation. Tribal courts have criminal jurisdiction over tribal offenses occurring, and committed by American Indians in Indian Country.⁽¹⁾

Why Are American Indians and Alaska Natives Sometimes Referred to as Native Americans?

When referring to the indigenous peoples of Alaska or the 48 contiguous states of the United States, it is appropriate to use the terms "Alaska Natives" and "American Indians," respectively.

While the term "Native Americans" came into usage in the 1960's with respect to American Indians and Alaska Natives, over time, usage of the term has been expanded to include all native peoples of the United States and its territories, including Native Hawaiians, Chamorros, and American Samoans.

Are American Indians and Alaska Natives Citizens?

American Indians and Alaska Natives are citizens of the United States and of the states in which they reside.⁽²⁾ They are also citizens of the tribes to which they belong according to the criteria established by each tribe.

What Is the Relationship Between the United States and the Tribes?

The relationship between the tribes and the United States is one of a government to a government. This principle has shaped the entire history of dealings between the federal government and the tribes, and is lodged in the Constitution of the United States.

Can American Indians and Alaska Natives Vote?

American Indians and Alaska Natives have the same right to vote as all United States citizens. American Indians and Alaska Natives vote in state and local elections, as well as in tribal elections. Just as state, federal, and local governments have the

sovereign right to establish voter eligibility criteria; each tribe has the right to decide its voter eligibility criteria for tribal elections.

Who Is an American Indian or Alaska Native?

As a general principle an Indian is a person who is of some degree Indian blood and is recognized as an Indian by a tribe and/or the United States. No single federal or tribal criterion establishes a person's identity as an Indian. Government agencies use differing criteria to determine eligibility for programs and services. Tribes also have varying eligibility criteria for membership.

It is important to understand the difference between the ethnological term "Indian" and the political/legal term "Indian." The protections and services provided by the United States for tribal members flow not from an individual's status as an American Indian in an ethnological sense, but because the person is a member of a tribe recognized by the United States, and with which the United States has a special trust relationship. This special trust relationship entails certain legally enforceable obligations and responsibilities.

Do American Indians and Alaska Natives Have the Right to Hold Federal, State, and Local Government Offices?

American Indians and Alaska Natives have the same rights as all citizens to hold public office. In this century, American Indian and Alaska Native men and women have held elected and appointed offices at all levels of state, local, and federal government. Charles Curtis, a member of the Kaw Tribe of Kansas, served as Vice President of the United States under President Herbert Hoover.

Indians have also been elected to the United States Congress. Ben Nighthorse Campbell, a member of the Northern Cheyenne Tribe of Montana, was elected to the Senate in 1992 after having served his third term in the United States House of Representatives.

Historically, Did All American Indians and Alaska Natives Speak a Common Language?

American Indians and Alaska Natives speak many diverse languages. At the end of the 15th Century, more than 300 American Indian and Alaska Native languages were spoken. Some were linked by "linguistic stocks" which meant that widely scattered tribal groups had similar languages. Today, some 250 tribal languages are both spoken and many are written.

What Is a Reservation?

Reservations are territories reserved as permanent tribal homelands. Some were created through treaties while others were created by statutes, or executive orders.

What Is Meant by Tribal Self-determination and Self-governance?

These are important concepts in federal Indian policy, and are also the objectives of major federal legislation. In policy, the concepts are similar to the block grant system, by which state and local governments are accorded the opportunity to administer federal programs directly.

Under the self-determination and self-governance laws, tribes have been accorded the authority to control and operate federally-funded and administered programs whenever tribal governments choose to do so. Moreover, these laws affirm the fundamental American belief that local problems are best resolved at the local level using the collective resources of the nation.

What Is the Relationship Between Tribal and State Governments?

Because the Constitution vests authority over Indian Affairs in the federal government, generally, states have no authority over tribal governments. Tribal governments are not subordinate to state governments. They retain the right to enact and enforce stricter or more lenient laws and regulations than those of the neighboring state(s).

Tribes possess both the right and the power to regulate activities on their lands independently from the neighboring state government. However, tribes frequently collaborate and cooperate with states through compacts or other agreements. The Tribal-to-State relationship is also one of a government to a government.

What Is the Role of the Bureau of Indian Affairs in the Provision of Services to American Indians and Alaska Natives?

The role of the Bureau of Indian Affairs (BIA) has changed dramatically over time. Until the 1960's, the BIA was the direct provider of services to American Indians and Alaska Natives. As we near the 21st Century, BIA is implementing the federal policy and law of self-determination and self-governance.

In its modern role, BIA technical specialists work with tribal managers in protecting and managing trust resources pending informed decision-making by the tribe on the development of the resources. Also, BIA assists tribes to enhance their quality of life and to raise the standard of living in tribal communities.

What Are "Treaty Rights"?

From 1777 to 1871, United States relations with individual Indian nations were conducted through treaty negotiations. These "contracts among nations" created unique sets of rights for the benefit of each of the treaty-making tribes. Those rights, like any other treaty obligations of the United States, represent "*the supreme law of the land.*" As such, the protection of treaty rights is a

critical part of the federal Indian trust relationship.

Tribes with reservations are also entitled to other rights, such a United States reserved water rights for Indian reservations.

Do Tribes Have Property Rights?

Rights created in treaties, statutes and executive orders are property rights, for example, the rights to hunt, fish or gather on lands ceded to the United States. There are also judicially-recognized reserved rights created by actions of the United States, for example, the right to water for an Indian reservation arising from the creation of Indian reservations. These kinds of rights are property rights which are entitle to the same protection from taking just as other citizen's property rights are under the 5th Amendment of the United States Constitution.

What is the Federal Indian Trust Responsibility?

The **Federal Indian Trust Responsibility** is a legal obligation under which the United States "has charged itself with moral obligations of the highest responsibility and trust" toward Indian tribes (*Seminole Nation v. United States, 1942*). It was first discussed by U.S. Supreme Court Chief Justice John Marshall in *Cherokee Nation v. Georgia, (1831)*. Over the years, the trust doctrine has been the center of numerous other Supreme Court cases. It is one of the most important principles in federal Indian law.

The federal Indian trust responsibility is a legally enforceable fiduciary obligation, on the part of the United States, to protect tribal lands, assets, resources, and treaty rights, as well as a duty to carry out the mandates of federal law with respect to American Indian and Alaska Native tribes. In several cases discussing the trust responsibility, the Supreme Court has used language suggesting that it entails legal duties, moral obligations, and the fulfillment of understandings and expectations that have arisen over the entire course of dealings between the United States and the tribes.

Footnotes

1. Criminal jurisdiction in Indian Country is governed by federal law set out primarily in Title 18 of the United States Code at Sections 1151, 1152, and 1153. Under these statutes, the United States expressly retained jurisdiction over major crime committed by Indians and crimes against Indians committed by non-Indians. Under Supreme Court interpretations of these statutes, jurisdiction over crimes between non-Indians, even though occurring in Indian Country, is vested in states.
2. Indians were granted citizenship pursuant to the Indian Citizenship Act of 1924 (8 U.S.C. §1401). Later amendments clarified that the Act applied to Alaska Natives, as well.

Historical and Legislative Review -- Federal Indian Policy

1776 - 1871 THE FORMATIVE YEARS

- 1776 - Treaties and other agreements
- 1787 - The Northwest Ordinance
- 1790 - Congress defines "Indian Country"
- 1790 - Non-Intercourse Act," 25 U.S.C. §177
- 1808 - Assimilative Crimes Act, 18 U.S.C. §13
- 1817 - General Crimes Act, 18 U.S.C. §1152
- 1830 - Indian Removal Act, 4 Stat. 411
- 1831 - 1832 U.S. Supreme Court Chief Justice John Marshall's "Trilogy" of cases establishing fundamental Constitutional Indian law

1871 - 1928 ALLOTMENT & ASSIMILATION

- 1871 - Congress eliminates treaty-making with Indian tribes
- 1883 - *Crow Dog Ex Parte*, 109 U.S. 556
- 1883 - Counts of Indian offenses established
- 1885 - Major Crimes Act, 18 U.S.C. §§1153, 3242
- 1887 - General Allotment Act (also known as the Dawes Act), 25 U.S.C. §§331-334, 339, 3441, 342, 348, 349, 354, 381
- 1908 - Winters Doctrine of Reserved Indian Water Rights, 207 U.S. 564
- 1909 - Leasing of Allotted Lands for Mining Purposes, 25 U.S.C. §396
- 1910 - Sale of Timber on Lands Held Under Trust, 25 U.S.C. §406
- 1910 - Sale of Timber on Unallotted Lands, 25 U.S.C. §407
- 1921 - Snyder Act, 25 U.S.C. §13
- 1924 - Indian Citizenship Act, 8 U.S.C. §1401

1928 - 1953 INDIAN REORGANIZATION

- 1928 - Meriam Report on Indian Policy of the Allotment Period
- 1934 - Indian Reorganization Act (also known as the Wheeler-Howard Act), 25 U.S.C. §461
- 1938 - Indian Mineral Leasing Act, 25 U.S.C. §396a-396g
- 1938 - Leasing of Allotted Lands for Mining Purposes, 25 U.S.C. §396
- 1943 - Congress Clarifies "Indian Country," 18 U.S.C. §1151
- 1948 - Rights-of -Ways for All Purposes Across Any Indian Lands, 25 U.S.C. §323

1953 - 1968 TERMINATION ERA

1953 - H.C.R. 108 Termination Resolution
 1953 - Passage of laws to terminate over 100 tribes
 1953 - Public Law 83-280, Limits of State Jurisdiction 18 U.S.C. §1162, 28 U.S.C. §1360
 1955 - Lease of Restricted Lands for Public, Religious, Educational, Recreational, Residential, Business, and Other Purposes; Approval By Secretary, 25 U.S.C. §415

1968 - 1982 INDIAN SELF-DETERMINATION

1964 - *Arizona v. California*, Established Method for Quantifying Indian Water Rights, 373 U.S. 546
 1968 - Indian Civil Rights Act, 25 U.S.C. §1301 *et seq*
 1970 - President Nixon's message "Recommendation for Indian Policy"
 1971 - Alaska Native Claims Settlement Act, 43 U.S.C. §1601 *et seq*
 1974 - Indian Finance Act, 25 U.S.C. §1451 *et seq*
 1975 - Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§450-450n, 455-458e
 1976 - *Bryan v. Itasca County, MN*, U.S. 373
 1978 - Indian Child Welfare Act, 25 U.S.C. §1901 *et seq*
 1978 - American Indian Religious Freedom Act, 42 U.S.C. §1996
 1980 - Alaska National Interest Lands Conservation Act, 16 U.S.C. §3111 *et seq*

1982 - Present SELF-GOVERNANCE

1982 - Tribal Tax Status Act, 96 Stat. 2607
 1982 - Indian Mineral Development Act, 25 U.S.C. §2101
 1987 - *Cabazon*, 480 U.S. 202
 1988 - Indian Gaming Regulatory Act, P.L. 100-497, 102 Stat. 2467
 1988 - Amendment to Self Determination and Education Assistance Act, 25 U.S.C. §§450-450n, 455-458e
 1988 - Self-Governance Demonstration Project
 1990 - Native American Graves Protection and Repatriation Act, 25 U.S.C. §3001
 1990 - Indian Law Enforcement Act, 25 U.S.C. §2801
 1990 - *Duro v. Reina*, 495 U.S. 676
 1991 - Legislation reversing *Duro v. Reina*, enacted by Congress
 1994 - The Tribal Self Governance Act of 1994, 25 U.S.C. §458 Part D
 2000 - Tribal Self-Governance Amendmenst of 2000, P.L. 106-260, 8/18/00