

## Tribal Governments Essay

This essay describes the powers and rights of American Indian tribal governments, especially as they relate to national, state, and local governments.

### **Tribal Recognition and the Status of Tribal Governments**

The U.S. federal government recognizes 562 American Indian tribes. In addition, some tribes are recognized by a state government but not by the federal government. Tribes vary widely in size, but to be federally recognized they must prove, among other things, that they have existed as a distinct community since “historical times,” that they operate as a “single autonomous political entity,” and that they have governing procedures.

These tribal governments are defined as “domestic dependent nations.” Indian nations are sovereign and their unique political and legal standing has evolved. Contemporary policy stresses that the United States and American Indian nations have a “government-to-government relationship”—that is, the tribal government is to be treated as equal in standing to the federal government. It also emphasizes the federal government’s “trust responsibility,” its obligation to protect tribal assets and seek the welfare of American Indian communities. Most Indian lands are held in trust by the U.S. government, which provides programs and services to members of the tribes.

### **Powers and Limitations of Tribal Governments**

Tribal governments in the United States vary widely in size and structure. The smallest tribe, the Augustine Band of Cahuilla Indians in California, has only five members, and its government consists of a tribal chairperson. By contrast, the Navajo Nation has 250,000 members, with a tribal council of 88 delegates representing 110 chapters, or communities. Indian nations have the power to form their own governments and adopt their own constitutions. Many tribal governments predate the United States’ own federal government; indeed, some tribes have had constitutions for hundreds of years. In 1934 the federal government sought to standardize how tribes governed themselves, enacting the Indian Reorganization Act. The act promised certain benefits to tribes that adopted a constitution similar to the U.S. Constitution. Many tribes complied, setting up governments similar in structure to that of the federal government, often with executive, legislative, and judicial branches. Yet many others continued to govern themselves according to long-standing tradition. In recent years some tribes have undertaken a process of constitutional reform to create more effective and culturally appropriate governments.

Indian nations also have the power to enforce their own civil and criminal laws, to tax their citizens, to establish their own criteria for membership in the tribe, to license and regulate activities on tribal lands, and to exclude persons from tribal territory. Tribal governments, like state governments, have specific limits to their powers. For example, they may not engage in foreign relations with other nations, make war on another nation, or coin their own money.

### **Tribal Governments and the Federal Government**

Federal policy toward tribal governments has a long and complicated history shaped by the Constitution, Supreme Court decisions, executive orders, existing federal policy, and tribal laws. Each tribe’s relationship to the federal government is slightly different, depending on individual treaties, unique relationships, and particular agreements. Regardless of special circumstances, though, federal policy is to approach interactions at a government-to-government level.

Central to the relationship between the tribes and the federal government is the so-called trust relationship. The Department of the Interior’s Bureau of Indian Affairs manages this relationship and has responsibility for the 55.7 million acres of land held in trust for American Indians and Alaska natives. The BIA develops forestlands, protects water and land

rights, directs agricultural programs, and develops and maintains infrastructure and economic development on these lands. It also runs schools that educate 60,000 Indian children through college.

In addition, the federal government gives grants to tribes to help finance a range of services, such as health care, social welfare, education, housing, transportation, and environmental protection. Since the Tribal Self-Governance Act of 1994, tribes have had greater power to assess for themselves their needs and determine the priorities for serving their communities with federal dollars. Many tribes have taken over programs formerly run by the BIA.

Tribal sovereignty is not absolute, however. For example, the Supreme Court ruled in *Oliphant v. Suquamish Indian Tribe* (1978) that tribal courts do not have criminal jurisdiction over non-Indians on their lands. The Court stated that tribes could not exercise powers surrendered by treaty, prohibited by federal law, or “inconsistent with their status of a domestic dependent nation.” Court decisions and laws passed by Congress continue to define limits to tribal powers.

Critics of the limitations on tribes’ sovereignty argue that the “trust” relationship implies that Indian nations are incompetent and unable to handle their own affairs. They also point to the erosion of sovereignty, especially as affected by the courts. Organizations such as the National Congress of American Indians and the Native American Rights Fund have made it their goal to protect tribal sovereignty. They seek to strengthen tribal leadership while educating Congress and the public about issues that affect the tribes.

### **Tribal Governments and State Governments**

Because the Constitution gives authority over Indian affairs to the federal government, state governments have no official authority over tribal governments. Yet even though the tribes operate independent of state governments, in practice they must collaborate and cooperate in a government-to-government fashion.

State governments and tribal governments have parallel and often overlapping responsibilities and challenges. Both use public funds to serve the welfare of their citizens. Both provide services such as education, health care, and law enforcement. Both seek to protect the environment and promote a healthy economy.

Yet some non-Indians live on reservation lands, just as some tribal members live off-reservation, which means providing services to either constituency can be complicated. Consider the Navajo Nation. Its lands span approximately 27,000 square miles across three states, and several thousand non-Navajos live within these boundaries. All 10 divisions of the Navajo Nation government must interact with state governments to coordinate services. For example, the Navajo Transit System faces the challenge of transporting residents across the vast area of tribal lands, often on state highways. Though run by the Navajo Nation, the system is funded primarily by the Arizona and New Mexico state departments of transportation. The Navajo Nation’s Division of Public Safety operates fire and rescue services, yet some communities are protected by community services or even the BIA.

In addition to coordinating public services, tribal and state legislatures interact about policy issues. Tribal governments have become increasingly visible in recent years, and state legislators are becoming more aware of the effects of state laws on American Indian constituents. For example, environmental laws enacted by the state might differ from those on a neighboring reservation but still affect the environment of those tribal lands. Tribal leaders also recognize that state legislatures appropriate funds for state programs that might benefit tribal members. They know that they need to have an open, working relationship with legislators who represent a tribal community’s district.

One area where conflict and confusion arise between state and tribal governments is the judicial system. Often at issue is which system has jurisdiction over persons and things within tribal borders. In 1953 Congress enacted Public Law 280, which transferred legal authority in criminal and civil matters concerning tribal lands from the federal government to state governments. Though it only applies to six states (including California), these states contain 359 of the 562 federally recognized tribes. The law created ambiguity about the jurisdiction of tribal courts and also took away federal funding for law enforcement on Indian lands. The absence of federal support meant that many tribes lacked functioning criminal justice systems, which led the states to increase their involvement in tribal criminal cases. In recent years the U.S. Department of Justice and the tribes have worked to strengthen tribal justice systems so they might achieve parity and serve concurrently with state systems.

### **Tribal Governments and Local Governments**

Just as American Indian nations often have rights and responsibilities that overlap with those of state governments, the same is true with counties and municipalities. In some cases, a tribal government might function like a county government, such as when it has responsibility for the delivery of health and social services to tribal members. And, like cities and counties, tribal governments control economic development and land use issues within their boundaries. For example, a tribe might have responsibility for road maintenance, housing development, designating areas for agricultural use, and regulating environmental protection. In the area of law enforcement, sometimes county, local, and tribal police are cross-deputized so that they can enforce laws in each other's jurisdictions.

Sometimes local tribes join together in regional organizations to accomplish specific purposes, similar to how a county might function. A consortium of tribes in California's San Diego County runs the Tribal Aid to Needy Families program to deliver welfare services in its region, much as the county implements the state's CalWorks program. Indian tribes also work with special purpose districts, such as when they join together to work out water rights with local water districts. Forming intertribal governments has made it possible for tribes to seek community development grants, much as county governments do.

Members of tribal governments are often prohibited from acting as voting members of regional or local government bodies because of issues of sovereignty. Increasingly, though, tribal officials are invited to play an advisory role. Just as cities and counties consult each other regarding their plans, tribal governments help to influence regional issues such as habitat conservation, transportation, infrastructure to support economic development, and environmental protection.