



Policy Basics: What Is Tribal Sovereignty?

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This report is part of an ongoing project that introduces readers to foundational topics. Other policy basics in this series will include: citizenship; land; jurisdiction; and taxes in Indian Country. This report focuses specifically on the legal concept of tribal sovereignty.

Sovereign Since Time Immemorial

Sovereignty refers to the inherent right of tribal nations to self-govern their people and territory and to self-determine their futures. The United States did not give tribal nations this right. This means that tribal citizens follow the laws and government of their tribal nation. Tribal nations have been sovereign since time immemorial, long before the United States began occupying this land.

European settlers treated tribal nations as sovereign when they first came to what is now the United States. These early interactions set the stage for future relations. The United States continues to recognize the political status of tribal nations and the legal relationship that this status entails.

The Political and Legal Status of Tribal Nations and Citizens

The political and legal status of tribal nations and citizens do not derive from race or ethnicity. Tribal citizens are citizens of their tribal nation, the United States, and the state in which they reside. The U.S. Constitution recognizes tribal nations as sovereign governments and as having a formal nation-to-nation relationship with the United States.¹

Between 1778 and 1871, the inherent sovereignty of tribal nations and the United States allowed the parties to enter into more than 370 treaties.^{2,3} U.S. treaties with tribal nations are of the same status as treaties with foreign nations. Treaties represent an acknowledgement of certain rights, not a granting of rights, already held by tribal nations and citizens. Tribal nations reserve all rights they did not exchange in treaties, including the right to self-govern. Unless a treaty or federal policy removed a power or right, the tribal nation is assumed to still possess it. These treaties have no expiration date.

Hundreds of treaties, the Supreme Court, the president, and Congress have repeatedly upheld the inherent right of tribal nations to self-govern and have created a legally binding contract between tribal nations and the United States.⁴

The Federal Trust Responsibility

The United States is what it is today because tribal nations ceded control of millions of acres of land through treaties. In exchange, the federal government guaranteed the continued inherent right of tribal nations to self-govern on their own lands.⁵ The United States also declared tribal nations to be domestic dependent nations to whom the federal government has a trust responsibility.⁶ This federal trust responsibility: (i) stems from treaties; (ii) protects tribal lands and self-government; and (ii) provides federal assistance, such as health care and education, to tribal nations to ensure the success of tribal communities in perpetuity.⁷ The federal government has never fully honored its trust responsibility.⁸

Between 1968 and 2000, Congress enacted policies that favored tribal self-governance and the right of tribal nations to self-determine their futures.⁹ Under self-determination and self-governance acts, tribal governments can assume varying levels of control over a variety of federal programs serving their communities, such as health-care delivery. These agreements are referred to as 638 compacts and contracts. Although tribal governments receive some federal dollars for this work, chronic underfunding requires them to supplement program budgets with their own resources.¹⁰ Nevertheless, this function promotes sovereignty and allows tribal nations to leverage their many strengths.

State-Tribal Relations

Because U.S. treaties with tribal nations are made under the U.S. Constitution, they are the “supreme law of the land” and take precedence over any conflicting state law.¹¹ Moreover, the federal government has authority over Indian affairs, and unless authorized by Congress, state law does not apply in Indian Country.¹² This means that tribal nations have the right and authority to regulate activities on their lands independently from the state. However, the state can and should engage in government-to-government relations with tribal nations as sovereigns. Montana law recognizes this relationship between tribal nations and the state and requires state agencies to follow principles that acknowledge this relationship.¹³

Honoring tribal sovereignty is critical for all of Montana. Tribal nations in Montana represent a core strength of the state, contributing roughly \$1 billion annually to the Montana economy,¹⁴ providing quality education and jobs through tribal colleges and universities, delivering essential government services that benefit all Montanans, and so much more.

Reservation	Tribal Government	Tribes
Blackfeet Reservation	Blackfeet Nation	Blackfeet
Crow Reservation	Crow Tribe of Indians	Crow
Flathead Reservation	Confederated Salish and Kootenai Tribes	Salish, Kootenai, Pend d'Oreille
Fort Belknap Reservation	Fort Belknap Indian Community	Gros Ventre, Assiniboine
Fort Peck Reservation	Fort Peck Tribes	Assiniboine, Sioux
Northern Cheyenne Reservation	Northern Cheyenne Tribe	Northern Cheyenne
Rocky Boy's Reservation	Chippewa Cree Tribe	Chippewa Cree
To Be Determined	Little Shell Tribe of Chippewa Indians	Little Shell Chippewa

¹ National Congress of American Indians, “Tribal Governance.”

² Cahoon, H., “Revenue Competitions between Sovereigns: State and Tribal Taxation in Montana,” *American Indian Culture and Research Journal*, Vol. 42, No. 1, 2018, pp. 17-39.

³ National Congress of American Indians, *Tribal Nations and the United States: An Introduction.*”

⁴ National Congress of American Indians, *Tribal Nations and the United States: An Introduction.*”

⁵ National Congress of American Indians, “Tribal Governance.”

⁶ Koenig, A. and Stein, J., “Federalism and the State Recognition of Native American Tribes: A Survey of State-Recognized Tribes and State Recognition Processes across the United States,” *Santa Clara Law Review*, Vol. 48, No. 1, 2008.

⁷ National Congress of American Indians, *Tribal Nations and the United States: An Introduction.*”

⁸ National Congress of American Indians, *Tribal Nations and the United States: An Introduction.*”

⁹ National Congress of American Indians, *Tribal Nations and the United States: An Introduction.*”

¹⁰ Davis, L., U.S. Department of the Interior, *testimony on H.R. 4347, the Department of the Interior Tribal Self-Governance Act*, House Natural Resources Committee, June 9, 2010.

¹¹ National Congress of American Indians, *Tribal Nations and the United States: An Introduction.*”

¹² Fletcher, M. L. M., “A Shorty History of Indian Law in the Supreme Court,” *American Bar Association*, Oct. 1, 2014.

¹³ *Mont. Code Ann.*, 2-15-142.

¹⁴ Department of Commerce, “Economic Contributions of Reservations to the State of Montana, 2003-2009.”