

## Nations within a Nation

American Indian and Alaska Native tribes are sometimes described as “nations within a nation.” Although the tribes are located within the United States, our Constitution considers them separate, sovereign governments. As a **sovereign government**, tribes have the right to self-govern territory through their own authority, laws, and government structure. Federal treaties, legislation by Congress, executive actions by the president, and decisions from the Supreme Court have helped define the relationship between the United States and tribal governments.

**Federally recognized tribes** are those sovereign governments recognized as having a government-to-government relationship with the United States. This relationship includes defined responsibilities, powers, limitations, and obligations between the U.S. and a recognized tribe. There are currently 567 federally recognized American Indian and Alaska Native tribes and villages in the United States.



## Sovereign Power

As sovereign nations, American Indian and Alaska Native tribes are responsible for creating and maintaining governments that provide for and protect the members of the community. They hold the power to determine their own governing structures, create civil and criminal laws, and enforce those laws with their own police and justice systems. They also develop laws and regulations regarding tribal citizenship, taxation, and land use. As with state and federal governments, tribal governments are also responsible for providing a variety of services to their communities.

## Tribal Government Structures

While some tribal governments are organized based on traditional processes, many American Indian and Alaska Native tribes have adopted constitutions similar to the U.S. Constitution. As a result, these tribes have branches of government similar to those in our state and federal governments. This allows for the separation of powers. Such tribes have:

- An elected governor, chief, chair, or president who holds the executive power in the tribe.
  - Example: the President of the Navajo Nation is elected every four years
- A tribal council, which holds the legislative power.
  - Example: The White Earth Chippewa Tribal Council passes laws that are collected in Tribal Codes.
- A tribal court system handles disputes between tribal members as well as some disputes between members of the tribe and non-members.
  - Example: The Cherokee court system has a District Court as well as a Supreme Court

Some tribal constitutions, however, do not create separate branches of government. Some are governed only by a tribal council led by a tribal chair.



### By the Numbers

- Over 100 million acres are under the control of American Indian or Alaska Native tribes.
- The Navajo Nation would be the 42nd largest state in the U.S.
- 229 tribal nations are located in Alaska, 338 are located across 34 other states.

### What's in a Name?

#### American Indian (AI) and Alaska Native

**(AN):** Persons belonging to the Indigenous tribes of the continental U.S. (AI) and the Indigenous tribes and villages of Alaska (AN)

**Native American:** All Native peoples of the U.S. and its trust territories (i.e., American Indians, Alaska Natives, Native Hawaiians, Chamorros, and American Samoans), as well as persons from Canadian First Nations and Indigenous communities in Mexico and Central/South America who are U.S. residents.

-From the U.S. Bureau of Indian Affairs

## Tribal Services and Revenue

Tribal governments provide services to their community as well as require sources of revenue to pay for those services. Services and programs include education, social programs, emergency response services, energy and land management, as well as workforce development. They also oversee the building and maintenance of infrastructure, like bridges, roads, and public buildings.

Federally funded programs provide some money for services, but tribal governments are still responsible for paying for much of what happens within tribal life. Income from tribal businesses are the largest source of revenue for most tribes. Some tribes have found economic success with large-scale gaming and casino businesses, while others focus on tourism and a variety of broader business opportunities. Taxes, mainly sales tax, provide another important source of revenue.



The NIGC was created in 1988 with the passage of the Indian Gaming Regulatory Act, which was enacted to support and promote tribal economic development, self-sufficiency, and strong tribal governments through the operation of gaming on Indian lands.

### Treaties & Agreements

370 treaties were signed with various tribes between 1778 and 1871. After this date, the U.S. government stopped recognizing individual tribes and entering into treaties.

Since then agreements have been made through congressional acts and executive agreements and orders.



*The Head Chief of the Nez Perce represented his tribe at the signing of a treaty in 1855.*

## Treaties with the United States

Since America's founding, hundreds of treaties have been made to define how these nation-to-nation relationships between self-governing tribes and the United States government work. Westward expansion brought the U.S. into contact with more and more tribes, and the desire for tribal lands led to conflict and compromise. Treaties with American Indian tribes carry the same status as those with foreign nations and take precedence over any conflicting state laws, due to the fact that they are made under the U.S. Constitution and are the "supreme law of the land."

These treaties reflect a basic exchange between the U.S. government and the tribes with which they were created. As the tribes agreed to give up major portions of their territorial land, the federal government agreed to provide services and federal assistance to those within the tribe, for all time. Each treaty varies in detail, but common terms and provisions include the following:

- U.S. protection and a guarantee of peace
- Determination of land boundaries (what is reserved as tribal land vs. what is now federal land)
- Tribal recognition of U.S. authority
- Fishing and hunting rights (may include land outside the tribal boundaries)

Many treaties also include details regarding the types of federal services the tribe receives in exchange for their land. Also called **treaty rights**, these services often include healthcare, education, agricultural assistance, housing, and economic development. The goal was to provide enough assistance to ensure the success of tribal lands, although the federal funding necessary for these services has been historically inadequate.

# Tribal Government

Name: \_\_\_\_\_

## The Federal Trust Responsibility

Carrying out the promises of treaties with American Indian and Alaska Native tribes is a part of what is called the **federal trust responsibility**. This is the obligation of the entire U.S. federal government to protect tribal sovereignty and self-governance, lands, assets, resources, and treaty rights, and to carry out the direction of federal law and court cases. There are two basic areas of the trust relationship:

- Property protection: Tribal property and assets are protected by the U.S. government where the title to the land is held in trust for the benefit of the tribe.
- Land preservation and self-government: The U.S. government guarantees tribal lands for cultural use and governmental control.



The Supreme Court defined the trust

responsibility as a “moral obligation of the highest responsibility and trust” in the case of *Seminole Nation v. United States*, 1942.

## Interacting Governments



A **reservation** is a legal designation for land managed by an American Indian tribe under the U.S. Bureau of Indian Affairs.

The interactions of tribal, state, and the federal governments are that of distinct sovereign governments, rather than levels within the same shared government structure. The responsibilities, limitations, and powers of each government are defined through tribal, state, and federal law. States can't interfere with what happens on tribal land unless the tribe gives them permission to have **jurisdiction**, or authority, over it. Tribal governments are able to create and enforce stricter or lighter laws than the surrounding state or states where they are located. State and tribal governments do often collaborate when there are issues of shared concern like environmental protection and law enforcement. These collaborations can be established through individual agreements and compacts.

The federal government's relationship with American Indian and Alaska Native tribes is managed, for the most part, through the Bureau of Indian Affairs. This bureau was created within the U.S. Department of the Interior in 1824 to oversee and carry out the federal trust responsibility of the U.S. government. They oversee the funding related to programs and services for the tribal communities.

## Then and Now

The relationship between the United States government and American Indian and Alaska Native tribes has a long and difficult history. The pendulum has swung between cooperation with tribal governments as sovereign nations to violent removal of tribes from their lands with little or no compensation or recourse. Below are six general periods of the U.S. and tribal government relationship.

### 1492-1828: Colonial and Early American Relationships

Tribal governments were treated as sovereign nations and government-to-government relationships resulted in land acquisition through treaties.

**1828-1934: Removal and Reservation** As the U.S. population grew, more land was needed. Forced migration of Eastern tribes to reserved lands in the West and the eventual loss of that land to more American settlers left less than 1/3 of reservation lands for resettled tribes.

**1934-1945: Restoration and Reform** The federal government began to restore lands to tribes and worked to help reform tribal government structures. Programs were created to restore Indian economic life as well.

**1945-1968: End of Recognition** Congress terminated federal recognition and assistance to over 100 tribes, bringing economic disaster and imposing state civil and criminal authority. Attempts were made to relocate Indians from reservation lands to urban areas.

**1968-2000: Regaining Self-Determination** Federal policies began to favor self-governance and allowed for tribal governments to manage federal programs serving their people.

**2000– Present: Return to Nation-to-Nation Relationship** Building on the gains in self-determination and self-governing, tribal governments continue to assert themselves as independent nations.

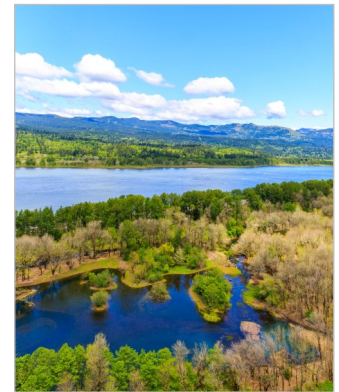
## Spotlight On: Fishing Rights in the Pacific Northwest

### A History of Tension

The history of federal, state, and tribal relations in the Pacific Northwest provides a great opportunity to watch the balance of sovereignty tip back and forth over a single issue: fishing rights. American Indian tribes of the region have always relied heavily on fishing for sustenance, trade, and cultural traditions. When white settlers moved in to the region in the 19th century, competition for natural resources grew to the point of conflict.

In 1855 the U.S government tasked Isaac Stevens, governor of the Washington Territory, to negotiate treaties with the tribes in what is now Washington state. The language in what is now known as the Stevens Treaties includes the following which guarantees the Native people, "The right of taking fish at usual and accustomed grounds and stations ... in common with all citizens of the United States."

These treaties failed to prevent future conflict as battles over land access, regulation, and conservation efforts continued to make their way to the courts. These cases show the ongoing tension between state and tribal sovereignty, as well as the role of the federal government in executing its trust responsibility.



*The Columbia River is an important source of tribal traditions and culture in the Pacific Northwest.*

**Searching for Sovereignty.** Select one historical conflict among the three sovereign governments (tribal, state, federal) and research the conflict, considering all perspectives. Use a separate piece of paper to answer the questions below based on your selection.

<p><b>Option 1:</b> In 1887, a white landowner fenced off access to the Yakima tribe's traditional fishing grounds. This ultimately resulted in the Supreme Court Case, <i>United States v. Taylor</i>.</p>	<p><b>Option 2:</b> In 1939, state game wardens arrested tribal fishermen for fishing without a state license. This resulted in the Supreme Court case, <i>Tulee v. Washington</i>.</p>	<p><b>Option 3:</b> In 1979, the Supreme Court affirmed the "Boldt decision" declaring that tribal fishermen were entitled to 50% of the fish in the "usual and accustomed grounds," that they could manage their own fisheries, and that earlier state restrictions were unlawful based on treaty rights.</p>
<p>Questions:</p> <ol style="list-style-type: none"> <li>Describe the perspectives of the following groups: Yakima tribe fishermen, the federal government, the state of Washington, the landowner who built the fence.</li> <li>What was the outcome of the Supreme Court decision in the case?</li> <li>Were treaty rights protected?</li> </ol>	<p>Questions:</p> <ol style="list-style-type: none"> <li>Describe the perspectives of the following groups: tribal fishermen arrested, the federal government, the state of Washington.</li> <li>What was the outcome of the Supreme Court decision in the case?</li> <li>Were treaty rights protected?</li> </ol>	<p>Questions:</p> <ol style="list-style-type: none"> <li>Describe the perspectives of the following groups: tribal fishermen, the federal government, the state of Washington, non-Indian commercial and sports fishermen.</li> <li>How does this decision impact conservation efforts?</li> <li>Were treaty rights protected?</li> </ol>

# Tribal Government

Name: \_\_\_\_\_

**Different Governing Styles.** Read the excerpts that establish the structure of government from two different tribal constitutions. Then consider the pros and cons for each style below.



## The Yavapai-Apache Nation

Section 1. Three Branches of Government.

The Yavapai-Apache government shall be divided into three (3) separate and independent branches of government: the Legislature, the Judiciary and the Executive Department. No person or group of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except as this constitution may otherwise expressly direct or permit.



## The White Mountain Apache Tribe

Section 1. Governing Body.

The governing body of the White Mountain Apache Tribe shall be known as the White Mountain Apache Tribal Council and shall consist of a Chairman, Vice Chairman and nine members to be chosen as follows:

- Chairman, by popular vote of the Tribe
- Vice-chairman, by popular vote of the Tribe
- Two members, by popular vote of the Cibecue, Oak Creek and Grasshopper District
- Two members, by popular vote of the Carrizo, Forestdale and Cedar Creek District
- Two members, by popular vote of Eastfork, Turkey Creek, and Seven Mile District
- Three members, by popular vote of the Canyon Day, Hondah-McNary and Whiteriver-Northfork District

<p>1. How would you describe the structure of the Yavapai-Apache Nation's government?</p> <p>2. What is one check or balance mentioned in this section of the constitution?</p>	<p>1. How would you describe the structure of the White Mountain Apache Tribe's government?</p> <p>2. Which positions are selected by the whole tribe? How are the other members of the Council selected?</p>
<p>List <b>one pro</b> and <b>one con</b> for this type of government structure.</p>	<p>List <b>one pro</b> and <b>one con</b> for this type of government structure.</p>