

You will learn how the unique status of Indian tribes and their historical relationship with the federal government affects government programs, responsibilities, and initiatives. An excellent tool for anyone working in Indian Country.

Working Effectively with Tribal Governments

2009

DISCLAIMER: THIS TRAINING PROGRAM IS FOR GENERAL EDUCATIONAL PURPOSES ONLY, AND IS NOT INTENDED TO PROVIDE LEGAL ADVICE.

Working Effectively with Tribal Governments

Overview of Working Effectively with Tribal Governments

In the Introduction to Tribal Concepts Section, you will be introduced to key terms and concepts to provide a foundation for this course.

In the Federal Indian Law and Policy Section, you gain both a historical and current perspective of the federal government's policy toward Indian tribes.

You will also be introduced to jurisdictional issues, the topic of tribal and state relations, and legislation relevant to Indian tribes.

In the Cultural Orientation Section, you will learn generally about Native American cultures. You will also learn about the importance of cultural sensitivity when working with Native Americans and tribal governments.

Purpose

This training curriculum has been developed to provide federal employees with skills and knowledge they can use to work more effectively with tribal governments.

In this course, you will develop an understanding and awareness of tribal issues and concerns. You will learn how the unique status of Indian tribes and their historical relationship with the federal government affects government programs, responsibilities, and initiatives.

You will also learn about the integral role of federal Indian policy in all aspects of working with tribal governments.

To work effectively with tribes, you should be aware of not only historical and legal issues, but cultural factors as well. This course will also touch on some of these cultural factors.

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Disclaimer

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SECTION ONE – Introduction to Tribal Concepts

Objectives

Working effectively with tribal governments can be complex. It requires a familiarity with terms and concepts that pertain specifically to Indian tribes.

In this section, you will be introduced to many of these key terms and concepts. The knowledge you gain will provide a foundation for the remainder of this training course, and for your future work with tribal governments.

Some of the key terms and concepts used throughout the course include the following:

- American Indian, Alaska Native, Native American.
- Federal Recognition.
- Treaties.
- Tribal Sovereignty.
- Tribal Governments.
- The Government-to-Government Relationship.
- The Federal Trust Responsibility.
- Indian Country.

The People

American Indian, Alaska Native, Native American. You have probably heard these terms used before, but what do they really mean? For the purposes of this training course, each of these terms can refer to a person descended from ancestors indigenous to the lands that now constitute the United States.

- The term "Alaska Native" is by definition exclusive to peoples indigenous to Alaska. But as is the case for tribes located in the lower 48 states, the tribes in Alaska are culturally diverse with rich traditions rooted in their regional homelands. The language of the 1934 Indian Reorganization Act (or IRA) included in its definition of an Indian, "Eskimos and other aboriginal people of Alaska."
- Generally, the term "Native American" includes both American Indians of the lower 48 states and Alaska Natives.
- Although some people may use the terms "Indian" or "American Indian" to refer to themselves, others prefer the term "Native American." This course will use these terms interchangeably.
- Keep in mind, however, that it is generally preferable to refer to an individual as a member of his or her particular tribe.

Supplemental Information

Native American Demographics According to the U.S. Census Bureau

Native American populations are increasing. As of 2005, there are an estimated 4.5 million American Indians and Alaska Natives, including those identifying as multi-racial. They make up 1.5 percent of the total U.S. population.

The median age of the Native American population is younger than that of the U.S. population as a whole. As of 2005, about 1.3 million American Indians and Alaska Natives were under 18 years of age, and 336,000 were 65 or older.

In 2005, there were approximately 170,000 Native American veterans of the U.S. armed forces. On a per capita basis, more Native Americans serve in the U.S. military than any other race of U.S. citizens.

The poverty rate of people who reported they were Native American and no other race was 25%.

Location and Concentration

Native Americans live in every state in the U.S., in small towns, villages, big cities, and on reservations or other forms of tribal land.

- The Bureau of Indian Affairs (BIA) is responsible for the administration and management of 55.7 million acres of land held in trust by the United States for individual American Indians, Indian tribes, and Alaska Natives. There are currently over 560 federal recognized tribal governments in the United States. Developing tribal forest lands, leasing assets on tribal lands, directing tribal agricultural programs, protecting tribal water and land rights, and developing and maintaining tribal infrastructure and economic development are all part of the BIA's responsibility. In addition, the BIA provides education services to approximately 48,000 Native American students.*
- There are many tribal communities scattered geographically throughout the United States.*

According to the U.S. Census Bureau:

- As of 2005, the Native American population of California is the highest of any state, followed by Oklahoma and Arizona.*
- As of 2003, the metropolitan area of Farmington, NM had the highest percentage of Native Americans. Approximately 40% of the population. Flagstaff, AZ follows at 31% of the population.*

Federally Recognized Indian Tribes

- Another definition of a Native American is a person with tribal membership. What does tribal membership mean? Since tribes can define their own membership criteria, different tribes have different requirements for tribal enrollment. There are individuals**

of Native American descent who nevertheless cannot meet the enrollment criteria of their tribe, or tribes, of origin. As a result, they would not be considered to hold tribal membership.

- In a few cases, federal agencies may have their own definitions of who is eligible for certain programs, which may not include membership in a federally recognized tribe.
- A general definition of a tribe is a body of people bound together by blood ties who are socially, politically, and religiously organized. The people may live together in a defined territory and speak a common language. The term "Indian tribes," which appears in Article 1, Section 8 of the United States Constitution, has been used in numerous pieces of legislation and as a result "Indian tribe" has become a frequently used legal term of art. You may also hear tribes referred to as "Nations," which is another way of expressing their sovereign status. For purposes of this training module, the term "Indian tribes" refers to federally recognized tribes.
- "Indian tribe" means any tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. (43 U.S.C. 450b(e)).
- Federally recognized Indian tribes have a legal relationship with the U.S. government and its agencies unlike that of any other group of Americans. This relationship is based in large part on the recognition of tribes as sovereign nations in the U.S. Constitution. This relationship is furthered in historic treaties that the federal government signed with Indian tribes, which acknowledged and recognized the tribes' inherent sovereignty as nations. Therefore, the relationship between the federal government and federally recognized Indian tribes is a political one, based on this historic and evolving relationship between sovereign governments, and not on the ethnicity of Native Americans.
- The fact that federally recognized Indian tribes possess this unique political status does not affect the ability of their individual tribal members to participate in programs that serve minority populations.
- Federal recognition is now normally achieved by a statutorily defined federal acknowledgment process through the Bureau of Indian Affairs (or BIA), or by an act of Congress. The BIA process requires tribes to show that they have maintained a substantially continuous tribal existence and have functioned as autonomous entities throughout history to the present. Most tribes, however, were recognized by the U.S. government long before the present BIA process was implemented, usually by treaty, federal statute, or Presidential Executive Order. Federal recognition is a prerequisite for a tribe's participation in the special Indian programs and services administered by the departments and agencies of the U.S. government, and for the immunity of a tribe's trust lands from state taxation.
- Legally, there is a distinction between Indian tribes who are federally recognized and those who are not. Federal recognition signifies that the U.S. government acknowledges the political sovereignty and Indian identity of a tribe, and from that recognition flows the obligation to conduct dealings with that tribe's leadership on a

government-to-government basis. There will be more about the government-to-government relationship later in this module.

- Today, there are over 560 tribes recognized by the U.S. government. This includes over 220 Alaska Native Villages. We use these approximate numbers because there are tribes currently seeking recognition through the BIA process or by federal statute, and thus these numbers may increase over time.
- Regardless of how it was recognized, each tribe has its own unique history and culture.

Supplemental Information

Indian Tribe – A Statutory Definition

"Indian tribe" means any tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. (43 U.S.C. 450b (e)).

Names of the Federally Recognized Tribes

Absentee-Shawnee Tribe of Indians of Oklahoma
Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California
Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona
Alabama-Coushatta Tribes of Texas
Alabama-Quassarte Tribal Town, Oklahoma
Alturas Indian Rancheria, California
Apache Tribe of Oklahoma
Arapahoe Tribe of the Wind River Reservation, Wyoming
Aroostook Band of Micmac Indians of Maine
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana
Augustine Band of Cahuilla Indians, California (formerly the Augustine Band of Cahuilla Mission Indians of the Augustine Reservation)
Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin
Bay Mills Indian Community, Michigan
Bear River Band of the Rohnerville Rancheria, California
Berry Creek Rancheria of Maidu Indians of California
Big Lagoon Rancheria, California
Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California
Big Sandy Rancheria of Mono Indians of California
Big Valley Band of Pomo Indians of the Big Valley Rancheria, California
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Blue Lake Rancheria, California
Bridgeport Paiute Indian Colony of California
Buena Vista Rancheria of Me-Wuk Indians of California
Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon
Cabazon Band of Mission Indians, California
Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California
Caddo Nation of Oklahoma
Cahuilla Band of Mission Indians of the Cahuilla Reservation, California
Cahto Indian Tribe of the Laytonville Rancheria, California
California Valley Miwok Tribe, California
Campo Band of Diegueno Mission
Indians of the Campo Indian Reservation, California
Capitan Grande Band of Diegueno Mission Indians of California: Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California

Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California
Catawba Indian Nation (aka Catawba Tribe of South Carolina)
Cayuga Nation of New York
Cedarville Rancheria, California
Chemehuevi Indian Tribe of the Chemehuevi Reservation, California
Cher-Ae Heights Indian Community of the Trinidad Rancheria, California
Cherokee Nation, Oklahoma
Cheyenne and Arapaho Tribes, Oklahoma (formerly the Cheyenne- Arapaho Tribes of Oklahoma)
Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Chickasaw Nation, Oklahoma
Chicken Ranch Rancheria of Me-Wuk Indians of California
Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana
Chitimacha Tribe of Louisiana
Choctaw Nation of Oklahoma
Citizen Potawatomi Nation, Oklahoma
Cloverdale Rancheria of Pomo Indians of California
Cocopah Tribe of Arizona
Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho
Cold Springs Rancheria of Mono Indians of California
Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California
Comanche Nation, Oklahoma
Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana
Confederated Tribes of the Chehalis Reservation, Washington
Confederated Tribes of the Colville Reservation, Washington
Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon
Confederated Tribes of the Goshute Reservation, Nevada and Utah
Confederated Tribes of the Grand Ronde Community of Oregon
Confederated Tribes of Siletz Indians of Oregon (previously listed as the Confederated Tribes of the Siletz Reservation)
Confederated Tribes of the Umatilla Reservation, Oregon
Confederated Tribes of the Warm Springs Reservation of Oregon
Confederated Tribes and Bands of the Yakama Nation, Washington
Coquille Tribe of Oregon
Cortina Indian Rancheria of Wintun Indians of California
Coushatta Tribe of Louisiana
Cow Creek Band of Umpqua Indians of Oregon
Cowlitz Indian Tribe, Washington
Coyote Valley Band of Pomo Indians of California
Crow Tribe of Montana
Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota
Death Valley Timbi-Sha Shoshone Band of California
Delaware Nation, Oklahoma
Delaware Tribe of Indians, Oklahoma
Dry Creek Rancheria of Pomo Indians of California
Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada
Eastern Band of Cherokee Indians of North Carolina
Eastern Shawnee Tribe of Oklahoma
Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California
Elk Valley Rancheria, California
Ely Shoshone Tribe of Nevada
Enterprise Rancheria of Maidu Indians of California
Ewiiapaayp Band of Kumeyaay Indians, California
Federated Indians of Graton Rancheria, California
Flandreau Santee Sioux Tribe of South Dakota
Forest County Potawatomi Community, Wisconsin
Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Fort Bidwell Indian Community of the Fort Bidwell Reservation of California
Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California
Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon

Fort McDowell Yavapai Nation, Arizona
Fort Mojave Indian Tribe of Arizona, California & Nevada
Fort Sill Apache Tribe of Oklahoma
Gila River Indian Community of the Gila River Indian Reservation, Arizona
Grand Traverse Band of Ottawa and Chippewa Indians, Michigan
Greenville Rancheria of Maidu Indians of California
Grindstone Indian Rancheria of Wintun- Wailaki Indians of California Guidiville Rancheria of California
Habematolel Pomo of Upper Lake, California
Hannahville Indian Community, Michigan
Havasupai Tribe of the Havasupai Reservation, Arizona
Ho-Chunk Nation of Wisconsin
Hoh Indian Tribe of the Hoh Indian Reservation, Washington
Hoopa Valley Tribe, California
Hopi Tribe of Arizona
Hopland Band of Pomo Indians of the Hopland Rancheria, California
Houlton Band of Maliseet Indians of Maine
Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona
Iipay Nation of Santa Ysabel, California (formerly the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation)
Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California
Ione Band of Miwok Indians of California
Iowa Tribe of Kansas and Nebraska
Iowa Tribe of Oklahoma
Jackson Rancheria of Me-Wuk Indians of California
Jamestown S'Klallam Tribe of Washington
Jamul Indian Village of California
Jena Band of Choctaw Indians, Louisiana
Jicarilla Apache Nation, New Mexico
Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona
Kalispel Indian Community of the Kalispel Reservation, Washington
Karak Tribe of California
Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California
Kaw Nation, Oklahoma
Keweenaw Bay Indian Community, Michigan
Kialegee Tribal Town, Oklahoma
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas
Kickapoo Tribe of Oklahoma
Kickapoo Traditional Tribe of Texas
Kiowa Indian Tribe of Oklahoma
Klamath Tribes, Oregon
Kootenai Tribe of Idaho
La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California
La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California
Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin
Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin
Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan
Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada
Little River Band of Ottawa Indians, Michigan
Little Traverse Bay Bands of Odawa Indians, Michigan
Lower Lake Rancheria, California
Los Coyotes Band of Cahuilla and Cupeno Indians, California (formerly the Los Coyotes Band of Cahuilla & Cupeno Indians of the Los Coyotes Reservation)
Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada
Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota
Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington
Lower Sioux Indian Community in the State of Minnesota
Lummi Tribe of the Lummi Reservation, Washington

Lytton Rancheria of California
Makah Indian Tribe of the Makah Indian Reservation, Washington
Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California
Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California
Mashantucket Pequot Tribe of Connecticut
Mashpee Wampanoag Tribe, Massachusetts
Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan
Mechoopda Indian Tribe of Chico Rancheria, California
Menominee Indian Tribe of Wisconsin
Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California
Mescalero Apache Tribe of the Mescalero Reservation, New Mexico
Miami Tribe of Oklahoma
Miccosukee Tribe of Indians of Florida
Middletown Rancheria of Pomo Indians of California
Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band)
Mississippi Band of Choctaw Indians, Mississippi
Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada
Modoc Tribe of Oklahoma
Mohegan Indian Tribe of Connecticut
Mooretown Rancheria of Maidu Indians of California
Morongo Band of Mission Indians, California (formerly the Morongo Band of Cahuilla Mission Indians of the Morongo Reservation)
Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington
Muscogee (Creek) Nation, Oklahoma
Narragansett Indian Tribe of Rhode Island
Navajo Nation, Arizona, New Mexico & Utah
Nez Perce Tribe, Idaho (previously listed as Nez Perce Tribe of Idaho)
Nisqually Indian Tribe of the Nisqually Reservation, Washington
Nooksack Indian Tribe of Washington
Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana
Northfork Rancheria of Mono Indians of California
Northwestern Band of Shoshoni Nation of Utah (Washakie)
Nottawaseppi Huron Band of the Potawatomi, Michigan (formerly the Huron Potawatomi, Inc.)
Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
Ohkay Owingeh, New Mexico (formerly the Pueblo of San Juan)
Omaha Tribe of Nebraska
Oneida Nation of New York
Oneida Tribe of Indians of Wisconsin
Onondaga Nation of New York
Osage Nation, Oklahoma (formerly the Osage Tribe)
Ottawa Tribe of Oklahoma
Otoe-Missouria Tribe of Indians, Oklahoma
Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes) (formerly Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes))
Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California
Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada
Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California
Pala Band of Luiseno Mission Indians of the Pala Reservation, California
Pascua Yaqui Tribe of Arizona
Paskenta Band of Nomlaki Indians of California
Passamaquoddy Tribe of Maine
Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California
Pawnee Nation of Oklahoma
Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California
Penobscot Tribe of Maine
Peoria Tribe of Indians of Oklahoma

Picayune Rancheria of Chukchansi Indians of California
Pinoleville Pomo Nation, California (formerly the Pinoleville Rancheria of Pomo Indians of California)
Pit River Tribe, California (includes XL Ranch, Big Bend, Likely, Lookout, Montgomery Creek and Roaring Creek Rancherias)
Poarch Band of Creek Indians of Alabama
Pokagon Band of Potawatomi Indians, Michigan and Indiana
Ponca Tribe of Indians of Oklahoma
Ponca Tribe of Nebraska
Port Gamble Indian Community of the Port Gamble Reservation, Washington
Potter Valley Tribe, California
Prairie Band of Potawatomi Nation, Kansas
Prairie Island Indian Community in the State of Minnesota
Pueblo of Acoma, New Mexico
Pueblo of Cochiti, New Mexico
Pueblo of Jemez, New Mexico
Pueblo of Isleta, New Mexico
Pueblo of Laguna, New Mexico
Pueblo of Nambe, New Mexico
Pueblo of Picuris, New Mexico
Pueblo of Pojoaque, New Mexico
Pueblo of San Felipe, New Mexico
Pueblo of San Ildefonso, New Mexico
Pueblo of Sandia, New Mexico
Pueblo of Santa Ana, New Mexico
Pueblo of Santa Clara, New Mexico
Pueblo of Santo Domingo, New Mexico
Pueblo of Taos, New Mexico
Pueblo of Tesuque, New Mexico
Pueblo of Zia, New Mexico
Puyallup Tribe of the Puyallup Reservation, Washington
Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada
Quapaw Tribe of Indians, Oklahoma
Quartz Valley Indian Community of the Quartz Valley Reservation of California
Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona
Quileute Tribe of the Quileute Reservation, Washington
Quinault Tribe of the Quinault Reservation, Washington
Ramona Band or Village of Cahuilla Mission Indians of California
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin
Red Lake Band of Chippewa Indians, Minnesota
Redding Rancheria, California Redwood Valley Rancheria of Pomo
Indians of California Reno-Sparks Indian Colony, Nevada
Resighini Rancheria, California
Rincon Band of Luiseno Mission
Indians of the Rincon Reservation, California
Robinson Rancheria of Pomo Indians of California
Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
Round Valley Indian Tribes of the Round Valley Reservation, California
Rumsey Indian Rancheria of Wintun Indians of California
Sac & Fox Tribe of the Mississippi in Iowa
Sac & Fox Nation of Missouri in Kansas and Nebraska
Sac & Fox Nation, Oklahoma
Saginaw Chippewa Indian Tribe of Michigan
St. Croix Chippewa Indians of Wisconsin
Saint Regis Mohawk Tribe, New York (formerly the St. Regis Band of Mohawk Indians of New York)
Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona
Samish Indian Tribe, Washington
San Carlos Apache Tribe of the San Carlos Reservation, Arizona
San Juan Southern Paiute Tribe of Arizona

San Manuel Band of Mission Indians, California (previously listed as the San Manuel Band of Serrano Mission Indians of the San Manuel Reservation)

San Pasqual Band of Diegueno Mission Indians of California

Santa Rosa Indian Community of the Santa Rosa Rancheria, California

Santa Rosa Band of Cahuilla Indians, California (formerly the Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation)

Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California

Santee Sioux Nation, Nebraska

Sauk-Suiattle Indian Tribe of Washington

Sault Ste. Marie Tribe of Chippewa Indians of Michigan

Scotts Valley Band of Pomo Indians of California

Seminole Nation of Oklahoma

Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)

Seneca Nation of New York

Seneca-Cayuga Tribe of Oklahoma

Shakopee Mdewakanton Sioux Community of Minnesota

Shawnee Tribe, Oklahoma

Sherwood Valley Rancheria of Pomo Indians of California

Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California

Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington

Shoshone Tribe of the Wind River Reservation, Wyoming

Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho

Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada

Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota

Skokomish Indian Tribe of the Skokomish Reservation, Washington

Skull Valley Band of Goshute Indians of Utah

Smith River Rancheria, California

Snoqualmie Tribe, Washington

Soboba Band of Luiseno Indians, California

Sokaogon Chippewa Community, Wisconsin

Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado

Spirit Lake Tribe, North Dakota

Spokane Tribe of the Spokane Reservation, Washington

Squaxin Island Tribe of the Squaxin Island Reservation, Washington

Standing Rock Sioux Tribe of North & South Dakota

Stockbridge Munsee Community, Wisconsin

Stillaguamish Tribe of Washington

Summit Lake Paiute Tribe of Nevada

Suquamish Indian Tribe of the Port Madison Reservation, Washington

Susanville Indian Rancheria, California

Swinomish Indians of the Swinomish Reservation, Washington

Sycuan Band of the Kumeyaay Nation

Table Mountain Rancheria of California

Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band)

Thlopthlocco Tribal Town, Oklahoma

Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota

Tohono O'odham Nation of Arizona

Tonawanda Band of Seneca Indians of New York

Tonkawa Tribe of Indians of Oklahoma

Tonto Apache Tribe of Arizona

Torres Martinez Desert Cahuilla Indians, California (formerly the Torres- Martinez Band of Cahuilla Mission Indians of California)

Tule River Indian Tribe of the Tule River Reservation, California

Tulalip Tribes of the Tulalip Reservation, Washington

Tunica-Biloxi Indian Tribe of Louisiana

Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California

Turtle Mountain Band of Chippewa Indians of North Dakota
Tuscarora Nation of New York
Twenty-Nine Palms Band of Mission Indians of California
United Auburn Indian Community of the Auburn Rancheria of California
United Keetoowah Band of Cherokee Indians in Oklahoma
Upper Sioux Community, Minnesota
Upper Skagit Indian Tribe of Washington
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah
Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah
Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California
Walker River Paiute Tribe of the Walker River Reservation, Nevada
Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts
Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches)
White Mountain Apache Tribe of the Fort Apache Reservation, Arizona
Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma
Wilton Rancheria, California
Winnebago Tribe of Nebraska
Winnemucca Indian Colony of Nevada Wiyot Tribe, California (formerly the Table Bluff Reservation—Wiyot Tribe)
Wyandotte Nation, Oklahoma
Yankton Sioux Tribe of South Dakota
Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona
Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona
Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada
Yomba Shoshone Tribe of the Yomba Reservation, Nevada
Ysleta Del Sur Pueblo of Texas
Yurok Tribe of the Yurok Reservation, California
Zuni Tribe of the Zuni Reservation, New Mexico

Native Entities within the State of Alaska Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs

Native Village of Afognak
Agdaagux Tribe of King Cove
Native Village of Akhiok
Akiachak Native Community
Akiak Native Community
Native Village of Akutan
Village of Alakanuk
Alatna Village
Native Village of Aleknagik
Algaaciq Native Village (St. Mary's)
Allakaket Village
Native Village of Ambler
Village of Anaktuvuk Pass
Yupiit of Andreafski
Angoon Community Association
Village of Aniak
Anvik Village
Arctic Village (See Native Village of Venetie Tribal Government)
Asa'carsarmiut Tribe
Native Village of Atka
Village of Atmautluak
Atqasuk Village (Atkasook)
Native Village of Barrow Inupiat Traditional Government
Beaver Village
Native Village of Belkofski
Village of Bill Moore's Slough
Birch Creek Tribe

Native Village of Brevig Mission
Native Village of Buckland
Native Village of Cantwell
Native Village of Chenega (aka Chanega)
Chalkyitsik Village
Cheesh-Na Tribe (formerly the Native Village of Chistochina)
Village of Chefornak
Chevak Native Village
Chickaloon Native Village
Chignik Bay Tribal Council (formerly the Native Village of Chignik)
Native Village of Chignik Lagoon
Chignik Lake Village
Chilkat Indian Village (Klukwan)
Chilkoot Indian Association (Haines)
Chinik Eskimo Community (Golovin)
Native Village of Chitina
Native Village of Chuathbaluk (Russian Mission, Kuskokwim)
Chuloonawick Native Village
Circle Native Community
Village of Clarks Point
Native Village of Council
Craig Community Association
Village of Crooked Creek
Curyung Tribal Council
Native Village of Deering
Native Village of Diomedea (aka Inalik)
Village of Dot Lake
Douglas Indian Association
Native Village of Eagle
Native Village of Eek
Egegik Village
Eklutna Native Village
Native Village of Ekuk
Ekwok Village
Native Village of Elim
Emmonak Village
Evansville Village (aka Bettles Field)
Native Village of Eyak (Cordova)
Native Village of False Pass
Native Village of Fort Yukon
Native Village of Gakona
Galena Village (aka Loudon Village)
Native Village of Gambell
Native Village of Georgetown
Native Village of Goodnews Bay
Organized Village of Grayling (aka Holikachuk)
Gulkana Village
Native Village of Hamilton
Healy Lake Village
Holy Cross Village
Hoonah Indian Association
Native Village of Hooper Bay
Hughes Village
Huslia Village
Hydaburg Cooperative Association
Igiugig Village
Village of Iliamna
Inupiat Community of the Arctic Slope

Iqurmit Traditional Council
Ivanoff Bay Village
Kaguyak Village
Organized Village of Kake
Kaktovik Village (aka Barter Island)
Village of Kalskag
Village of Kaltag
Native Village of Kanatak
Native Village of Karluk
Organized Village of Kasaan
Kasigluk Traditional Elders Council
Kenaitze Indian Tribe
Ketchikan Indian Corporation
Native Village of Kiana
King Island Native Community
King Salmon Tribe
Native Village of Kipnuk
Native Village of Kivalina
Klawock Cooperative Association
Native Village of Kluti Kaah (aka Copper Center)
Knik Tribe
Native Village of Kobuk
Kokhanok Village
Native Village of Kongiganak
Village of Kotlik
Native Village of Kotzebue
Native Village of Koyuk
Koyukuk Native Village
Organized Village of Kwethluk
Native Village of Kwigillingok
Native Village of Kwinhagak (aka Quinhagak)
Native Village of Larsen Bay
Levelock Village
Lesnoi Village (aka Woody Island)
Lime Village
Village of Lower Kalskag
Manley Hot Springs Village
Manokotak Village
Native Village of Marshall (aka Fortuna Ledge)
Native Village of Mary's Igloo
McGrath Native Village
Native Village of Mekoryuk
Mentasta Traditional Council
Metlakatla Indian Community, Annette
Island Reserve
Native Village of Minto
Naknek Native Village
Native Village of Nanwalek (aka English Bay)
Native Village of Napaimute
Native Village of Napakiak
Native Village of Napaskiak
Native Village of Nelson Lagoon
Nenana Native Association
New Koliganek Village Council
New Stuyahok Village
Newhalen Village
Newtok Village
Native Village of Nightmute

Nikolai Village
Native Village of Nikolski
Ninilchik Village
Native Village of Noatak
Nome Eskimo Community
Nondalton Village
Noorvik Native Community
Northway Village
Native Village of Nuiqsut (aka Nooiksut)
Nulato Village
Nunakauyarmiut Tribe
Native Village of Nunam Iqua (formerly the Native Village of Sheldon's Point)
Native Village of Nunapitchuk
Village of Ohogamiut
Village of Old Harbor
Orutsararmuit Native Village (aka Bethel)
Oscarville Traditional Village
Native Village of Ouzinkie
Native Village of Paimiut
Pauloff Harbor Village
Pedro Bay Village
Native Village of Perryville
Petersburg Indian Association
Native Village of Pilot Point
Pilot Station Traditional Village
Native Village of Pitka's Point
Platinum Traditional Village
Native Village of Point Hope
Native Village of Point Lay
Native Village of Port Graham
Native Village of Port Heiden
Native Village of Port Lions
Portage Creek Village (aka Ohgsenakale)
Pribilof Islands Aleut Communities of St. Paul & St. George Islands
Qagan Tayagungin Tribe of Sand Point Village
Qawalangin Tribe of Unalaska
Rampart Village
Village of Red Devil
Native Village of Ruby
Saint George Island (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Native Village of Saint Michael
Saint Paul Island (See Pribilof Islands)
Aleut Communities of St. Paul & St. George Islands)
Village of Salamatoff
Native Village of Savoonga
Organized Village of Saxman
Native Village of Scammon Bay
Native Village of Selawik
Seldovia Village Tribe
Shageluk Native Village
Native Village of Shaktoolik
Native Village of Shishmaref
Native Village of Shungnak
Sitka Tribe of Alaska
Skagway Village
Village of Sleetmute
Village of Solomon
South Naknek Village

Stebbins Community Association
Native Village of Stevens
Village of Stony River
Sun'aq Tribe of Kodiak (formerly the Shoonaq' Tribe of Kodiak)
Takotna Village
Native Village of Tanacross
Native Village of Tanana
Native Village of Tatitlek
Native Village of Tazlina
Telida Village
Native Village of Teller
Native Village of Tetlin
Central Council of the Tlingit & Haida Indian Tribes
Traditional Village of Togiak
Tuluksak Native Community
Native Village of Tuntutuliak
Native Village of Tununak
Twin Hills Village
Native Village of Tyonek
Ugashik Village
Umkumiute Native Village
Native Village of Unalakleet
Native Village of Unga
Village of Venetie (See Native Village of Venetie Tribal Government)
Native Village of Venetie Tribal
Government (Arctic Village and Village of Venetie)
Village of Wainwright
Native Village of Wales
Native Village of White Mountain
Wrangell Cooperative Association
Yakutat Tlingit Tribe

Confederated Tribes

When the federal government relocated two or more tribes onto one reservation, they were sometimes called confederated or affiliated tribes. Examples include the Confederated Tribes of Umatilla, and the Confederated Tribes of Grande Ronde. Reservations are discussed later in this section.

Non-Federally Recognized Tribes

As noted earlier, not all tribes are federally recognized. These non-recognized tribes do not have government-to-government relations with the federal government and its agencies. Non-recognized tribes generally are ineligible for the federal services and assistance that federally recognized tribes receive, and they do not hold the same legal rights as federally recognized tribes. They may, however be eligible for other federal programs based on their status as a community. They may also be recognized by states and be eligible for state programs even though they do not have federal recognition.

Treaties

A treaty is a legal agreement between sovereign nations. The treaties the U.S. signed with Indian tribes acknowledged and recognized the tribes' inherent sovereignty as distinct, independent nations. These treaties established the pattern of legal and political interaction between the U.S. government and Indian tribes, and serve to document the beginnings of the government-to-government relationship that we discuss later in this module.

Through treaties, many Indian tribes ceded, or relinquished, certain lands and rights to the U.S. government in exchange for various federal commitments that included provisions for the future of their people. In these treaties, tribes often reserved for themselves certain portions of land, called reservations. In some treaties, tribes also reserved the right to hunt, fish, gather resources, and access sacred sites on their former lands.

Time does not diminish the effect of treaties. Although the practice of Indian treaty-making was halted by Congress in 1871, treaties signed before that time remain the law of the land unless modified or abrogated by the passage of subsequent federal law. Federal agencies need to be mindful of treaty obligations when carrying out programs with the potential to impact a treaty provision.

Not all tribes have treaties, and treaties are not the sole source of the federal government's responsibilities to tribes. The federal government's responsibilities to tribes also stem from court decisions, statutes, executive orders, and the historical relationships between the United States and Indian tribes.

Supplemental Information

Text of Delaware Treaty - 1778

INDIAN AFFAIRS: LAWS AND TREATIES

Vol. II, Treaties

TREATY WITH THE DELAWARES, 1778.

Sept. 17, 1778. | 7 Stat., 13 Compiled and edited by Charles J. Kappler.

Washington : Government Printing Office, 1904.

Articles of agreement and confederation, made and entered into by Andrew and Thomas Lewis, Esquires, Commissioners for, and in Behalf of the United States of North-America of the one Part, and Capt. White Eyes, Capt. John Kill Buck, Junior, and Capt. Pipe, Deputies and Chief Men of the Delaware Nation of the other Part.

ARTICLE 1.

That all offences or acts of hostilities by one, or either of the contracting parties against the other, be mutually forgiven, and buried in the depth of oblivion, never more to be had in remembrance.

ARTICLE 2.

That a perpetual peace and friendship shall from henceforth take place, and subsist between the contracting parties aforesaid, through all succeeding generations: and if either of the parties are engaged in a just and necessary war with any

other nation or nations, that then each shall assist the other in due proportion to their abilities, till their enemies are brought to reasonable terms of accommodation: and that if either of them shall discover any hostile designs forming against the other, they shall give the earliest notice thereof, that timeous measures may be taken to prevent their ill effect.

ARTICLE 3.

And whereas the United States are engaged in a just and necessary war, in defence and support of life, liberty and independence, against the King of England and his adherents, and as said King is yet possessed of several posts and forts on the lakes and other places, the reduction of which is of great importance to the peace and security of the contracting parties, and as the most practicable way for the troops of the United States to some of the posts and forts is by passing through the country of the Delaware nation, the aforesaid deputies, on behalf of themselves and their nation, do hereby stipulate and agree to give a free passage through their country to the troops aforesaid, and the same to conduct by the nearest and best ways to the posts, forts or towns of the enemies of the United States, affording to said troops such supplies of corn, meat, horses, or whatever may be in their power for the accommodation of such troops, on the commanding officer's, &c. paying, or engaging to pay, the full value of whatever they can supply them with. And the said deputies, on the behalf of their nation, engage to join the troops of the United States aforesaid, with such a number of their best and most expert warriors as they can spare, consistent with their own safety, and act in concert with them; and for the better security of the old men, women and children of the aforesaid nation, whilst their warriors are engaged against the common enemy, it is agreed on the part of the United States, that a fort of sufficient strength and capacity be built at the expense of the said States, with such assistance as it may be in the power of the said Delaware Nation to give, in the most convenient place, and advantageous situation, as shall be agreed on by the commanding officer of the troops aforesaid, with the advice and concurrence of the deputies of the aforesaid Delaware Nation, which fort shall be garrisoned by such a number of the troops of the United States, as the commanding officer can spare for the present, and hereafter by such numbers, as the wise men of the United States in council, shall think most conducive to the common good.

ARTICLE 4.

For the better security of the peace and friendship now entered into by the contracting parties, against all infractions of the same by the citizens of either party, to the prejudice of the other, neither party shall proceed to the infliction of punishments on the citizens of the other, otherwise than by securing the offender or offenders by imprisonment, or any other competent means, till a fair and impartial trial can be had by judges or juries of both parties, as near as can be to the laws, customs and usages of the contracting parties and natural justice: The mode of such trials to be hereafter fixed by the wise men of the United States in Congress assembled, with the assistance of such deputies of the Delaware nation, as may be appointed to act in concert with them in adjusting this matter to their mutual liking. And it is further agreed between the parties aforesaid, that neither shall entertain or give countenance to the enemies of the other, or protect in their respective states, criminal fugitives, servants or slaves, but the same to apprehend, and secure and deliver to the State or States, to which such enemies, criminals, servants or slaves respectively belong.

ARTICLE 5.

Whereas the confederation entered into by the Delaware nation and the United States, renders the first dependent on the latter for all the articles of clothing, utensils and implements of war, and it is judged not only reasonable, but indispensably necessary, that the aforesaid Nation be supplied with such articles from time to time, as far as the United States may have it in their power, by a well-regulated trade, under the conduct of an intelligent, candid agent, with an adequate salary, one more influenced by the love of his country, and a constant attention to the duties of his department by promoting the common interest, than the sinister purposes of converting and binding all the duties of his office to his private emolument: Convinced of the necessity of such measures, the Commissioners of the United States, at the earnest solicitation of the deputies aforesaid, have engaged in behalf of the United States, that such a trade shall be afforded said nation, conducted on such principles of mutual interest as the wisdom of the United States in Congress assembled shall think most conducive to adopt for their mutual convenience.

ARTICLE 6.

Whereas the enemies of the United States have endeavored, by every artifice in their power, to possess the Indians in general with an opinion, that it is the design of the States aforesaid, to extirpate the Indians and take possession of their country: to obviate such false suggestion, the United States do engage to guarantee to the aforesaid nation of Delawares, and their heirs, all their territorial rights in the fullest and most ample manner, as it hath been bounded by former treaties, as long as they the said Delaware nation shall abide by, and hold fast the chain of friendship now entered into. And it is further agreed on between the contracting parties should it for the future be found conducive for the mutual interest of both parties to invite any other tribes who have been friends to the interest of the United States, to join the present confederation, and to form a state whereof the Delaware nation shall be the head, and have a representation in Congress: Provided, nothing contained in this article to be considered as conclusive until it meets with the approbation of Congress. And it is also the intent and meaning of this article, that no protection or countenance shall be afforded to any who are at present our enemies, by which they might escape the punishment they deserve.

In witness whereof, the parties have hereunto interchangeably set their hands and seals, at Fort Pitt, September seventeenth, anno Domini one thousand seven hundred and seventy-eight.

Andrew Lewis, [L. S.]

Thomas Lewis, [L. S.]

White Eyes, his x mark, [L. S.]

The Pipe, his x mark, [L. S.]

John Kill Buck, his x mark, [L. S.]

In presence of—

Lach'n McIntosh, brigadier-general, commander the Western Department.

Daniel Brodhead, colonel Eighth Pennsylvania Regiment,

W. Crawford, colonel,

John Campbell,

John Stephenson,

John Gibson, colonel Thirteenth Virginia Regiment,

A. Graham, brigade major,

Lach. McIntosh, jr., major brigade,

Benjamin Mills,

Joseph L. Finley, captain Eighth Pennsylvania Regiment,

John Finley, captain Eighth Pennsylvania Regiment.

Tribal Sovereignty

One of the most significant issues for Indian tribes is the safeguarding of tribal sovereignty, or self-governing authority. Tribal sovereignty is recognized as being inherent, meaning that the traditional authority of tribal leaders to govern their people and lands existed long before their relationship with the U.S. government. Indian treaties were based on the sovereign power of Indian tribes to enter into agreements on a government-to-government basis with the United States. Because it is inherent, tribal sovereignty is something Indian tribes have retained, not something granted to them by the federal government. Tribal sovereignty was reaffirmed in the landmark cases of *Cherokee Nation v. Georgia* (1831) and *Worcester v. Georgia* (1832), wherein the Supreme Court, in opinions penned by Chief Justice John Marshall, held that tribes retained a nationhood status and inherent powers of self-governance. These cases formed a large part of the foundation of present-day Indian law.

Tribal sovereignty includes the inherent right of Indian tribes to exercise self-determination and self-governance. Recognition of these powers is reflected in Public Law 93-638, the Indian Self-Determination and Education Assistance Act of 1975, or (ISDEA). ISDEA encouraged "maximum Indian participation in the government and education of the Indian people." The Act established procedures by which tribes could assume the administration of their own social services, education, and other programs by contracts or grants from certain federal agencies. Subsequent amendments to the Act have encouraged self-governance, by which tribes have contracted to assume even greater control over the administration of programs serving their tribal members. ISDEA applies to a number of federal agencies and has codified a requirement for annual consultation with tribes in the development of the budget for the Indian Health Service and the Bureau of Indian Affairs. In addition to the ISDEA, tribes may administer federal programs under other statutes, e.g., the Clean Water Act.

Tribal sovereignty is the basis of a tribe's jurisdiction over people and activities on tribal lands. The complex topic of jurisdiction is discussed in the Federal Indian Law and Policy module.

Tribal Government

Federal laws recognize that tribes may adopt whatever form of government best suits their own practical, cultural, or religious needs. For example:

- Most tribal governmental structures combine traditional features with Western forms.
- Leaders of traditional tribal governments are often chosen by clans, families, or religious laws, and are often chosen by consensus.
- Some tribal governments use an electoral process to choose officials.
- Some tribal governments operate under written constitutions.

As part of the sovereign status of Indian tribes, their tribal governments generally have the authority to do the following:

- Define their tribal membership criteria.
- Enact civil, criminal, and regulatory legislation; provide specific areas of law enforcement, and establish a court system.
- Assert jurisdiction over their people and lands.
- Tax non-tribal members engaged in economic activity on tribal lands.

These rights are in effect unless waived by a tribe, or modified by a treaty, statute, or Supreme Court decision.

Supplemental Information

Sovereignty in Oklahoma

Between 1812 and 1835, tribes located in the southeast were compelled by the U.S. government to give up their lands and move west to Indian Territory, which is now the State of Oklahoma. Many tribes from the northeast, southwest and the Great Plains were also forced to resettle on reservations there. As a result, there are now over 30 tribes in Oklahoma.

- However, due to federal statutes that broke up these reservations into individual parcels, or allotments, in the late 1800s, there are still many open-ended legal questions about Indian lands in Oklahoma.
- Even though Oklahoma tribes no longer have formal reservations, the lands that they do control are considered to be Indian Country and the tribal governments exercise inherent authority over them.

Sovereignty in Alaska: A Different Relationship

- There are over 220 federally recognized Alaska Native tribes. Controversy continues to surround the status of Alaska Native villages, their authority, and their lands. The relationship of the federal government with Alaska Natives has differed significantly from that of the Indian tribes of the lower 48 states.
- The Alaska Native Claims Settlement Act of 1971 (ANCSA) extinguished the aboriginal title to all lands within the state, eliminated two of three Indian reservations, and provided funds and lands to corporations, the shareholders of which would be Alaska Natives. Unlike many of the tribal lands in the lower 48 states, these lands were not taken into trust status by the U.S. government. Placing them into a corporate model of ownership affected the ability of Alaska Native tribes to exercise territorial jurisdiction over those lands. ANSCA did not, however, terminate tribal governments or their inherent sovereign authority to govern their tribal members.

The Government-to-Government Relationship

- The government-to-government relationship between the U.S. government and federally recognized Indian tribes is rooted in the historic signing of treaties. As noted in the prior discussion of treaties, in these treaties the U.S. recognized and acknowledged the inherent sovereignty of tribal nations. The U.S. Constitution established the exclusive power of the Congress to regulate commerce with Indian tribes in Article 1, Section 8, and Clause 3, known as the "Indian commerce clause."
- The federal government's exclusive relationship with tribes was further solidified by the passage of multiple laws, called Trade and Intercourse Acts, which prohibited states from encroaching upon or purchasing land from tribes without congressional approval. Later, the 1832 U.S. Supreme Court decision in *Worcester v. Georgia* also served to establish in the canons of Indian law the precept that the states are specifically excluded from this relationship between two sovereign nations.
- Federal recognition signifies that the U.S. government acknowledges the political sovereignty of a tribe, and from that recognition flows the obligation to conduct dealings with the tribe's leadership on a government-to-government basis. In practice, the government-to-government relationship is frequently embodied by consultation and coordination between a designated tribal representative and a designated federal representative on issues that may impact the Indian tribe.
- Since the 1970s, U.S. Presidents have consistently reaffirmed the primacy of the government-to-government relationship between the federal government and federally recognized Indian tribes.

- Most recently, this relationship has been articulated in President George W. Bush's Presidential Memorandum, "Government-to-Government Relationship with Tribal Governments," which states: "my administration is committed to continuing to work with federally recognized tribal governments on a government-to-government basis and strongly supports and respects tribal sovereignty and self-determination for tribal governments in the United States."
- This Presidential Memorandum reaffirmed the federal responsibilities set forth in Executive Order 13175 (2000), "Consultation and Coordination with Tribal Governments." Executive Order 13175 specifically states that each federal agency must ensure that it operates within a government-to-government relationship with federally recognized tribes. It also states that agencies should consult with tribal governments before taking action that affects tribal lands, resources, and tribal members.

Supplemental Information

Link to Presidential memos that pertain to Tribal Governments:

<http://www.epa.gov/tribalportal/basicinfo/presidential-docs.html>

Federal Trust Responsibility

Another vital aspect of the unique relationship between the federal government and federally recognized tribes is the federal trust responsibility.

This trust responsibility requires the federal government to uphold rights reserved by or granted to Indian tribes and Indian individuals by treaties, federal statutes, and executive orders, which are sometimes further interpreted through court decisions and federal regulations.

The famous 1831 Supreme Court decision *Cherokee Nation v. Georgia* introduced the concept that while Indian tribes could not be considered to have the same status as foreign nations because they were located within the boundaries of the United States, they still retained their status as nations. Because tribes had ceded lands in exchange for certain promises of provisions and protection from the United States, Chief Justice John Marshall coined the term "domestic dependent nations" to refer to the status of the tribes.

Federal courts often discuss the trust responsibility as having the elements of a common-law trust, which generally has three elements: a trustee, which in this case is the U.S. government; a beneficiary, which may be a tribe or an individual Native American; and a corpus, meaning the "body" of the trust—for example, lands, resources, or funds. Unlike a common-law trust, however, the federal trust responsibility is defined by federal statutes and regulations

Trust lands cannot be sold, leased, or otherwise alienated by the beneficiary without the approval of the U.S. In dealing with trust property, the trustee considers the desires of the trust beneficiary, but makes independent decisions based on the beneficiary's best interests.

The government must ensure that its actions are consistent with the protection of trust lands and tribal rights, while in keeping with its other statutory obligations. This means that harm to an Indian trust asset cannot be outweighed in favor of the "general public welfare" or any other considerations that do not directly compensate the trust beneficiaries for the harm to their trust assets. Rather, the government must balance its competing statutory obligations

All federal agencies share in the trust responsibility.

Trust responsibility issues can be complex, and may have legal consequences. When questions arise regarding a possible trust responsibility issue, federal employees should consult with their agency's legal counsel for further guidance.

Indian Country Definitions

"Indian country" is a significant legal term that refers to the lands set aside for federally recognized Indian tribes. It includes reservations, fee land within reservation boundaries, dependent Indian communities, Indian allotments, and trust land. Generally, the designation of land as Indian country means that the tribe and the federal government have jurisdictional authority within its boundaries and the states are excluded. There are some very important exceptions to this rule, which are discussed in the jurisdiction section of the Federal Indian Law and Policy module.

Indian country is defined in Title 18 of the United States Code, section 1151 as follows:

1. All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;
2. All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and
3. All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Supplemental Information - Definitions

Indian Reservations

A reservation is land established by treaty, statute, executive order, or administrative procedure for the use of a designated tribe. Many tribes reserved portions of land for themselves when they relinquished other land areas to the U.S. government through treaties. Since then, reservations have been established through executive orders and federal statutes. There are approximately 275 Indian land areas in the U.S. administered as Indian reservations (this includes pueblos, rancherias, and dependent Indian communities).

Trust Land

As commonly used, the term "trust land" refers to land whose title is held by the U.S. government "in trust" for an Indian tribe or an individual tribal member.

In these circumstances a tribe or individual Indian is often referred to as the "beneficial" owner of the land. Trust land cannot be conveyed, sold, assigned or transferred without federal approval.

In some cases a tribe may have trust lands that are located outside of the exterior boundaries of its reservation. Those lands generally have the same status as if they were located within the reservation's boundaries.

Fee Land

The term "fee land" refers to a parcel located within a reservation's exterior boundaries whose title is owned in fee simple. One attribute of "fee simple" land status means the parcel can be sold without U.S. government approval. Many fee lands are owned by non-tribal members, often a result of the allotment policies discussed later in this module. However, fee lands are defined as such because of the status of their title, not the race of their owners. While reservation fee lands are not held in trust by the U.S. government, they are still considered to be Indian country.

The New Mexico Pueblos hold their lands in fee simple as a result of historic Spanish grants, but the Supreme Court has held that these lands are nevertheless Indian Country and cannot be sold without the approval of the U.S. government. The Pueblo lands are administered by the federal government as reservations.

Allotted Land

The term "allotted land" refers to land owned by individual Indians that is either held in trust by the United States or is subject to a statutory restriction on sale or other forms of alienation (conveyance or transference of property to another). Most allotted lands are the result of allotment laws that the U.S. government passed in the late 1800s and early 1900s that mandated the subdivision of Indian reservations. These statutes decreed that reservations be broken up and the land divided into parcels, or "allotments," to be assigned to the heads of Indian households or single individuals, the "allottees."

The best known of the allotment statutes is the 1887 General Allotment Act (commonly called the Dawes Act). The Dawes Act and other Indian allotment statutes were designed to dissolve tribal collective control of reservations and to assimilate tribal members into mainstream American society by teaching them the importance of private property and farming. After assigning parcels from reservation lands to individual tribal members, the remaining "surplus" lands were opened to non-Indian settlement. The parcels assigned to tribal members were to be held in trust by the U.S. for a period of time, usually 25 years, although this time period could be extended or shortened, after which title was to pass to the Indian owners in fee simple. Owning their lands in fee simple meant that the Indian owners could sell their lands without federal approval. It also meant these lands could be taxed. Financial pressures and unscrupulous land speculators caused many allottees to sell their fee parcels. Many other allotments were lost due to sale for unpaid taxes.

The opening up of reservation lands to non-Indian settlement and the sale of Indian allotments

caused a dramatic decline in the total amount of Indian lands in the U.S. The practice of allotment ended in the 1930s with the passage of the Indian Reorganization Act, which halted further allotments, stopped any remaining allotments from converting into fee simple status, and continued the trust status of existing allotments indefinitely. The Indian Reorganization Act remains in effect.

Today, many reservations contain both Indian allotments and fee lands, owned by both Indian and non-Indian owners, within their borders. This combination of land holdings has resulted in a checkerboard pattern of ownership within many reservation boundaries.

Dependent Indian Communities

“Dependent Indian communities” are included within the 18 U.S.C. section 1151 definition of “Indian country” as a result of a 1913 U.S. Supreme Court decision, United States v. Sandoval, 231 U.S. 28, which held that the New Mexico Pueblos that hold their lands in fee simple are dependent Indian communities. United States v. Sandoval and another Supreme Court decision, United States v. Candelaria, 271 U.S. 432 (1926), which held that the Pueblo tribes could not sell their land without the consent of the United States, established that dependent Indian communities were to be considered Indian country, even if they were not situated within a reservation. However, not all other Native American communities have been found to meet the statutory definition of “dependent Indian communities.”

The 1998 U.S. Supreme Court decision in Alaska v. Native Village of Venetie Tribal Government, 522 U.S. 520, held that “dependent Indian communities” refers to a limited category of Indian lands which are neither reservations nor allotments and which must satisfy two requirements: first, they must have been set aside by the federal government for the use of the Indians as Indian land; and, second, they must be under federal superintendence. Superintendence in this context has been interpreted to include federal jurisdiction and a restriction on the sale of land without federal approval.

Other Terms: Checkerboard Land, Restricted Land, Ceded Territory

Checkerboard Land

“Checkerboard land” is a term that generally refers to a mixture of Indian trust parcels and non-tribal fee simple parcels, which together result in a checkerboard pattern of ownership within reservation boundaries. Checkerboard land patterns are largely a result of the federal allotment statutes of the late 1800s and early 1900s that broke up reservation lands into individual parcels.

Restricted Lands

“Restricted lands” refers to lands that are held in fee simple by tribal members but still have certain restrictions on their title. As a result, they have some characteristics of both fee and trust lands. When dealing with this class of Indian land, federal employees should consult with their agency's legal counsel.

Ceded Territory

"Ceded territory" refers to land located within a reservation's former boundaries (meaning that the original size of the reservation was subsequently reduced), or within a tribe's aboriginal territory (prior to the establishment of any reservation), that has been ceded, or relinquished, by the tribe, usually by treaty.

Tribes may have retained treaty rights to hunt, fish, and/or gather other resources (and the right to regulate members exercising those reserved rights) in ceded territories, as is the case for some Great Lakes or Northwest tribes.

SECTION TWO: Federal Indian Law and Policy

Objectives

In this section, you will gain both a historical and a present-day perspective of policies and issues regarding Native Americans and the federal government, and an overview of federal Indian law. There will also be a brief introduction to jurisdiction in Indian Country.

Generally, the term "Native American" includes both American Indians of the lower 48 states and Alaska Natives.

More laws have been enacted for Native Americans than for any single racial or ethnic group in America. For example, an entire volume of federal statutes, Title 25 of the U.S. Code, is exclusively focused on Indians and Indian tribes.

This section presents an introduction to:

- The history of federal policy with Native Americans.
- Federal Indian law regarding jurisdictional issues.
- Tribal and state relations.

History of Indian Law and Policy

While this section provides the historical background for Indian law and policy, numerous legal principles and policies, which were established in the 17th, 18th, and 19th centuries, are still in effect today. Treaties, the U.S. Constitution, and Supreme Court decisions form the foundation of federal Indian law and shape the federal-tribal relationship.

From the early 1800s to the present day, there have been several shifts in federal policies which have affected Native Americans, and the federal-tribal relationship. In some cases, these eras overlap.

The Treaty Making Era (1778-1871)

Treaties established the earliest pattern of legal and political interaction between the U.S. government and Indian tribes.

Europeans signed the first treaties with Indian tribes in the early 1600s. In 1778, the U.S. signed its first treaty with an Indian tribe: the Delaware Indians. In 1871, when the treaty making era formally ended, the U.S. had signed more than 350 treaties with Indian tribes. Even after 1871, there were many written agreements between tribes and the United States which functioned like treaties.

The Removal Era (1830-1850)

Indian Removal Act policies during the time period between 1830 and 1850 removed many tribes from their eastern homelands to lands west of the Mississippi River, especially into the area known as Indian Territory, which is now the State of Oklahoma. These mass removals included the "Trail of Tears," a long journey traveled primarily on foot by the Cherokee, Choctaw, Creek, Chickasaw, and Seminole, during which many died.

The Reservation System (1850-1891)

Removal policies later gave way to the reservation system. Between 1850 and 1891, numerous treaties and other written agreements were made that required tribes to relocate to distant territories, or confined them to smaller areas that were "reserved" portions of the tribes' aboriginal territories. These reservations were created by treaties, statutes, and executive orders.

The Allotment and Assimilation Era (1887-1934)

The General Allotment Act, also known as the "Dawes Act," was passed in 1887. It broke up communal reservation lands and assigned individual parcels, or "allotments," to tribal members. These parcels, generally held in trust by the U.S. for 25 years, could not be sold or otherwise conveyed. After 25 years, titles to the parcels were to convert to fee simple status, giving the tribal owners the ability to sell their parcels without federal approval. After tribal members received their allotments, the remaining reservation land was declared "surplus" and was opened to non-Indian settlement.

As a result of allotment policies, by 1934 Indian tribes had lost 90 million of their 138 million acres of reservation lands. This era is also characterized by government-sponsored efforts to assimilate Native Americans into mainstream American society. Many Native American children were sent to boarding schools during this period, separating them from their families and tribes. These schools had policies prohibiting the use of tribal languages, tribal dress, and traditional practices.

In 1924, U.S. citizenship was granted to all Native Americans.

The Reorganization Policy (1934-1953)

The next phase of the federal government's policy supported the reorganization of Indian tribes. The Indian Reorganization Act of 1934 ended the allotment of reservations, ensured that any allotted parcels still held in trust for individual Indians would not convert to fee simple status, and reaffirmed that tribal governments had inherent powers. The Act also provided a mechanism for the formalization of tribal government through written constitutions and charters for tribes that would agree to federal oversight.

The Termination Era (1953-1968)

During this period, many of the reorganization era reforms were reversed, primarily by the U.S. government's decision to terminate the federal recognition of many Indian tribes. The Termination Policy was intended to further promote the assimilation of Native Americans into mainstream American society. In some cases, termination led to a loss of federal services and resources for those tribes. Some tribes terminated during this period have successfully petitioned to have their federal recognition restored. In 1953, a statute known as Public Law 280 transferred federal criminal jurisdiction, and some civil jurisdiction, to certain states over tribal lands that lay within their boundaries.

The Self-Determination Era (1968 to the present)

In the late 1960s and early 1970s, federal Indian policy began to support the concept of Indian self-determination. Various laws and presidential policies strengthened support for tribal governments and reaffirmed federal acknowledgment of tribal sovereignty.

Introduction to Jurisdictional Issues

Jurisdiction is the power of a government to exercise authority over persons and things in a specified territory. When a government has jurisdictional authority, its laws or regulations will apply, and its courts may be the forum in which disputes are heard and where cases involving violations of the law are adjudicated.

There are three types of domestic sovereign governments recognized by the laws of the United States: federal, tribal, and state. In Indian country, sometimes the jurisdictions overlap. "Indian Country" is a legal term of art that is found in Title 18 United States Code § 1151 and includes all areas within a reservation, including non-Indian owned fee land; dependent Indian communities; and Indian allotments to which title has not been extinguished. Courts have interpreted § 1151 to include lands held in trust by the United States for a tribe or an individual Indian. Although the "Indian country" definition is found in the federal criminal statutes, it is also used in civil cases.

Statutory Definition of Indian Country 18 U.S.C. § 1151

Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian country," as used in this chapter, means: (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

This section will discuss jurisdictional issues related to:

- Civil jurisdiction.
- Criminal jurisdiction.
- Tribal and state relations.

Jurisdiction: Civil and Criminal

Only entities having sovereign powers can exercise jurisdiction. Most introductions to Indian sovereignty, and the relationship between Indians and non-Indians, begin with a discussion of three Supreme Court cases from the early 1800s, known as the "Marshall trilogy":

- *Johnson v. McIntosh*, 21 U.S. 543 (1823)
- *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831)
- *Worcester v. Georgia*, 31 U.S. 515 (1832)

Rulings from these cases recognized Indian sovereignty and set the stage for the federal Indian trust responsibility and the interplay of federal-tribal jurisdiction. These cases held that tribes had placed themselves under the protection of the United States, and established that tribes could not sign treaties with states, nor transfer lands to states or other non-federal entities without federal permission.

Civil Jurisdiction

Civil jurisdiction is the authority of a government to prescribe civil laws and regulations, and to have its courts hear disputes between parties.

Tribes have inherent jurisdiction over their own tribal members living within Indian country, which includes land within the boundaries of a reservation and tribal trust land. In some circumstances, for example, when tribal hunting and fishing rights exist, jurisdiction may extend outside a tribe's territory. Tribal authority over non-tribal members on fee lands within reservations is controlled by the 1981 case of *Montana v. U.S.*, 450 U.S. 544, in which the Supreme Court stated that tribes retained their inherent power to "exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands," but only when:

- non-members enter into consensual relationships with the tribe or its members; or
- a non-member's conduct threatens or has a direct effect on the political integrity, economic security, or health or welfare of the tribe.

This analysis, called the "Montana Test," is applied by courts when determining whether Indian tribes have inherent authority to regulate non-member activities on fee lands within reservation boundaries.

In some cases, civil jurisdiction will also be affected by acts of Congress. For example, the Clean Water Act allows qualifying tribes to assume certain responsibilities, such as enforcement of provisions of the Act.

Knowing which jurisdiction exists in a given situation is important to understanding the federal role.

Criminal Jurisdiction

Criminal jurisdiction is the authority of a government to define criminal offenses and to prosecute those charged with committing them. When a crime occurs within Indian Country, the law may allow the offender to be prosecuted in the courts of one or more of the three previously mentioned sovereigns: federal, tribal, and state.

Federal statutes and Supreme Court decisions have made the determination of Indian Country criminal jurisdiction very complex. Jurisdiction over crimes committed in Indian Country can be determined by looking at applicable laws and: 1) the status of the suspected perpetrator (Indian or non-Indian); 2) the status of the victim (Indian or non-Indian); and 3) the type of offense involved. The complexity is compounded by the location of a tribe, and the state or states in which a tribe's lands are located. Some states have been given either full or partial civil and/or criminal jurisdiction over tribal members on tribal lands pursuant to Public Law 280 or other Congressional acts.

Trying to determine whether jurisdiction is held by the federal, tribal, or state government, or whether it is held concurrently by more than one of them, is sometimes simple, once a few basic facts are established, but can also be very complex. Some supplemental information has been provided here as an introduction to this topic.

Supplemental Information

Public Law 280

Public Law 280 is a federal statute which transfers criminal jurisdiction (except for wildlife offenses) from the federal to the state government. There are two types of P.L. 280 jurisdictional transfers; they are commonly referred to as "mandatory P.L. 280" and "optional P.L. 280." In mandatory P.L. 280 jurisdictions, states have been given jurisdiction to criminally prosecute most of the misdemeanors and felonies committed in Indian country that the federal government would normally prosecute. While tribes have concurrent jurisdiction with states under the P.L. 280 scheme, the federal government lacks jurisdiction to prosecute most Indian country crimes. In the usual, non-P.L. 280 situation, Indian country criminal jurisdiction is largely determined by looking at applicable laws and considering the following factors: 1) the status of the suspected perpetrator (Indian or non-Indian); 2) the status of the victim (Indian or non-Indian); and 3) the type of crime involved.

Within the P.L. 280 jurisdictions, since 1970, certain states have retroceded (given back) their jurisdiction over certain tribes and their lands to the federal government. Some of these states and tribes are Minnesota (Bois Forte Chippewa); Nebraska (Omaha, Winnebago, and Santee Sioux); Oregon (Burns Paiute and Umatilla); and Wisconsin (Menominee), but the list is not exhaustive.

It is important to note that Indian country status under 18 U.S.C. section 1151 is not lost by an assumption of criminal and civil jurisdiction by a state pursuant to P.L. 280 or another act of Congress. Tribes subject to state jurisdiction under P.L. 280 retain their inherent sovereignty over their members and their lands, and retain concurrent criminal jurisdiction with the state over misdemeanor offenses.

Other federal statutes affecting criminal jurisdiction

Besides P.L. 280, there are several other federal statutes which affect criminal jurisdiction in Indian country.

- *The Major Crimes Act (18 U.S.C. § 1153) creates federal court jurisdiction for certain offenses committed by Indians in Indian country.*
- *The Indian Country Crimes Act (18 U.S.C. § 1152), sometimes called the General Crimes Act, creates federal court jurisdiction for certain types of offenses committed by Indians against non-Indian victims, and for all offenses committed by non-Indians against Indian victims.*
- *The Indian Civil Rights Act (25 U.S.C. § 1302(7)) contains a provision which limits the penalty which tribal courts can impose in criminal cases to one year imprisonment or a \$5,000 fine, or both, for any single offense.*

Supreme Court cases addressing criminal jurisdiction

The United States Supreme Court has addressed the topic of Indian country criminal jurisdiction on numerous occasions. Some of the important cases are:

- *Worcester v. Georgia, 31 U.S. 515 (1832): The Court held that state criminal law does not apply in Indian country. However, this was later modified by U.S. v. McBratney, 104 U.S. 621 (1881) and Draper v. U.S., 164 U.S. 240 (1896), which held that state courts have exclusive jurisdiction over crimes committed by non-Indians against non-Indian victims in Indian country.*
- *Oliphant v. Suquamish Tribe, 435 U.S. 191 (1978): The Court held that tribal courts do not have criminal jurisdiction over non-Indians for crimes committed in Indian country.*
- *U.S. v. Lara, 541 U.S. 193 (2004): The Court held that tribal courts have criminal jurisdiction over all members of federally recognized tribes for crimes committed in Indian country.*

Who is an Indian for criminal jurisdiction purposes?

Whether or not the defendant and/or victim is an Indian is a material element in most Indian country prosecutions. To be considered an Indian, one generally has to have both a significant degree of blood and a sufficient connection to his or her tribe to be regarded by the tribe or the tribal government as one of its members for criminal jurisdiction purposes.

When no special jurisdictional statutes apply

Greatly simplified (and where neither Public Law 280 nor any other special jurisdictional statutes apply), the usual Indian country criminal jurisdictional arrangement is:

1. *Indian perpetrator & Indian victim: concurrent tribal and federal jurisdiction: "Major Crimes" (as statutorily defined) – federal court; all offenses – tribal court (penalty limited by Indian Civil Rights Act (ICRA)).*
2. *Indian perpetrator & non-Indian victim: concurrent tribal and federal jurisdiction: "Major Crimes" – federal court; all offenses – tribal court (penalty limited by ICRA).*
3. *Non-Indian perpetrator & non-Indian victim: state court.*
4. *Non-Indian perpetrator & Indian victim: federal court.*

Which government has jurisdiction?

The following chart sets forth in summary form which government entity has criminal jurisdiction in various types of scenarios.

Where jurisdiction has not been conferred on the state

Offender	Victim	Jurisdiction
<i>Non-Indian</i>	<i>Non-Indian</i>	<i>State jurisdiction is exclusive of federal and tribal jurisdiction.</i>
<i>Non-Indian</i>	<i>Indian</i>	<i>Federal jurisdiction under 18 U.S.C. § 1152 is exclusive of state and tribal jurisdiction.</i>
<i>Indian</i>	<i>Non-Indian</i>	<i>If listed in 18 U.S.C. § 1153, there is federal jurisdiction, exclusive of the state, but not of the tribe. If the listed offense is not otherwise defined and punished by federal law applicable in the special maritime and territorial jurisdiction of the United States, state law is assimilated. If not listed in 18 U.S.C. § 1153, there is federal jurisdiction, exclusive of the state, but not of the tribe, under 18 U.S.C. § 1152. If the offense is not defined and punished by a statute applicable within the special maritime and territorial jurisdiction of the United States, state law is assimilated under 18 U.S.C. § 13.</i>
<i>Indian</i>	<i>Indian</i>	<i>If the offense is listed in 18 U.S.C. § 1153, there is federal jurisdiction, exclusive of the state, but not of the tribe. If the listed offense is not otherwise defined and punished by federal law applicable in the special maritime and territorial jurisdiction of the United States, state law is assimilated. See section 1153(b). If not listed in 18 U.S.C. § 1153, tribal jurisdiction is exclusive.</i>

Where jurisdiction has been conferred by Public Law 280, 18 U.S.C. § 1162

Offender	Victim	Jurisdiction
Non-Indian	Non-Indian	State jurisdiction is exclusive of federal and tribal jurisdiction.
Non-Indian	Indian	"Mandatory" P.L. 280 state has jurisdiction exclusive of federal and tribal jurisdiction. "Optional" P.L. 280 state and the federal government have concurrent jurisdiction. There is no tribal jurisdiction.
Indian	Non-Indian	"Mandatory" P.L. 280 state has jurisdiction exclusive of the federal government, but not of the tribe. "Optional" P.L. 280 state has concurrent jurisdiction with federal and tribal courts.
Indian	Indian	"Mandatory" P.L. 280 state has jurisdiction over the federal government, but not of the tribe. "Optional" P.L. 280 state has concurrent jurisdiction with federal and tribal courts.

When jurisdiction has been conferred by another statute.

Offender	Victim	Jurisdiction
Non-Indian	Non-Indian	State jurisdiction is exclusive of federal and tribal jurisdiction.
Non-Indian	Indian	Unless otherwise provided, there is concurrent federal and state jurisdiction exclusive of tribal jurisdiction.
Indian	Non-Indian	Unless otherwise provided, state has concurrent jurisdiction with federal and tribal courts.
Indian	Indian	Unless otherwise provided, state has concurrent jurisdiction with federal and tribal courts.

Tribal and State Relations

Relations between tribes and states are often complex – and made even more so by Public Law 280, which was discussed earlier in this module. One reason is that Congress and the federal courts have not fully addressed many key questions about tribal and state jurisdictional authority.

As a result of differing legal views about their respective jurisdictional authority, tribes and states at times compete aggressively for such authority; however, there are often many points of agreement, and cooperative partnerships between tribes and states are commonplace.

Usually, these agreements between tribes and states have focused on information exchanges and trans-boundary coordination, much like agreements commonly reached between states. An example is cross-deputization agreements between tribal, local and state law enforcement agencies.

Additional Federal Laws Pertaining to Indian Tribes

The preceding material represents a sampling of the subjects addressed in the vast body of federal Indian law. Other important areas include economic development; housing; natural resources and the environment; cultural heritage and preservation; gaming; child welfare; and Indian health. Any one of these areas – including many not mentioned here – could be an important factor in the way your agency implements its programs and mission.

Supplemental Information General Laws Concerning Indian Tribes

Title 25 ("Indians"). This entire volume of the U.S. Code addresses subjects important to the tribal-federal relationship. The subjects range from the Bureau of Indian Affairs to Indian health care to Native American languages.

Economic Development Law

The Indian Financing Act of 1974 stimulates and increases Indian entrepreneurship and employment through the establishment, acquisition or expansion of Indian-owned economic enterprises. Programs include loan guarantees and loan and bond insurance. (25 U.S.C. §§ 1498, 1511)

The Indian Employment, Training, and Related Services Demonstration Act of 1992, or P.L. 102-477, as amended by the Omnibus Indian Advancement Act of 2000, authorizes the programmatic integration of employment, training, and related services provided by tribal governments to demonstrate how tribes can improve the effectiveness of services, reduce joblessness in Indian communities and serve tribally determined goals. (25 U.S.C. § 3401 et seq.)

The Indian Mineral Development Act and the Indian Energy Policy Act of 2005 streamline the planning and authorization for development of energy and mineral resources held in trust for the benefit of Indian owners. (25 U.S.C. § 2101 et seq.)

Native American Program Act of 1974, as amended, was intended to promote the goal of economic and social self-sufficiency for American Indians, Native Hawaiians, other Native American Pacific Islanders (including American Samoan Natives), and Alaska Natives. (42 U.S.C. § 299 et seq.)

Housing Law

The Native American Housing Assistance and Self-Determination Act (NAHASDA) of 1996 addresses the need for affordable homes in safe and healthy environments on Indian reservations, in Indian communities and in Alaska Native villages. The Act assists Indian tribes and tribally designated housing entities with providing affordable housing to low-income families residing on reservations and in other tribal areas. (25 U.S.C. § 4101 et seq.)

Natural Resource and Environmental Law

The National Environmental Policy Act of 1969 (NEPA):

NEPA requires the preparation of an environmental assessment (EA) or environmental impact statement (EIS) for any proposed major federal action that may significantly affect the quality of the human environment. While the statutory language of NEPA does not mention Indian tribes, the Council on Environmental Quality (CEQ) regulations and guidance do require agencies to contact Indian tribes and provide them with opportunities to participate at various stages in the preparation of an EA or EIS. CEQ has issued a Memorandum for Tribal Leaders encouraging tribes to participate as cooperating agencies with federal agencies in NEPA reviews. (42 U.S.C. § 4321 et seq.)

Snapshot of the Environmental Protection Agency's Laws and Indian Program

Implementation:

Some environmental laws explicitly authorize the Environmental Protection Agency (EPA) to treat Indian tribes as states for purposes of becoming eligible to receive grants, and to manage programs for which states may also be eligible. The Clean Water Act Section 518 (CWA), 33 U.S.C. § 1377, the Safe Drinking Water Act Section 1451 (SDWA), 42 U.S.C. § 300j-11, and the Clean Air Act Section 301(d) (CAA), 42 U.S.C. § 7601(d). all fall in this category. EPA issued a series of rules for implementing tribal provisions of the Clean Water and Safe Drinking Water Acts between 1988 and 1994, and issued the Final Tribal Air Rule in February of 1998, specifying those provisions of the Clean Air Act for which tribes may be treated in the same manner as states. Other statutes specify some role for tribes under particular provisions. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136(u) and the Comprehensive Environmental Recovery, Compensation, and Liability Act Section 126 (CERCLA), 42 U.S.C. § 9626, fall into this category.

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) 7 U.S.C. § 136(u), among other things, allows for tribes to enter cooperative agreements with the EPA for enforcement, and for tribes to obtain the ability to certify applicators of pesticides.

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 42 U.S.C. § 9626, provides that tribes may be treated substantially the same as states under several provisions.

Toxic Substance Control Act (TSCA) Section 404, 15 U.S.C. § 84, and the **Emergency Planning & Community Right to Know Act (EPCRA)**, 42 U.S.C. § 11001 et seq., are silent on tribal roles, but those roles have been addressed in EPA rule makings under these acts. EPCRA has been interpreted to allow a tribe to develop a local rule for coordinating emergency response, and to report either to the state or directly to the EPA, as states do.

Resource Conservation and Recovery Act (RCRA) 42 U.S.C. § 6901 et seq., has not been amended to make tribes eligible to manage programs for which states are eligible. However, tribes may apply to the EPA to waive certain federal requirements for reservation landfills.

To be federally approved, environmental programs established by a tribe must meet applicable federal standards and regulations. A key aspect of protecting the environment in Indian country is the enforcement of either tribal or federal environmental laws or regulations. Enforcement includes activities such as inspections, compliance monitoring, and other efforts to encourage compliance with environmental standards. Issuing and enforcing tribal rules and permits enables tribes to exercise authority to protect their environments.

For more information about the Environmental Protection Agency's Indian program and authorities visit the following link: <http://www.epa.gov/tribalportal>.

Cultural Heritage and Preservation Law

National Historic Preservation Act of 1966 (NHPA), as amended, includes several provisions that relate to federal-tribal consultation and enhance tribal participation in the national historic preservation program. Most importantly, the 1992 amendments clarified that federal agencies, in carrying out their Section 106 responsibilities, must consult with any Indian tribe that attaches religious and cultural significance to historic properties that may be affected by an undertaking. The amendments also included provisions for:

1. Historic properties of religious and cultural significance to Indian tribes to be eligible for listing in the National Register of Historic Places; and
2. An Indian tribe to assume the responsibilities of the state historic preservation officer on its lands. (16 U.S.C. § 470 et seq.)

For more information, please visit the following link: <http://www.achp.gov/nhpa.html>

American Indian Religious Freedom Act of 1978 (AIRFA) as amended, establishes the policy of the federal government "to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including, but not limited to, access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites." (42 U.S.C. § 1996)

For more information, please visit the following link: http://www.nps.gov/history/local-law/FHPL_IndianRelFreAct.pdf

Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), Section 3(c), requires federal land-managing agencies to consult with federally recognized Indian tribes prior to the intentional removal or excavation of Native American human remains and other cultural items as defined in NAGPRA from federal lands. (25 U.S.C. § 3001).

On tribal lands, planned excavation requires the consent of the appropriate Indian tribe (43 CFR § 10.3).

In instances where a proposed project that is funded or licensed by a federal agency may cross federal or tribal lands, it is that agency that is responsible for compliance with NAGPRA.

For more information, please visit the following link: <http://www.nps.gov/history/nagpra/MANDATES/25USC3001etseq.htm>

Archaeological Resources Protection Act of 1979 (ARPA) establishes a permit process for the management of cultural sites on federal lands which provides for consultation with affected tribal governments. (16 U.S.C. § 470aa-mm)

For more information, please visit the following link: http://www.nps.gov/history/local-law/FHPL_ArchHistPres.pdf

Indian Arts and Crafts Act of 1990 promotes the development of Indian arts and crafts and established a board within the Department of Interior to promote the economic welfare of Indian tribes. First enacted in 1935, the law was later amended in 1990, to prohibit misrepresentation in marketing of Indian arts and craft products in the U.S. (PL 101-644)

For more information, please visit the following link: <http://www.doi.gov/iacb/iacba35.html>

Indian Gaming Law

The Indian Gaming Regulatory Act of 1988 (IGRA). Tribes were gaming long before Congress legislated in this area. In 1987, the Supreme Court in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, held that the states did not have jurisdiction to regulate tribal gaming. Following the *Cabazon* ruling, Congress passed IGRA as a means to provide a regulatory framework for Indian gaming and to balance the divergent interests of federal, state, and tribal governments. Congress divided Indian gaming into three classes, assigning different games and different regulatory responsibilities to each class. (25 U.S.C. § 2701 et. seq.)

Classes of Gaming and Jurisdiction

	<i>Examples</i>	<i>Jurisdiction</i>
<i>Class I</i>	<i>Social games of minimal value or traditional games played in conjunction with tribal ceremonies or celebrations</i>	<i>Tribes exclusively</i>
<i>Class II</i>	<i>Bingo, pull-tabs, non-banked card games such as poker where players play against each other</i>	<i>Primarily tribes, also the federal government (NIGC)</i>
<i>Class III</i>	<i>Slot machines, banked card games such as blackjack played against the house, other games typically found in a Las Vegas casino, lotteries, and horseracing</i>	<i>Primarily tribes, NIGC* and states (as negotiated in compacts)</i>

**NIGC's jurisdiction to regulate was recently limited by a D.C. Circuit Court ruling — Colo. River Indian Tribes v. Nat'l Indian Gaming Comm'n, 373 U.S. App. D.C. 288 (2006).*

Since the passage of the Indian Gaming Regulatory Act in 1988, Indian gaming has undergone explosive growth, increasing from \$100 million in gross gaming revenue in 1988 to \$8.5 billion in 1998 and \$25.1 billion in 2006. Only tribes recognized by the federal government may engage in Indian gaming. Approximately 225 of the 562 recognized tribes run some 400 operations, which range from the largest casino in the world to small weekly or seasonal bingo games in remote areas. Tribes conducting gaming operations are required under IGRA to use their gaming revenues to benefit their tribal communities.

Contrary to popular perception, the IGRA limited, rather than expanded, the power of tribal governments. IGRA's regulatory framework vests regulatory authority in the tribes, the federal government via the National Indian Gaming Commission (NIGC), and the state governments. In order to engage in the most profitable, Class III gaming, tribes must negotiate gaming compacts with the states where they are located. Among other things, a compact provides for the allocation of regulatory responsibility between the tribe and the state.

Use of Tribal Gaming Revenues

The Indian Gaming Regulatory Act limits the use of tribal gaming net revenues to five specific areas to:

- Fund tribal government operations or programs;*
- Provide for the general welfare of the tribe and its members;*

- Promote tribal economic development;
- Donate to charitable organizations; and
- Help fund operations of local government agencies providing services to tribes.

Tribes may also distribute "per capita payments" to tribal members, but only upon approval by the Secretary of the Interior of a revenue allocation plan. The Secretary must find that such a plan devotes adequate revenue to tribal government operations, government programs, and economic development.

Correcting Common Misconceptions:

Tribes are growing rich from Congress allowing them to game.

This is false. Congress did not allow tribes to game by passing IGRA. The Cabazon ruling affirmed tribes' independent, sovereign right to game as an expression of self-government. Further, while a few well-situated tribes have been able to generate significant revenues, many tribes still struggle to fund services (police protection, health care, education, etc.) for their members. In 2005, 44.7% of gaming revenue was generated by only 6% of operations.

All tribal members receive large, tax-free revenue shares from the casinos.

This is false. Many gaming tribes do not issue per capita payments to members. IGRA requires that members who do receive payments pay federal taxes on them.

Child Welfare Law

The Indian Child Welfare Act of 1978 (ICWA) governs "child custody proceedings" (adoption, termination of parental rights, foster care, and pre-adoptive placements) when the child is an Indian, and sets national standards and procedures which must be followed. The Act establishes tribal authority over such proceedings, and allows placement cases involving Indian children to be heard in tribal courts, if possible, but, if heard in state court, permits a child's tribe to be involved in proceedings for adoptions, foster care placements and termination of parental rights. If a child is facing foster care or adoption in state court, the Act requires that preference be given to placing Indian children with extended family members, other tribal members or other Indian families. The Act applies to all Indian children who are members of federally recognized tribes or are eligible for membership. (25 U.S.C. §§ 1901-1963)

Indian Health

Indian Health Service Mission: The IHS is an agency in the Department of Health and Human Services that operates a comprehensive health service delivery system for approximately 1.8 million of the nation's estimated 3.3 million American Indians and Alaska Natives. Members of federally recognized American Indian and Alaska Native Tribes and their descendants are eligible for services provided by the Indian Health Service (IHS). Its annual appropriation is approximately \$3 billion. The IHS strives for maximum tribal involvement in meeting the needs of its service population.

Examples of IHS tribal programs include:

- **The Special Diabetes Program for Indians:** This program is intended to promote improved health care among American Indians and Alaska Natives through special diabetes prevention and treatment services.
- **The Intergenerational Approaches to HIV/AIDS Prevention Education With Women Across the Lifespan Pilot Program:** The objectives of this program pertaining to Native American/American Indian, are for women and other female members of the family 12+ years old to: know their sero status; increase their knowledge of HIV/AIDS prevention; gain competencies in cross-generational communications about health in general and sexual health specifically; and connect with a primary healthcare physician (and navigate other systems of care).

For more information, please visit the following link: <http://www.ihs.gov/>.

SECTION THREE: Cultural Orientation and Tips for Working More Effectively with Tribal Governments

Objectives

Although Native Americans may share many attributes in their values, way of life, and historic and present-day circumstances, each tribe is unique.

Generally, the term "Native American" includes both American Indians of the lower 48 states and Alaska Natives.

Only direct interactions, experience, and personal relationships can really build this understanding. This module is intended to help you to appreciate their cultures and to develop skills for effective cross-cultural communication.

In this section, you will gain a basic understanding of:

- The importance of cultural factors.
- Skills for cross-cultural communication.
- Important and practical steps for working more effectively with tribes.

What is Culture?

Culture could be described as "the way of life" of a people. Culture includes a vast array of behaviors and beliefs. Critical cultural factors may differ greatly from culture to culture. Factors that should be considered when interacting with Native Americans include, but are not limited to:

- History, from a tribe's own perspective.
- Traditional values and attitudes, including the tribe's relationship with its homelands and social etiquette.
- Spirituality, such as ceremonies, rituals, sacred objects and places, and beliefs.
- Societal structure, including bands, clans and other kinship relations, gender roles, and the position of elders and children within the tribe.
- Governmental structures, protocols and laws, including traditional and westernized models.
- Language, which includes spoken, written, and non-verbal communications.

Respect for the Natural World

One important theme within many Native American cultures is a strong connection to all aspects of the natural world. It is important for federal employees to understand that the vitality of Native American cultures, religions, and the environment are often inextricably linked. The resulting sense of responsibility often affects the way that they approach and evaluate programs that impact the natural world.

A subsistence lifestyle is still practiced by many tribal members. This may involve utilizing natural resources for subsistence fishing, farming, ranching, hunting and gathering, and for the maintenance of spiritual and physical health. When planning or implementing federal programs, impacts on natural resources are critical to consider.

Spirituality

A strong respect for spirituality (whether traditional, Christian, or a combination of both) is common among tribes, and often forms a sense of group unity. Spiritual practices are often deeply ingrained in day-to-day living. For example, many tribes conduct meetings with traditional opening and closing ceremonies, which may be in the form of prayer.

Specific practices such as ceremonies, prayers and religious protocols vary among tribes. For centuries after European contact, practitioners of traditional Native American religions were often persecuted and, as a result, many religions were practiced in secret. The 1978 American Indian Religious Freedom Act established the policy to protect and preserve for Native Americans their inherent right of freedom to believe, express, and exercise their traditional religions.

Be aware that many traditional tribal beliefs and practices are not to be shared publicly.

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Elders and Children, and the Importance of Clans and Kinship

Elders and children are accorded special respect in many tribes. Elders are recognized as the keepers of cherished cultural knowledge, and are honored for the sacrifices they made for the welfare of future generations. Children and youth are understood to be the future leaders who will ensure the continuation of the tribe and its traditions. Extended family, kinship, and clan ties are also extremely important in many tribal communities.

Leadership and Decision-making

Tribal traditions often require that tribal leaders deliberate extensively and consider the long-term consequences of their decisions. This responsibility to consider the impacts of decisions on future generations may contrast with the time frames federal agencies are accustomed to considering. Furthermore, tribal governing bodies may meet to deliberate at set times of the year, and federal employees should be aware of these schedules in order to provide adequate time for tribal decision-making.

Cross-Cultural Communication: Language

Many tribal members speak English as a second language. According to the U.S. Census Bureau, 25% of American Indians and Alaska Natives 5 years and older speak a language other than English at home.

Like traditional Native American religions, the use of Native languages was actively discouraged by the schools that many Indian children were forced to attend. As a result, many Native languages are considered in danger of being lost forever. To respond to this threat, many tribes have instituted Native language programs to encourage their use in all aspects of tribal life. Because language is an integral part of culture, the continued use of Native languages is a priority for many tribes.

In cases where a tribal member who is not fluent in English needs to communicate with a federal employee, the tribe may provide an interpreter. As is the case with many languages, however, some concepts are not easily translated. Therefore, cross-cultural communication can be more challenging than typical conversations.

Problems in cross-cultural communication occur primarily because people assume that the elements of their own culture are clearly understood by everyone, thereby misunderstanding the distinctions between their culture and that of others. Being sensitive to such possibilities and seeking clarification in a patient and respectful manner can go a long way in bridging any gaps that may exist in cross-cultural communication.

Cross-Cultural Communication: Demonstrating Respect

In your work as a federal employee you are representing the federal government. Remember, many historic federal policies toward Native Americans resulted in a general distrust toward government officials, making it especially important that your interactions with tribes are carried out in a thoughtful and respectful manner. Tribes are sovereign nations, and should be treated accordingly.

Respect can be demonstrated in many ways.

- Be willing to admit limited knowledge of tribal culture, and invite tribal members to educate you about specific cultural protocols in their community. When in doubt about something, don't assume. Rather, ask respectfully.
- Understand that certain objects, such as feathers, beadwork, artwork, medicine bags, etc., may be sacred, and should not be touched.
- Do not take photographs without permission.
- If you are unsure of the appropriate attire for any meeting or event, ask your tribal contacts for guidance.
- Listen and observe more than you speak. Learn to be comfortable with silences, or long pauses in conversation. In tribal communities, any interruption is considered highly disrespectful, and may undermine your credibility.
- Federal jargon, acronyms, and standard operating procedures that are commonplace for federal employees may not be familiar to tribal members. Therefore, adjust your presentation accordingly. Educate, but don't patronize.

General Tips for Working More Effectively with Tribal Governments

The following tips will help you as you interact with tribal representatives:

- Take time to learn about the tribe's history and culture, tribal customs, and preferences. In addition, it is essential that federal employees understand the political environment in which the tribal government operates. For example, find out if there are tribal councils, business committees, or corporations. Learn the time frames in which these decision-making bodies operate, such as the frequency of council meetings.
- Always remember that you are a guest of the tribe that you are visiting. Respect their customs and laws. If you are invited to participate in an event or ceremony, watch respectfully, and remember that some events or ceremonies are for tribal members only.
- Consider opportunities for collaboration with other departments or other federal agencies that may benefit the tribe with whom you are working.
- Become familiar with the efforts and outcomes of your agency's prior work with the tribe.
- Ensure that tribal leadership or their designees are involved early in discussing projects, plans, or issues that may affect tribal concerns. Communicate early and often.
- If your agency has an established protocol agreement with a tribe, make sure that you follow it. If there is no such protocol in place, talk to tribal leaders about whether it would be beneficial to establish one.

Be aware that tribes like other governmental bodies, experience changing priorities with changing administrations.

Understand that your priorities may not be the same as the tribe's priorities.

In all of your work, ensure that potential impacts to tribes and tribal resources are considered. Consult with and involve tribes whenever government activities could affect their people, land, resources, and/or rights.

Try to respect confidentiality and the right of a tribe to control information it deems sensitive, but understand that sometimes federal laws do not permit government officials to maintain confidentiality. Ask about the tribe's position on the confidentiality of information prior to documenting the information or taking possession of materials the tribe may consider sensitive. Be honest with the tribal representatives if you are not certain that you can provide the level of protection the tribe desires to have. Seek counsel from other federal officials who are familiar with strategies that may allow you to use information while still respecting the tribe's confidentiality concerns.

When appropriate, plan your tribal visits so that you have flexibility to participate in any social or cultural events that you may be invited to. Such participation will help build your cultural understanding and foster positive relationships.

Clarify your role and authority to tribal leadership and officials to avoid raising unrealistic expectations, or making commitments that cannot be fulfilled.

If you are unsure of how to handle a particular situation during your visit to a tribal community, contact your agency's tribal program director or tribal contact for advice.

Be aware of your cross-cultural communication skills, and keep in mind that they can be improved by:

- Being open-minded. Keep your opinions flexible and be receptive to new ways of thinking and seeing the world.
- Listening and observing.
- Demonstrating sensitivity and respect for different cultures. This is critical to the building of effective working relationships.

SECTION FOUR: Credits

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