

Sovereignty: Teacher Background Information

Minnesota Indian Affairs Council

TRIBAL SOVEREIGNTY

"Tribal sovereignty" refers to the right of American Indian tribes to determine their own future. American Indian tribes through elected tribal governments have the right to operate as self-governing nations.

HISTORICAL PERSPECTIVE

When the United States government signed treaties with tribal nations, it affirmed the inherent sovereignty of the tribes. American Indian tribes have always been sovereign nations and controlled their own destiny. The United States Congress acknowledged this under House Concurrent Resolution 331. Among the attributes of sovereignty are American Indian control of the land and inherent powers. The inherent powers include: the power to determine the form of government; to define conditions for membership in the nation; to administer justice and enforce laws; to tax; to regulate domestic relations of its members; to regulate property tax.

One of the aspects of sovereignty is to be able to exert power to enforce the sovereignty.

The governments of these nations have always operated in accordance with democratic principles. An example is the Iroquois Confederacy. The framers of the U.S. Constitution based many of their basic concepts on this Confederacy. Each nation within the confederacy selected individuals to represent them at confederacy meetings. Issues were deliberated until all were in agreement on a common course of action. This method of decision making still used today is called consensus democracy.

TREATIES

In all the treaties and agreements that took place between American Indian nations and the United States government, the tribes retained the right to maintain their own governments. This right has been upheld since the 1830's when federal courts affirmed a trust responsibility to the tribes. That responsibility includes the protection of tribal rights and interests particularly with regard to tribal lands and resources. Federal Indian policy, however, followed an opposite course. In the treaties American Indian tribes agreed to cede vast segments of their homelands in exchange for honoring their right to retain small segments of this land for tribal members in common. The treaties included provisions that guaranteed the tribes government services in the areas of education, health and technical assistance. Some of the treaties guaranteed tribal members the right to hunt, fish and gather resources in a customary manner on ceded lands.

FEDERAL POLICES AND PRACTICES

The federal government did not honor the treaties. Instead the federal and state governments pursued policies and passed laws that led to the erosion of tribal political rights and the further confiscation of American Indian lands. Although the right of tribes to govern their own nations has been affirmed by treaty, federal laws, executive orders, federal policy and procedure have eroded the tribes' freedom to exercise this sovereign right.

Early in the relationships between American Indian Nations and the United States government, Congress used constitutional powers as justification for passing laws and approving treaties and agreements to regulate trade with Indian Nations. Later Congress arbitrarily passed legislation which interfered with the internal affairs of Indian Nations and assumed plenary power of Indian Nations. These actions attempted to exercise control over all aspects of American Indian life. United States courts have usually supported the plenary powers of Congress.

In 1790, the enactment of the first Indian Trade and Intercourse Act brought federal control over non-Indians on Indian land. This act was designed to "control" invasions of Indian land. This act and subsequent Trade Acts encouraged broader intrusions upon American Indian self-government.

The loss of the Indian land base through acts of the federal government has been enormous. Despite provisions of acts authorizing the acquisition of lands for American Indians, Congress did not appropriate money for the purpose of Indian land buy-back. The Dawes Act of 1887 allotted Indian lands that resulted in the further loss of millions of acres.

Assimilation policies followed the loss of land. These policies sought to destroy tribal cultures and assimilate American Indians as individuals into mainstream society.

The exercise of sovereign powers by Indian nations had already been eroded through legislation. The following methods were used:

- 1. The political question doctrine. Questions decided by the legislature or executive branch and not by courts.*
- 2. The guardian-ward relationship. "Trust" responsibility supposedly allowed Congress extraordinary power to take actions to protect Indian Nations.*
- 3. Plenary power of Congress. The courts have said that the power of Congress in Indian affairs is plenary (full and complete). Congressional power in Indian affairs is mentioned in the United States Constitution.*

External controls are requested by American Indian governments, but often Congressional action has been prompted by special interest groups who oppose

the exercise of tribal sovereignty.

From 1770 to 1870, Congress increased its role in Indian affairs from regulating trade with American Indians to controlling almost all facets of American Indian government. Treaty specifications were systematically reduced by subsequent acts of Congress.

One example is the reduction of land holdings of the Red Lake Reservation. Prior to 1863, the seven clans who comprised the Red Lake Chippewa owned and controlled more than 13 million acres of land in northwestern Minnesota. Land holding extended into North Dakota on the west and Canada on the north.

Red Lake was and is a separate and distinct nation. The Treaty of 1863 officially recognized Red Lake as separate and distinct with the signing of the Old Crossing Treaty of 1863. In this treaty, the Red Lake Nation ceded more than 11 million acres of the richest agricultural land in Minnesota in exchange for monetary compensation and a stipulation that the "President of the United States direct a certain sum of money to be applied to agricultural education and to other such beneficial purposes calculated to promote the prosperity and happiness of the Red Lake Nation."

In the Agreement of 1889 and the Agreement of 1904, Red Lake ceded another 2,256,152 acres and the Red Lake Nation was guaranteed that all benefits under existing treaties would not change. But they did.

There are additional examples in the treaty deliberations with other tribal nations.

NEED FOR HISTORICAL ACCURACY

Tribal sovereignty has not been understood, therefore a prevalent concern among American Indian scholars is to present an accurate history. The Institute for the Development of Indian Law defines sovereignty as the supreme power from which all specific political powers are derived.

All of the sovereign powers were once held by tribes, not the U.S. government. Whatever power the federal government may exercise over Indian nations it received from the tribe, and not the other way around.

Included in the inherent power are the following:

The power to determine the form of government.
The power to define conditions for membership in the nation.
The power to administer justice and enforce laws.
The power to tax.
The power to regulate domestic relations of its members.
The power to regulate property tax.

The law is clear that an Indian nation possesses all of the inherent powers of any sovereign government, except those powers that have been limited or qualified by treaties, agreements or an act of Congress.

Students will be able to function as responsible citizens if they know how sovereignty affects interactions of tribes with the federal government, the state of Minnesota and local governing units. All of the land in Minnesota was gained by the United States through a series of treaties with Anishinabe and Dakota sovereign nations. In order to understand issues of treaties, sovereignty or rights, one must first understand these very basic premises: No great war took these lands from American Indians. No American Indian leader gave Minnesota to the United States. The nations of Anishinabe and Dakota made concessions as to specific land uses by the United States. These concessions were clearly to benefit the settlers who wanted to establish businesses and homes on Indian lands. The United States was obligated to carry out the specifications of the treaties. Anishinabe and Dakota nations clearly retain any and all rights not specifically mentioned in the contracts.

A common misconception is that the United States gave American Indian nations rights through treaties. In fact, American Indian nations gave land to the United States while retaining inherent rights and powers.

The Plenary Power Doctrine, established in 1889, gives Congress and the Executive the power to make {...} policy free from judicial review. The doctrine rests on the assumption that {...} is a question of national sovereignty, relating to a nation's right to define its own borders.

Source: Minnesota Indian Affairs Council