

National Congress of American Indians

An Introduction to

INDIAN NATIONS
IN THE
UNITED STATES

The Congress shall have power to....regulate commerce with foreign nations, and among the several states, and with Indian the tribes...

Article 1, Section 8
United States Constitution

Indian Nations have 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."

Chief Justice John Marshall
United States Supreme Court
Worcester v. Georgia
31 US (6 Pet.) 515, 561 (1832)

The utmost good faith shall always be observed toward the Indians; their land and property shall never be taken away from them without their consent...but laws founded in justice and humanity shall from time to time be made, for preventing wrong to them...

Article Three
Northwest Ordinance of 1789



About the National Congress of American Indians

Founded in 1944, the NCAI is the oldest, largest, and most representative American Indian and Alaska Native organization in the United States. NCAI advocates on behalf of more than 250 member tribal governments and thousands of individual members, calling for the honorable fulfillment of U.S. commitments to tribes and promoting a better understanding of American Indian and Alaskan Native governments, rights, and myriad lifeways. For more information about NCAI, visit www.ncai.org.

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UNDERSTANDING CONTEMPORARY TRIBAL GOVERNMENTS

There are 562 federally recognized Indian Nations (variously called tribes, nations, bands, pueblos, communities, rancherias and native villages) in the United States. Approximately 229 of these ethnically, culturally, and linguistically diverse nations are located in Alaska; the rest are located in 33 other states.

The United States Constitution recognizes that Indian Nations are sovereign governments just like Canada and California. The Supreme Court, Congress, US Presidents, and hundreds of treaties have repeatedly reaffirmed that Indian Nations retain their inherent powers of self-government. Treaties and laws have created a fundamental contract between Indian Nations and the United States: Indian Nations ceded millions of acres of land that made the United States what it is today, and in return received, among other guarantees, the right of continued self-government on their own lands.

Tribal self-government serves the same purpose today as it always has: it ensures that Indian Nations remain viable as distinct groups of people. Tribal cultures enrich American life, and tribal economies provide opportunities where few would otherwise exist. Tribal governments also provide basic infrastructure, including roads, bridges, and public buildings, as well as a broad range of governmental services on tribal lands, including education, law enforcement, judicial systems, and environmental protection.

The status of American Indian and Alaskan Native tribal governments lies at the heart of nearly every issue that touches Indian Country. Self-government is essential if tribal communities are to continue to protect their unique cultures and identities. Unfortunately, too few people in the United States today are aware of the history of U.S./tribal relations and the purpose and historical context for tribal self-government.

This booklet seeks to provide a basic overview of the history and underlying principles of tribal governance, as well as information about tribes today to ensure that decision makers and members of the public at large have the information necessary to understand and engage effectively with contemporary Indian Nations.

The United States Constitution recognizes that Indian Nations are sovereign governments...

BRIEF HISTORY OF FEDERAL POLICY TOWARD INDIAN NATIONS

To understand today's tribal governments, it is helpful to know the basic history of federal policy towards Indian Nations:

- Pre-1492** **Pre-Columbian Period** – In the thousands of years preceding contact with Europeans, American Indian and Alaska Native people lived in organized societies with their own forms of government.
- 1492 -1828** **Colonial Period** - The proliferation of European colonies created a dominant presence on the East Coast of North America. These colonies acquired some Indian lands under the doctrine of discovery and also signed treaties with the tribes for additional land. Colonial governments treated Indian tribes as foreign governments, setting the precedent for future relations. Following the Revolutionary War, the newborn United States took pains to maintain peace and diplomatic relations with neighboring tribes.
- 1828 -1887** **Removal, Reservation and Treaty Period** - As the U.S. population and military strength grew, so did pressure by the U.S. government on eastern tribes to move west, resulting in forced migration. Seeking to obtain more Indian land, the U.S. government embarked on an aggressive military campaign throughout the West, relocating tribes to Indian reservations. In general, reservations were established through treaties, which required Indians to trade large tracts of land for the continued right of self-governance under the protection of the United States.
- 1887- 1934** **Allotment and Assimilation Period** - Settlers' increasing desire for the land within reservations and the push to assimilate Indians into mainstream American life led to the General Allotment Act of 1887. This Act (also known as the Dawes Act) dictated the forced conversion of communally held tribal lands into small parcels for individual Indian ownership. More than 90 million acres—nearly two-thirds of reservation land—were taken from tribes and given to settlers as “surplus,” most often without compensation to the tribes.
- 1934 -1945** **Indian Reorganization Period** - The federal government, under the Indian Reorganization Act of 1934, ended the discredited policy of allotment. It began to restore Indian lands to tribes and attempted to help tribes reconstitute their governments. The federal government created programs and projects to rehabilitate Indian economic life. These efforts were critical in re-establishing tribal economies and formed a basis for renewed tribal autonomy, but too often forced European/Anglo values and government structures upon tribes, thereby damaging traditional values and governance.
- 1945-1968** **Termination Period** - Congress decided that federal recognition and assistance to more than 100 tribes should be terminated. Public Law 280, passed in 1953, imposed state criminal and civil jurisdiction over tribes in California, Minnesota, Nebraska, Oregon and Wisconsin. Termination of federal assistance created economic disaster for many tribes, resulting in millions of acres of valuable natural resource land being lost through tax forfeiture sales. Federal policy emphasized the physical relocation of Indians from reservations to urban areas.
- 1968-Present** **Self-Determination Period** - A resurgence of tribal government involvement in Congress and in the federal courts ended the termination era and prompted the development of a policy of self-determination and self-governance. Policies like the Indian Self-Determination and Education Assistance Act of 1975 emerged that favored tribal control over their own destinies. With control over their lands and resources, tribes have made great strides towards reversing economic hardships that resulted from previous federal policies, and have in many cases revived their unique cultures and societies.

ANSWERS TO FREQUENTLY ASKED QUESTIONS ABOUT INDIANS

- **How many Indian tribes are there?**

There are 562 federally recognized Indian tribes, bands, nations, pueblos, rancherias, communities and Native villages in the United States. Approximately 229 of these are located in Alaska; the rest are located in 33 other states. Tribes are ethnically, culturally and linguistically diverse.

- **How many American Indian and Alaska Natives are there in the United States?**

According to the 2000 U.S. Census, approximately 4.1 million Americans self-identify as American Indian or Alaska Native alone or in conjunction with another race.

- **What is federal recognition?**

Federal recognition of an Indian tribe involves official acknowledgement by the United States of the political status of that tribe as a government. Members of a federally recognized tribe are eligible for a number of unique federal programs, including those offered for Indian people by the Indian Health Service. The process of attaining federal recognition is long, complex, and extremely stringent.

- **Why does the United States treat Indian tribal members differently from racial minority groups such as African Americans, Latinos, Asian Americans and others?**

American Indians, Alaska Natives, and Native Hawaiians are members of the original indigenous tribes of the United States, which were considered sovereign nations from their first interaction with European settlers. Tribal governments have unique legal and political relationships with the federal government which provides certain services to citizens of the tribes based on that political relationship, not because these citizens are a particular race or ethnicity. Tribal members are citizens of three sovereigns: their tribe, the state in which they reside, and the United States.

- **What are the requirements for tribal citizenship?**

Like any government, individual tribal governments determine their own criteria for citizenship. Usually there is some blood quantum requirement or a requirement of lineal descendency from a tribal citizen. Individual tribes can answer specific questions about their membership requirements. Some federal agencies also have criteria for determining eligibility for programs and services provided to American Indians and Alaska Natives.

- **How does the Constitution address Indian tribes—what is the “Indian Commerce Clause” and what is the role of the Congress in Indian affairs?**

Article I, section 8, clause 3 of the Constitution says: “The Congress shall have Power To...regulate Commerce...with the Indian Tribes.” This clause is the basis for congressional authority to pass laws dealing with tribes and their relationship with the federal government. Both the Senate and the House of Representatives have generally established specific committees to handle Indian legislation. In the Senate, the Committee on Indian Affairs handles most legislation relating to American Indian tribes (the Committee on Energy retains jurisdiction over most issues affecting Alaska Native lands); in the House, the Committee on Resources has authorizing authority over Indian issues.

- **What is the trust responsibility?**

The federal trust responsibility derives from the fiduciary relationship between the United States and Indian tribes, which has been likened in court cases to the relationship between a trustee and a beneficiary. Since the United States holds the vast majority of Indian lands, money, and resources in “trust” status, it is required to manage those lands and resources in a manner most beneficial to the tribes and individual Indian people.

- **What is meant by the terms “trust lands,” “reservations,” and “Indian Country”?**

“Trust lands” and “reservations” are complex terms under federal law that basically define what is and what is not “Indian Country.” Indian Country itself is that area over which the federal government and tribes exercise primary jurisdiction. Land within an existing Indian reservation constitutes the majority of Indian Country. Reservations are defined geographic areas with established boundaries recognized by the United States. Some reservations are made up wholly of trust lands (lands held in trust by the United States for the benefit of a tribe or an individual Indian); other reservations include trust lands as well as fee lands owned by tribes, individual Indians, and non-Indians.

After ceding vast tracts of land to the United States in the 1700’s and 1800’s, the tribes were promised in treaties that the “reserved” lands were theirs forever. But the U.S. subsequently broke these treaties and dismantled tribes’ land bases. The General Allotment Act of 1887, also known as the Dawes Act, forced the conversion of communally held tribal lands into small parcels for individual ownership. More than 90 million acres—nearly two-thirds of reservation land—were taken from tribes and given to settlers, most often without compensation to the tribes, frequently leaving tribes with non-arable land that would not sustain the growth of their populations.



A poster advertises Indian lands for sale in the allotment arena.

- **What is the government-to-government relationship?**

The government-to-government relationship between Indian tribal governments and the United States government has existed since the formation of the United States and has been reaffirmed by every President since Richard Nixon. The United States government and all of the executive agencies historically dealt and continue to deal with Indian tribes not as special interest groups or individuals, but as they treat the states: as governments.

- **What is tribal sovereignty?**

Prior to the arrival of Europeans, Indian tribes could raise armies and provide currency for commerce. Those powers are no longer enjoyed by tribes. However, all other powers, except those expressly taken away by the Congress, are retained by tribes. Congress may also expressly reaffirm inherent powers of tribes, and has done so in recognizing certain powers of tribes in environmental statutes. This means that tribes can regulate tribal land, taxes, zoning, resources, and the conduct of tribal members. Certain powers, including the tribes’ jurisdiction over non-members, have been blurred by recent federal case law, making lines of jurisdictional authority unclear in some instances.

- **What is tribal sovereign immunity?**

Like the federal government and the states, tribal governments are immune from lawsuits by citizens and other tribal, state, and local governments. Sovereign immunity enables governments to carry out their governmental duties on a day-to-day basis without fear of being brought to court for their governmental decisions and facing potential bankruptcy of critical publicly held assets. Although sovereign immunity is especially important to tribes because of their limited revenue sources, it is a limited legal protection and is not a barrier to most meritorious cases. In addition, immunity may be waived by tribal governments.

- **What is meant by self-determination and self-governance?**

First developed under President Nixon in consultation with Indian tribal leaders, the Indian Self-Determination and Education Assistance Act was signed by President Ford in 1975. This Act promotes the contracting by Indian tribes of federal programs enacted for the benefit of Indian people. As a result, for the past 25 years, tribes have been contracting to operate programs at the tribal level. More recently, self-governance policies have been enacted enabling tribes to enter into one agreement with the Department of the Interior to manage and redesign BIA and IHS programs, rather than to enter into separate contracts for each program.

- **How do Indian tribes organize their governments?**

Tribes have the inherent power to govern all matters involving their members and a range of matters in Indian Country. Tribes form their governments either by election of members to a governing council as provided in each tribe's constitution or, in some cases, by elders choosing the tribe's leaders in a traditional process. Each tribe generally has one elected chairperson, president, chief, or governor who is the recognized leader of the tribe and who has authority to act as such when dealing with the federal government. Many tribes have organized their governments under the auspices of the Indian Reorganization Act of 1934 and their constitutions and amendments are approved by the Secretary of the Interior.

- **Do states have jurisdiction over Indian Country or Indian people?**

States do not have any civil or criminal jurisdiction over Indian Country except that which the Congress may delegate or the federal courts determine exists. In the 1950's, Congress enacted several statutes (such as Public Law 83-280) giving states criminal jurisdiction over offenses committed within Indian Country. However the statute did not grant jurisdiction to states over the tribes themselves or over their lands. Some of the states have returned jurisdiction to the federal government. For more than a quarter century, until passage of the Indian Gaming Regulatory Act (IGRA) in 1988, no other statutes gave states any authority in Indian Country. The federal government has jurisdiction over most major crimes committed in Indian Country. Tribes prosecute all criminal misdemeanors committed by Indians on Indian lands that carry sentences of up to one year in jail. Tribal courts also have jurisdiction over most civil matters that arise within Indian Country.

- **Do tribal governments pay federal taxes?**

Like state governments, tribal governments are considered sovereign governments not subject to taxation by the federal government. This is a long-standing federal policy with Constitutional support that prevents interference with the ability to raise revenue for government functions. Like state and local governments, tribal governments use their revenues to provide essential services for their citizens. Unlike state governments, tribal governments are generally not in a position to levy property or income taxes because of the unique nature of land tenure in Indian Country, fragile economies, and jurisdictional restraints. Income from tribal businesses is the only non-federal revenue source for most tribes.

- **Do tribal governments pay state taxes?**

States cannot directly tax a tribal government. The Supreme Court has held that state governments can collect excise taxes on sales to non-members that occur on tribal lands, so long as the incidence of the tax does not fall directly on the tribal government. States and tribes have developed a variety of methods for collecting these taxes where the states choose to do so, including intergovernmental agreements or pre-taxing at the wholesale level.

- **Do Indian people pay taxes?**

Individual American Indians and Alaska Natives and their businesses pay federal income taxes just like every other American. The one exception is when an Indian person receives income directly from a treaty or trust resource such as fish or timber: that income is not federally taxed. States also cannot tax tribal members who live and derive their income on tribal land—just as one state would not seek to impose taxes on an individual who works in another state.

- **What is the economic condition of Indian Nations?**

Despite significant economic improvements in some pockets of Indian country over recent decades, more than a quarter of Indian people continue to live in poverty, and unemployment rates on reservations are more than double the population at large—13.6% on average by the most conservative estimate, and as high as 80% in some communities. Lack of infrastructure in tribal communities, including roads and bridges, telecommunications connections, and access to training, compound the economic hardship many tribes face. Tribes have also faced difficulty in accessing traditional sources of capital such as lending, banking, and bonding. Strong tribal governance structures have been recognized as key to effective economic development in areas that have consistently struggled for economic stability.

- **Does the federal government provide all the necessary funding for Indian tribes?**

Like state governments, tribal governments receive some federal funding to provide services and operate programs. The federal government has an obligation to tribal governments based on numerous treaties and on the overall trust responsibility. Despite these obligations, federal funding falls far short of fulfilling the need for services and infrastructure on Indian reservations. In 2003, the independent, bipartisan U.S. Commission on Civil Rights issued a report entitled “A Quiet Crisis: Federal Funding and the Unmet Needs in Indian Country,” which documents the federal failure to provide funding for adequate health care, law enforcement, and education for American Indians and Alaska Natives. The report calls for increased federal appropriations to address these needs.

- **Does the federal government pay all expenses—health care, housing and college tuition—for individual Indians?**

In general, no. The federal government provides basic health care for all Indian people through the Indian Health Service. Unfortunately, these health programs have been inadequately funded for many decades, and Indian people have the worst health status of any group in the country as a result. The Department of Housing and Urban Development provides some housing on Indian reservations, but Indians have the highest rate of homelessness and overcrowding. The federal government provides some educational assistance to tribal colleges, but higher education generally is not provided and remains beyond the reach of most Indian people.

- **Do all tribal members receive money from the federal government?**

Tribal members do not receive money from the federal government. Some tribal members receive distributions of money that derive from land claims settlements or income generated from the sale, development, and/or use of trust lands. Per capita distributions from tribal enterprises represent the tribe’s decision to redistribute tribal wealth (ordinarily generated from a tribal business) with individual payments to every tribal member. However, tribes generally redistribute tribal income to the community through services made available to all, rather than through individual disbursements.

- **Does the federal government pay for Indian education?**

There are approximately 600,000 American Indian and Alaska Native students attending K-12 programs in the United States. 450,000 of these attend public schools, while 50,000 attend BIA funded schools. Within the BIA school system—one of only two federally operated school systems—funding for Indian schools is the sole responsibility of the federal government, while both state and federal resources provide public education funding. Local Education Agencies (LEAs) and their surrounding communities also have the ability to pass bond initiatives in order to build or repair local school buildings. Tribal and BIA schools, on the other hand, must rely on the federal government to ensure their academic and construction needs are being met. A backlog of nearly \$1 billion in school construction and improvement needs as well as shortfalls in classroom and administration dollars speak to the need for increased federal commitment to support the BIA school system.

- **Does the federal government pay for law enforcement in Indian Country?**

The federal government funds most public safety and criminal justice systems in Indian Country. However, as with most Indian programs, federal funding for law enforcement is insufficient. The level of law enforcement services that many Americans take for granted rarely exists on or near Indian lands. There are only 2,380 BIA and tribal uniformed officers available to serve an estimated 1.4 million Indians covering over 56 million acres of tribal lands in the lower 48 states. On tribal lands, 1.3 officers must serve every 1,000 citizens, compared to 2.9 officers per 1,000 citizens in non-Indian communities with populations under 10,000. A total of at least 4,290 sworn officers are needed in Indian Country to provide the minimum level of coverage enjoyed by most communities in the United States.

- **What are sacred sites and why do tribes want to protect them?**

Sacred sites are those that are integral to the practices of Indian religions, the well-being of tribal cultures, and the health of the earth. Examples include sacred mountains, rivers, springs, rocks, petroglyphs, pictographs, burial sites, and ceremonial sites. Since the arrival of Europeans to what is now America, these sites have been subject to intrusion and vandalism by non-Indians. Tribal leaders are pushing for the enforcement of existing laws, expanded executive orders to protect these sites, and for the enactment of more explicit legislation to protect this aspect of American Indian and Alaska Native religious freedom.

- **What laws serve to protect tribal cultures?**

The preservation and protection of tribal history, language, culture, and traditions is a major issue of concern throughout Indian Country. Tribal cultures and traditions provide the foundation and the roots upon which Indian communities will grow in the 21st Century. A number of laws protect native cultures and attempt to correct some of the damages from the past. These include the American Indian Religious Freedom Act, the Native American Graves Protection and Repatriation Act (NAGPRA), the 1992 Tribal Amendments to the National Historic Preservation Act (NHPA), the Native American Languages Act (NALA), as well as Executive Order #13007 on Native American Sacred Sites, and Executive Order #13175 on Consultation and Coordination with Tribal Governments.

TRIBAL SOVEREIGNTY

American Indians and Alaska Natives are members of sovereign tribal nations that have a unique legal and political relationship with the federal government. This relationship has a strong historical foundation, with roots in the treaty-based relationship between tribes and arriving European settlers, who recognized the inherent sovereignty of the tribes. This relationship has been recognized and reinforced by the United States Constitution, nation-to-nation treaties, federal statutes, case law, executive orders, and other administrative policies.

Just as the United States deals with states as governments, it also deals with Indian tribes as governments, not as special interest groups, racial minorities, individuals, or other non-governmental entities. Many state governments also have explicitly recognized the governmental status of Indian tribes through various state recognition processes and agreements.

The essence of tribal sovereignty is the ability to govern and to protect the health, safety, and welfare of tribal citizens within tribal territory. Tribal governments exercise these inherent rights just as any governmental entity would, determining citizenship, establishing civil and criminal laws for their reservation areas, taxing, licensing, regulating, and delivering services. Tribal governments, like state and local governments, are responsible for a broad range of governmental activities on tribal lands, including education, law enforcement, environmental protection, and the development and maintenance of basic infrastructure such as roads, bridges, sewers, public buildings, and solid waste treatment and disposal.

Congress and the Federal Courts have placed increasingly complex limitations on the exercise of tribal sovereignty, particularly with regard to jurisdiction over non-Indians. In 1978, the Court began a process of limiting tribal jurisdiction with its decision in *Oliphant v. Suquamish Indian Tribe*, in which it held that tribes have no criminal jurisdiction over non-Indians unless expressly conferred by Congress. However, federal law is particularly protective of tribes' authority over internal matters and their ability to protect the health and welfare of their own people. Tribal sovereignty is inherent in the status of Indian tribes, and the law assumes tribes have sovereign authority unless a federal statute has specifically removed that authority or a federal court has determined that the tribe's exercise of authority is completely inconsistent with tribal status within the federal framework.

The status of Indian Nations as governments and the preservation and protection of tribal history, language, culture and traditions are often misunderstood or not considered by the non-Indian community. However, this relationship can be summed up very simply. Self-government is essential for tribal communities to continue to protect their unique cultures and identities, and in turn tribal cultures and traditions provide the foundation upon which Indian communities are governed.



With a moment of silence to mark the first anniversary of 9/11 and their journey ahead, members of the the Quinault Indian Nation gather to launch a cross-country run for tribal sovereignty from Taholah, WA to Washington DC.

TREATIES

When European settlers came to America, they dealt with tribes as sovereign nations. Exchanges of land and guarantees of peace were handled by treaty, and since then, hundreds of treaties between Indian Nations and the United States have been negotiated by the President and ratified by two-thirds of the Senate. Indian treaties have the same status as treaties with foreign nations, and because they are made under the U.S. Constitution, they take precedence over any conflicting state law. The Supreme Court is charged with upholding the terms of the treaties, although the Court has ruled that Congress may unilaterally abrogate treaties. However, Congress must show a “clear and plain” intent to abrogate a treaty (*Lone Wolf vs. Hitchcock, 1903*).

Treaties vary widely in their terms and provisions. They commonly included a guarantee of peace, a provision on land boundaries, a guarantee of hunting and fishing rights (often including lands outside the reservation boundaries) and a statement that the tribe recognized the authority of the United States and, in return, received a promise from the United States of protection. In addition, many treaties contain specific promises of federally provided health care, education, housing, economic development, and agricultural assistance. The federal government has never adequately funded these treaty commitments.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby...

United States Constitution, Article VI

Indian Treaty making effectively ended in 1871 when Congress passed a legislative rider that attempted to limit the power of the president to enter into treaties with Indian Nations. Although this legislation is of questionable constitutionality, it nevertheless made clear that no further treaties would be ratified. As a result, not all tribes have a treaty. Although the U.S. Senate did ratify 370 Indian treaties between 1778 and 1871, at least another 45 were negotiated with tribes but never considered for ratification. As determined by the U.S. Court of Claims, some of these unratified treaties have taken legal effect. After official treaty making ended, many tribes have been federally recognized through executive order or statute.



Law enforcement and emergency response are key components of tribal governance. The Cherokee Tribe has a full team of law enforcement officers to protect public safety.

TRUST RELATIONSHIP

The federal trust responsibility, one of the most important doctrines in federal Indian law, derives from the treaties and from traditional European legal theory. It is the obligation of the federal government to protect tribal self-governance, tribal lands, assets, resources, and treaty rights, and to carry out the directions of federal statutes and court cases. The Supreme Court has defined this trust responsibility as a “moral obligatio[n] of the highest responsibility and trust” (*Seminole Nation vs. United States, 1942*).

The trust responsibility can be broadly divided into two interrelated areas. The property-oriented trust duties mandate that the federal government protect tribal property and assets (such as water, mineral and oil, timber, fish and game) where the title is held in trust by the United States for the benefit of the tribe or an Indian person. The second and more fundamental federal trust obligation is to honor the federal guarantee of self-government and the promise that tribal lands must be preserved as the base for separate tribal cultures. A permanent tribal community requires a secure land base to govern and develop, water to irrigate the land, access to fish and game, and income from timber and mineral development. The federal trustee is under an obligation to protect those resources.

The trust responsibility is also acknowledged in the Snyder Act of 1921, which requires that the Bureau of Indian Affairs, under the supervision of the Secretary of the Interior Department, “direct, supervise, and expend such moneys as Congress may from time to time appropriate, for the benefit, care and assistance of Indians throughout the United States” for several purposes, including education; health; economic development and profitability of Indian property; development and maintenance of Indian water supplies and buildings; the hiring of government officials, physicians, Indian police, and Indian judges; and the suppression of drug and alcohol trafficking.

The United States’ trust responsibility to tribes includes carrying out obligations set forth in treaties, many of which promised that, in exchange for major portions of a tribe’s land, the federal government would provide health care and education to the Indian tribes involved, in perpetuity. Indian education, Indian health, and related federally provided services are not welfare, they are the present day manifestation of treaty rights – solemn promises made by the federal government. They represent the U.S.government’s obligation to fulfill its side of exchanges that gave the United States vast tracts of land that make up this nation’s land base.

The Department of the Interior, charged with the primary responsibility for carrying out trust obligations, has grossly mismanaged tribal lands and has lost track of billions of dollars in mining, logging, and other royalties that should have gone to American Indian individuals and tribes. The Department of the Interior is currently charged with a mandate from Congress to clean up the accounting of Indian trust funds, and faces a class action lawsuit (*Cobell v. Norton*) to settle claims from trust account holders seeking an accurate historical accounting and payment process.



The founding members of the National Congress of American Indians in 1944.

FEDERAL RECOGNITION

There are 562 federally recognized tribes in the United States. Historically, tribes have been granted recognition through treaties, by the Congress, or through administrative decisions within the executive branch. In 1978, the Bureau of Indian Affairs established a regulatory process for recognizing tribes. The current process for federal recognition is extremely rigorous and requires the petitioning tribe to satisfy seven mandatory criteria, including historical and continuous American Indian identity in a distinct community. Each of the criteria demands exceptional anthropological, historical, and genealogical evidence. The vast majority of petitioners do not meet these strict standards, and far more petitions have been denied than accepted. In fact, only about 8 percent of the 562 federally recognized tribes have been individually recognized since 1960. There are several hundred groups seeking official federal recognition, a process that frequently takes decades to complete. Many of the tribes seeking recognition were terminated in the 1950s or otherwise forced to disband and have fought since then to reestablish their former status as recognized tribes.

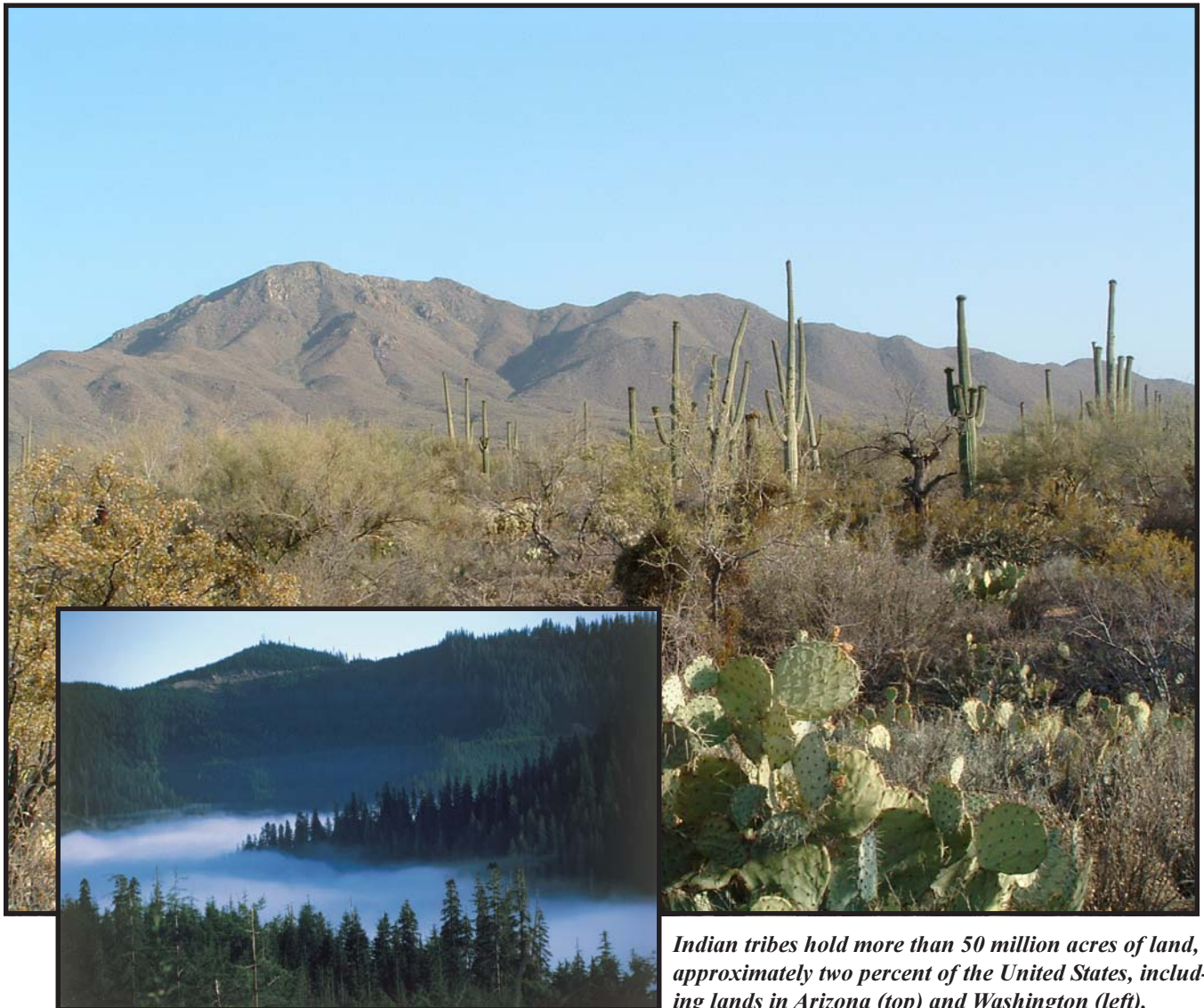
Federal recognition is important for tribes because it formally establishes a government-to-government relationship. Status as a sovereign entity carries with it significant privileges, including exemptions from state and local jurisdiction. These exemptions generally apply to lands that the federal government has taken into trust for a tribe or its members. Additionally, federally recognized tribes are eligible to participate in federal assistance programs, which can provide funding for vital community services.

TRIBAL GOVERNMENT STRUCTURE

Traditional tribal governments existed in the United States long before European contact and have evolved over time. Today, the 562 federally recognized tribes have governments that are diverse in structure and in decision-making processes. Because some tribal constitutions were patterned after the model constitution developed by the Bureau of Indian Affairs—in response to the Indian Reorganization Act (IRA) of 1934—some similarities exist among tribal governments. These standard tribal constitutions contain provisions describing tribal territory, specifying eligibility for citizenship, and establishing the governing bodies and their powers.

Most tribes give legislative authority to a tribal council. In some tribes, the tribal council members are elected by district; in others, they are elected at large. The council generally has authority to write tribal laws, and in some tribes the council members have administrative duties. Most tribal constitutions also provide for an executive officer, called a tribal chairman, president, governor, or chief. In some tribes, the tribal council elects the chief executive, while in others the voting citizens directly elect him or her. In most cases, the duties and powers of the chief executive are not specified in the constitution, but are set in the bylaws. Consequently, the role of the chief executive varies greatly among tribes. Many tribes also have created their own court systems that administer codes passed by the tribal council. In many tribes, judges are elected by popular vote; in others, judges are appointed by the tribal council.

About 60 percent of tribal governments are based on IRA constitutions. Tribes that have chosen other structures and constitutions frequently have made the decision to do so in favor of a governance structure that is more traditional to the tribe. For example, the Navajo Nation has no written constitution, but operates under a detailed tribal code and has an elected council and president. Many of the New Mexico pueblos operate entirely under unwritten, customary law, with traditional leadership and a unique government structure.



Indian tribes hold more than 50 million acres of land, approximately two percent of the United States, including lands in Arizona (top) and Washington (left).

TRIBAL LANDS

Land is of great spiritual and cultural significance to Indian tribes, and many Indian communities continue to rely upon the land for subsistence through hunting, fishing and gathering. Land-based production such as agriculture, forestry, mining, and oil and gas production play a prominent role in tribal economies. Moreover, Indian lands are critical for the exercise of tribal self-governance and self-determination.

Between 1887 and 1934, the U.S. government took more than 90 million acres—nearly two-thirds of reservation lands—from the tribes and gave it to settlers, most often without compensation to the tribes. In addition, the termination era of the 1940s and 1950s resulted in the loss of huge amounts of reservation land.

Today, Indian tribes hold more than 50 million acres of land, approximately two percent of the United States. Most of these lands are in arid and remote regions. The largest reservation—the Navajo Nation—covers an area as large as West Virginia. Some reservations are as small as a few acres, and some tribes hold no land at all. With the exception of Metlakatla’s reservation in Southeast Alaska, the Alaska Native Claims Settlement Act of 1971 shifted land title for many tribes in Alaska to Alaska Native Corporations. In 1998, the Supreme Court ruled in *Alaska v. Native Village of Venetie* that most tribal lands in Alaska are not “Indian Country” with the same jurisdictional rights tribes exercise in the lower 48.

Trust Lands

Title to most tribal lands is held by the federal government in trust for the benefit of current and future generations of tribal citizens. Most often, this land is within the boundaries of a reservation. Although trust land falls under tribal government authority and generally is not subject to state laws, it also is subject to limitations on the use of the land and requires federal approval for most actions. As a result of allotment, a great deal of land is held in trust status for individuals.

Under the 1934 Indian Reorganization Act, the federal government and the tribes can place additional land in trust in order to “...conserve and develop Indian lands and resources” and to rehabilitate Indian economic life. This land usually is purchased by the tribe or acquired from federal surplus lands. Trust status can be conferred only by the Secretary of Interior or the U.S. Congress.

Since 1934, the Department of the Interior has taken about 9 million acres back into trust status—about 10 percent of the total amount of land lost to tribes under the Allotment Act. The vast majority of reacquired lands have been within the boundaries of existing reservations. However, it is sometimes necessary for tribes to acquire land outside reservation boundaries. This is particularly true for tribes that have extremely small reservations, for those in remote areas far from the mainstream of economic life, and for those tribes where reservations were diminished during the allotment or termination periods.

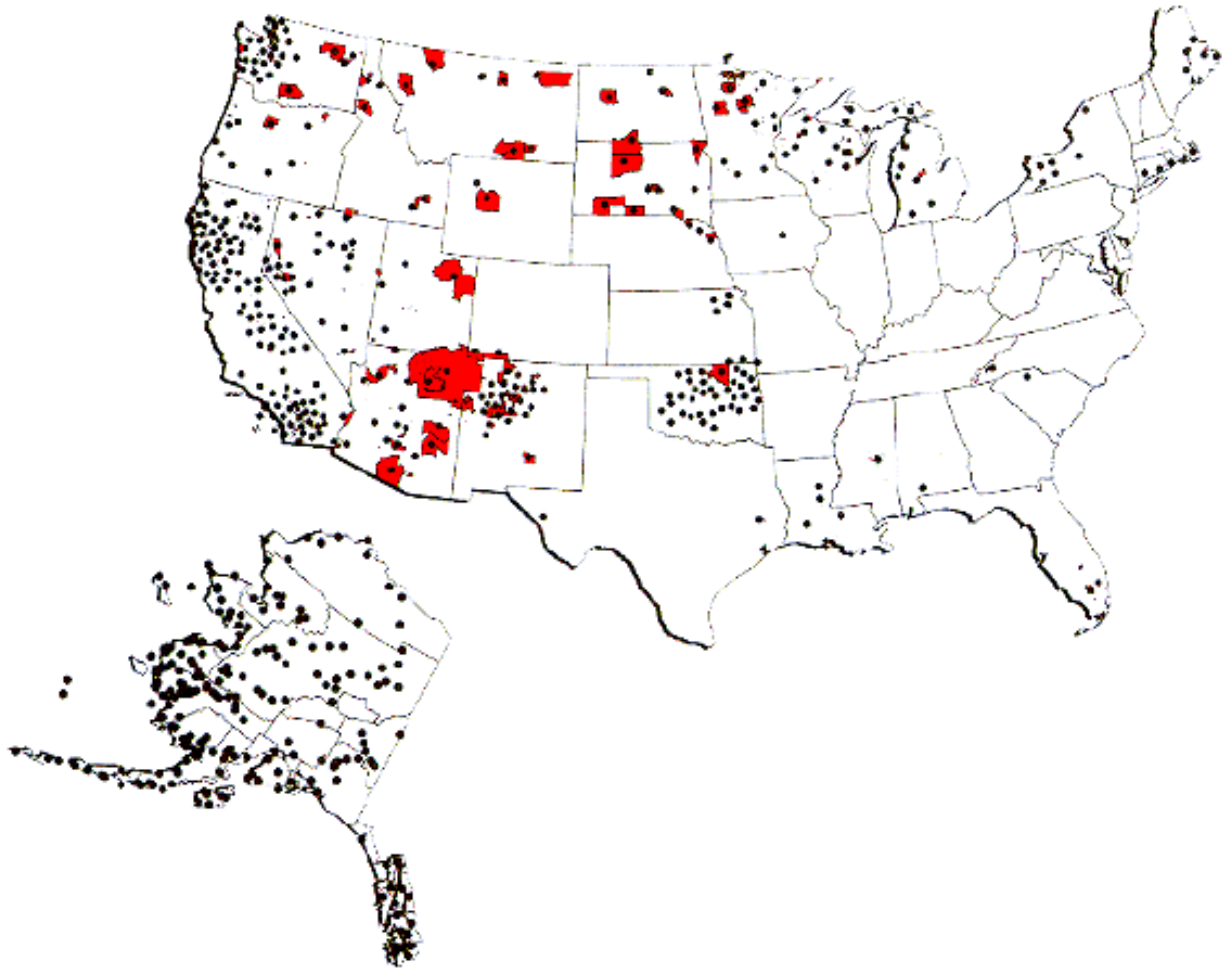
Regulations require that the Secretary of the Interior notify and consider the views of state and local governments before making a determination on taking land into trust status. The Secretary must specifically consider the effect on state and local governments of removal of the land from the tax rolls. State and local governments have the right to appeal a secretarial decision both within the Department of the Interior and in the federal courts.

Much stricter limitations exist on placing land into trust if that land is to be used by a tribal government for gaming purposes. The Indian Gaming Regulatory Act of 1988 prohibits gaming on off-reservation lands that were acquired in trust after 1988, unless the Governor of the state concurs and the Secretary of Interior determines that gaming would not be detrimental to the surrounding community.

Non-Indian Fee Lands

Former federal land policies—including allotment—left many tribes with reservations that are scattered, fractionated and intermixed with lands held by non-Indians. This landholding pattern, often called “checkerboarding,” creates two primary problems. The first is that it may render the tribal land base unusable for agriculture, grazing, timber, or mining. The second problem is the dispute about jurisdiction over non-Indian fee land within reservation boundaries. Some non-Indians do not want a tribal government to have jurisdiction over their land, and tribal governments in many cases resent the intrusion of state jurisdiction within tribal boundaries. In general, the Supreme Court has confirmed the authority of tribal governments to exercise civil authority over the conduct of non-Indians on fee lands within a reservation when that conduct threatens the political integrity, the economic security, or the health and welfare of the tribe (*Montana vs. U.S.*, 1981). In practice, jurisdictional matters on checkerboard lands call for a high level of coordination and the development of cooperative agreements between tribal, state, and local officials.

INDIAN COUNTRY FACTS



- ▶▶ As of 2003 there are 562 federally recognized tribes in the U.S., 229 of which are located in Alaska.
- ▶▶ The total American Indian & Alaska Native population in the United States today is 4.12 million, roughly 1.5% of the total U.S. population.
- ▶▶ Between 1887 and 1934, the U.S. Government took over 90 million acres of land from tribes without compensation.
- ▶▶ The largest reservation in the U.S. is the Navajo Nation.
- ▶▶ The smallest reservation is less than one acre.
- ▶▶ Indian lands comprise about 5% of the total land area of the U.S., but contain an estimated 10% of all the country's energy reserves.

TAXATION

There are a number of common misunderstandings about tax issues in Indian Country. It should be made clear that individual American Indians and Alaska Natives and their businesses pay federal income tax just like all other Americans. The exception is that the income an Indian receives directly from a treaty or trust resource such as fish or timber is not federally taxed. States cannot tax tribal citizens who live on and derive their income from tribal lands, but those who work or live outside tribal lands generally are subject to state income, sales, and other taxes.

Tribal government revenues are not taxed, just like state and local government revenues are not. This is a long-standing federal policy with Constitutional support that protects the ability of these entities to raise revenue for

Tribal government revenues are not taxed, just like state and local government revenues are not.

government functions. Like state and local governments, tribal governments use their revenues to provide essential services for their citizens. Unlike state governments, tribal governments are not generally in a position to levy property or income taxes. Income from natural resources and tribal businesses are most often the only non-federal revenue source.

States cannot directly tax a tribal government. The Supreme Court has held, in *Washington v. Colville Tribes*, that state governments can collect excise taxes on sales of imported products to non-members that occur on tribal lands, so long as the tax does not fall directly on the tribal government. In practice, this has resulted in the inequity of “dual taxation” where tribes are prevented from collecting their own sales taxes because of the resulting double tax burden, and the state tax revenue flows exclusively off-reservation. States and tribes have developed a variety of methods for addressing this inequity, often through intergovernmental agreements or through state statutes.

INDIAN GAMING

Like state and local governments, tribes use revenues from gaming as a tax base to fund essential services such as education, law enforcement, tribal courts, health care, social services, and infrastructure improvement. In fact, Indian tribes are required by federal law to use their gaming revenues for such purposes. Tribal government sponsored gaming—enterprises run by government entities to raise revenue for government functions—is more akin to state lotteries than to commercial for-profit businesses. Thirty-nine states and the District of Columbia now have lotteries.

Media coverage of tribal gaming has left the impression for many in the United States that all Indian tribes have grown rich on casino money and that poverty has been eradicated in Indian communities. In fact, only a small number of Indian tribes have found economic success through gaming. Of the 562 tribes, only 201 are engaged in gaming—most of these enterprises consisting of only small operations that provide a few badly needed jobs in their communities.

Tribal government gaming began in the early 1980’s at about the same time that state lotteries began to proliferate. In 1987 the Supreme Court, in *California v. Cabazon Band of Mission Indians*, relied on fundamental federal Indian law in ruling that if state law criminally prohibits a form of gambling, then the tribes within the state may not engage in that activity. However, if state law merely regulates but does not criminally prohibit a form of gambling, then tribes within the state may engage in that gaming free of state control. In 1988, Congress formally recognized but limited the right of Indians to conduct gaming with the passage of the Indian Gaming Regulatory Act (IGRA). IGRA created the National Indian Gaming Commission to regulate Indian gaming.

IGRA generally allows tribes to conduct Class II games such as bingo, so long as they are not criminally prohibited by the state. For Class III casino gaming, which includes slot machines and card games, tribes first must negotiate compacts with states concerning the games to be played and the regulation required for the games.

A number of factors have significantly restricted the growth of tribal gaming. Like other communities in the U.S., many tribes have chosen not to engage in gaming, despite its potential financial benefits. Location and demographics severely limit tribal gaming. Most Indian reservations are located in remote areas with little access to gaming customers. State laws and state failure to negotiate compacts have also limited the development of tribal gaming. In states such as Utah where gaming is criminally prohibited, no tribal gaming has developed. States such as Oklahoma have criminal laws that limit many tribal gaming enterprises to bingo only. A small number of states have used the compacting requirement in IGRA in a divisive way to completely block the development of tribal gaming. Under IGRA, the federal government has an obligation to mediate these disputes, but so far has failed to fulfill this obligation.

Where Indian gaming has been successful, it has had an enormously beneficial economic impact on Indian communities and surrounding communities. It has provided hundreds of thousands of jobs for Indians and non-Indians alike, and paid millions of dollars in payroll taxes and other direct benefits to state and local governments. Many tribes engaged in gaming have not found this great success, but have been able to create successful small businesses that provide a moderate amount of revenue. However, for most tribes Indian gaming has not been an answer to their tremendous needs.

RELATIONSHIPS BETWEEN THE FEDERAL GOVERNMENT AND TRIBES

After generations of disastrous federal policies toward Indians (including forced removal, forced assimilation, and termination of tribal identity), the federal government officially recognized in the 1970s that the best decision-makers for Indian Country are tribal governments themselves. Under the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638), “638” Self Governance contracting, and related measures designed to promote tribes’ control over their own destinies, tribal governments manage many federal programs that are intended to serve Indian people. With increased control over their own lands and resources, tribes have made great strides towards reversing economic hardships that resulted from previous federal policies, and toward reinvigorating their unique cultures and societies. But a changing federal landscape has brought new challenges to self-determination.

In recent years, service programs (welfare reform, child care, and social support) and environmental programs have been increasingly devolved from the federal government to state, local, and tribal governments in a shift in resources and responsibility intended to make government more responsive to local needs.

Decentralization has a mixed and unpredictable impact on tribal governments. Depending on the mechanism through which programs are devolved (generally through federal law), tribal governments may be overlooked as units of government with authority to directly receive the resources and administer the specific program. Although some authorizing laws—like many environmental laws and some parts of the welfare reform law—recognize tribal governments as capable program administrators, other federal laws, like Titles IV-E (foster care) and XX (social services block grant) of the Social Security Act, do not. Adequate resources to provide services are also of concern, particularly because fixed federal block grants may be inadequate in times of economic distress or downturn. Finally, many programs lack administrative resources and have limited flexibility, overly burdensome reporting requirements, and unrealistic programmatic performance measures—all of which are problematic for both states and tribes. Decentralization policies also raise questions about the federal trust and treaty responsibilities and the reduction of federal oversight and concern for tribal needs. For decentralized federal policies to work well in Indian Country, they will need to maintain federal baseline standards that protect the federal trust and treaty responsibilities to Indian Nations, further the policy of tribal self-government, and build on the government-to-government relationships between the federal government, the states and the tribes.

RELATIONSHIPS BETWEEN STATE GOVERNMENTS AND TRIBES

The U.S. Constitution gives exclusive authority in Indian affairs to the federal government, not to the state governments. Tribal governments are not subservient to state governments, and they retain the right to create laws that are stricter or more lenient than state laws. State laws cannot be applied where they interfere with the right of a tribe to make its own laws protecting the health and welfare of its citizens, or where it would interfere with any federal interest. In general, states may regulate only on matters that are exclusive to non-Indians and that do not affect tribal interests. In some limited instances, the federal government has delegated federal authority on Indian lands to the states.

The analysis of state-tribal relations often is described as a jurisdictional battle over when and how the state may regulate on tribal lands. However, this view of tribal-state relations is incomplete. For many decades and with far less publicity, tribal governments and state governments have found ways to cooperate on a broad range of regulatory matters. Most often, the cooperation is in the form of an intergovernmental agreement, a state statute, or an informal arrangement regarding which government will perform certain functions.

FUTURE OF FEDERAL POLICY TOWARD INDIAN NATIONS

As the history of federal policy toward Indian Nations illustrates, federal protection of Indian tribes is never secure. In the 1990's, tribes saw an increase in the amount of legislation advanced which sought to limit the exercise of tribal self-government. In addition, the Supreme Court has increasingly limited tribal governments' jurisdiction over non-tribal members. Proposals have surfaced in the U.S. Congress that would cripple the tribes' ability to provide basic government functions and services, exercise legal jurisdiction, enforce treaty rights, recover land, or raise revenues for government functions - even to continue age-old hunting and fishing practices. This hostile legislation threatens to end tribes' ability to function, and would effectively force tribal members to flee their homes and communities.

Tribal self-governance is modern, democratic, fair, and deserving of respect. In addition to being culturally and historically rich, tribal governments are good neighbors and good partners in economic development. It is up to each of us to become informed about tribal governments and help to protect them. The indigenous people of this nation are depending on your efforts, your conscience, and your support.

CONTACTING TRIBAL GOVERNMENTS

Tribal governments themselves are the fundamental source of authority in Indian Country. NCAI would urge you to contact them directly if you have a concern or question. NCAI and other organizations can serve as a resource, but we are no substitute for direct communication with tribal governments.

The 562 tribal governments are too numerous to list for the purposes of this brief booklet, but a complete list of federally recognized tribes with addresses and phone numbers is available on the NCAI web site at www.ncai.org.

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RESOURCES

National & International Tribal Organizations

| | <u>Phone</u> | <u>Web Address</u> |
|--|----------------|---|
| American Indian Disability Technical Assistance Center | (866) 424.3822 | aidtac.ruralinstitute.umt.edu/default.htm |
| American Indian Higher Education Consortium | (703) 838.0400 | www.aihec.org |
| American Indian Resources Institute | (510) 834.9333 | |
| American Indian Science and Engineering Society | (505) 765.1052 | www.aises.org |
| American Indian Society | (804) 448.3707 | www.aisd.org/public/ |
| Americans for Indian Opportunity | (505) 867.0278 | www.aio.org |
| AMERIND- Risk Management | (505) 837.2290 | www.amerind-corp.org/ |
| Center for World Indigenous Studies | (360) 754.1990 | www.cwis.org/ |
| Council of Energy Resource Tribes | (303) 282.7576 | |
| First Nations Development Institute | (540) 371.5615 | www.firstnations.org |
| Indian & Native American Employment & Training Coalition | (202) 339.9314 | www.nativeworkforce.org |

National & International Tribal Organizations

Phone Web Address

RESOURCES Cont.

| | | |
|---|-----------------|--|
| Indian Law Resource Center | (202) 547.2800 | www.indianlaw.org |
| Indigenous Languages Institute | | |
| Intertribal Agricultural Council | (406) 259.3525 | www.supermarketcoop.com/iac.htm |
| Intertribal Timber Council | (503) 282.4296 | www.itcnet.org |
| Intertribal Transportation Association | (405) 372.0202 | |
| Intertribal Trust Fund Monitoring Association | (505) 298 .8768 | www.itmatrustfunds.org/index.cfm |
| National American Indian Court Judges Assn. | (605) 342.4804 | www.naicja.org |
| National American Indian Housing Council | (202) 789.1754 | www.naihc.Indian.com |
| National Association of Tribal Historic Preservation Officers | (202) 628.8476 | www.nathpo.org/ |
| National Congress of American Indians | (202) 466.7767 | www.ncai.org |
| National Indian Business Association | (202) 223.3766 | www.nibanetwork.org/ |
| National Indian Child Care Association | (918) 756.2112 | |
| National Indian Child Welfare Association | (503) 222.4044 | www.nicwa.org |
| National Indian Council on Aging | (505) 292.2001 | www.nicoa.org |
| National Indian Education Association | (703) 838.2870 | www.niea.org |
| National Indian Gaming Association | (202) 546.7711 | www.indiangaming.org/ |
| National Indian Health Board | (202) 742-4262 | www.nihb.org |
| National Indian Justice Center | (707)579.5507 | nijc.indian.com |
| National Native American AIDS Prevention Center | (510) 444.2051 | www.nnaapc.org |
| National Tribal Environmental Council | (505) 242.2175 | www.ntec.org |
| National Tribal Justice Resource Center | (303) 245.0786 | www.tribalresourcecenter.org |
| Native American Finance Officers Association | (602) 532-6295 | www.nafoa.org |
| Native American Journalists Association | (605) 677.5282 | www.naja.com |
| Native American Rights Fund | (303) 447.8760 | www.narf.org |
| Native American Fish & Wildlife Society | (303) 466.1725 | www.nafws.org |
| Tribal Child Care Technical Assistance Center | (800) 388.7670 | www.nccic.org/tribal |
| United National Indian Tribal Youth (UNITY) | (405) 236.2800 | www.unityinc.org |

Regional Tribal Organizations

| | <u>Phone</u> | <u>Web Address</u> |
|---|----------------|--|
| Affiliated Tribes of Northwest Indians | (503) 249.5770 | www.atntribes.org |
| Alaska Federation of Natives | (907) 274.3611 | www.nativefederation.org/flash.html |
| Alaska Inter-Tribal Council | (907) 563.9334 | www.aitc.org |
| Alaska Native Health Board | (907) 743.6112 | www.anhb.org |
| All Indian Pueblo Council | (505) 881.1992 | www.aipcinc.com |
| California Council of Tribal Governments | (530) 244.2994 | |
| California Indian Lands Office | (209) 588.9770 | www.indianslandoffice.qpg.com |
| California Indian Manpower Consortium | (916) 920.0285 | |
| California Nations Indian Gaming Association | (916) 448.8706 | www.cniga.com |
| California Rural Indian Health Board | (916) 929.9761 | www.crihb.org/home.htm |
| Columbia River Inter-Tribal Fish Commission | (503) 238.0667 | www.critfc.org |
| Great Lakes Intertribal Council | (715) 588.3324 | www.glitc.org/ |
| Intertribal Bison Cooperative | (605) 394.9730 | www.intertribalbison.org/ |
| Inter Tribal Council of Arizona | (602) 258.4822 | www.itcaonline.com |
| Intertribal Council of California | (916) 973-9581 | |
| Intertribal Council of Nevada | (702) 355.0600 | itcn.org/itcn/itcn.html |
| Intertribal Council of the Five Civilized Tribes | (918) 756.8700 | |
| Inter Tribal Council of Michigan | (906) 632.6896 | www.itcmi.org |
| Midwest Alliance of Sovereign Tribes | (218) 547.2676 | |
| Montana-Wyoming Tribal Leaders Council | (406) 252.2550 | tlc.wtp.net |
| Northwest Indian Fisheries Commission | (360) 438.1180 | www.nwifc.wa.gov/ |
| Northwest Portland Area Indian Health Board | (503) 228.4185 | www.npaih.org |
| Oklahomans for Indian Opportunity | (800) 375.3737 | www.oio.com |
| Southern California Tribal Chairman's Association | (760) 742.8600 | www.sctca.net/ |
| United South & Eastern Tribes | (615) 872.7900 | usetinc.org/ |
| United Tribes of Texas, Kansas & Oklahoma | (918) 968.1141 | |

RESOURCES Cont.

Key Federal Government Contacts

| | Phone | Web address |
|--|-----------------------------------|--|
| Department of Agriculture, Director of Native American Programs | (202) 720.3805 | |
| Department of Health & Human Services Indian Health Service | (202) 619.0257 (301) 443.1083 | www.hhs.gov www.ihs.gov |
| Administration for Native American Department of Housing & Urban Development, Office of Native American Programs | (202) 690.7776 (202) 401.7914 | www.acf.hhs.gov/programs/ana www.codetalk.fed.us/HUD_ONAP.html |
| Department of the Interior, Bureau of Indian Affairs Department of the Interior, National Park Service, Native American Liaison Office | (202) 208.3711 (202) 354.6965 | www.doi.gov/bureau-indian-affairs.html www.cr.nps.gov/ailo/ |
| Department of Justice, Office of Tribal Justice Department of Labor, Division of Indian & Native American Programs | (202) 514.8812 (202) 693.3841 | www.usdoj.gov/otj/ wdsc.doleta.gov/dinap/ |
| Environmental Protection Agency, American Indian Environmental Office | (202) 260.7939 | www.epa.gov/indian/programs.htm |
| Federal Communications Commission, Indian Telecommunications Initiatives | (888) 225.5322 | www.fcc.gov/indians/ |
| National Indian Gaming Commission | (202) 632.7003 | www.nigc.gov |
| Smithsonian Institution, National Museum of the American Indian | (212) 514.3700/ (202) 287.2020 | www.nmai.si.edu/ |
| U.S. Senate Committee on Indian Affairs U.S. House of Representatives Native American Caucus | (202) 224.2251 (202) 225.0991 | www.senate.gov/~scia/ |
| U.S. House of Representatives, Resources Committee | (202) 225.2761 | www.house.gov/resources |



Members of the Mandan, Hidatsa and Arikara Nation of North Dakota, including Chairman Tex Hall celebrate the dedication of a statue memorializing Sakakawea in front of the US Capitol Building. Joining tribal members are North Dakota Congressman Earl Pomeroy (left), North Dakota Governor John Hoeven (second from right) and National Indian Gaming Association Chairman Ernest Stevens Jr. (right).

