



TRIBAL SOVEREIGNTY, GOVERNANCE, AND THE LAND

KEY POINTS AND TAKEAWAYS:

- Tribal Nations are sovereign governments with a government-to-government relationship with the United States that is codified in the U.S. Constitution.
- Through various federal government policies and laws, millions of acres of Tribal lands were lost which created a checkerboard of different jurisdictions within which Tribal governments have to operate.
- For the last 50 years, Tribal governments have been empowered to exercise their inherent sovereignty through self-governance and self-determination.



Tribal Nations are the First Sovereigns of what is now the United States and are part of the American family of governments: Tribal, Federal, and State governments.¹ Today there are 573 federally acknowledged (or recognized) Tribes and dozens of state recognized Tribes. However, the relationship between Tribes and federal and state governments is complicated. Just between the years of 1778 and 1871, the U.S. government entered in over 370 treaties² with different Tribes across the country establishing the basis of the federal government's direct relationship with Tribal Nations. This codified in the U.S. Constitution's Indian Commerce Clause which states that: "The Congress shall have the Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes . . ."³ Through treaties, agreements, laws, and other times through force, the basis of the federal trust and treaty responsibility was formed by land cessions or land takings. When land was ceded or taken, it was often done for a promise by the federal government: a promise of other lands, education, housing, funding, health care, agriculture, reserved subsistence rights, among many others.

Throughout the several different eras of Tribal and federal government interaction, land status and agriculture has been impacted in various ways which have carryover effects to today. During the pre-Colonization period before 1492, there were complex Indigenous food and agriculture systems which included, farming, irrigation, subsistence practices like hunting, fishing, gathering, and many others. After arrival and during colonization, between 1492 to 1828, starts the acquisition of Tribal lands, acknowledgement of Tribes as governments through treaties and agreements, but also the sidelining of traditional Indigenous food systems and ways and export of traditional foods once found only in North and South America. This period is followed by the removal, reservation, and treaty period from 1882 to 1887, where Manifest Destiny and western expansion lead forced agreements and forced Tribal land loss, along with the forcing non-traditional styles and methods of agriculture. Through the various Homestead Acts, many places were opened to non-Indians.

The allotment period starts in 1887 with the Dawes Act. Congress passed the Dawes Act which allotted, or broke into smaller tracts, Tribal land and gave it to individual Indians, some in fee simple and some still under the protected federal

trust status.⁴ Much of the land was either leased or sold to non-Indians for pennies on the dollars, which has created challenges to boosting Tribal agriculture even today. Land easily fell out of Tribal ownership through sales, leases, foreclosures, deaths, and probate. In total, the Allotment Period from 1887 to 1934 lead to a loss of over 90 million acres of land from Tribes and created a complex patchwork, or checkerboarding, of jurisdictional issues regarding who had and maintained control over the land and the activities on it and lead to the question which permeates land issues in Indian Country.

Allotment ended in 1934 with the Indian Reorganization Act of 1934, which reemphasized that Tribes were governments, and supported Tribal constitutions (although they were developed and approved by the Bureau of Indian Affairs). While this was an important and watershed moment in Indian Country, it did not last long. Starting in 1945 and running through 1968, the federal government again went through a period of terminating of Tribal governments, their trust lands, and rights causing 1.4 million acres to be lost and forcing urban relocation for many Native people.

A presidential statement by President Richard Nixon in 1968 ushered in a new, and what is the most recent of eras in Tribal/Federal relations:

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Tribal Self-Determination and Self-Governance. From this came many laws aimed at writing past wrongs, including: the Indian Civil Rights Act of 1968; the Indian Self-Determination and Education Assistance Act of 1975; the Indian Child Welfare Act of 1978; the 1990 Farm Bill – Additional Tribal inclusions in Conservation Title; and American Indian Agriculture Resource Management Act of 1993; Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012; Violence Against Women Reauthorization Act of 2013; and the Agriculture Improvement Act of 2018 (Farm Bill) with 63 Tribal specific provisions. All of these laws, plus many others, are important parts of the toolbox for Tribal governments to exercise and assert their sovereign authority within the various types of land throughout Indian Country: Trust Land (Tribal/Individual); Fee (Tribal/Individual); Restricted Fee; and non-Indian Fee (no jurisdiction).

Control over Tribal lands, assets, and resources means supporting Tribally driven protections and enforcement for: cultural, traditional, and spiritual uses, especially protecting sacred sites; agricultural; forestry; grazing; residential housing; commercial uses; mineral and natural resource extraction; and recreational uses. For example, since many Tribal sacred places and traditional hunting, gathering, and fishing areas are located on federally protected lands, so the agreements and relationship with the federal government is important for exercising and protecting those rights and places for the next generation. Who owns and controls the land is important for agricultural purposes as well as access to federal farm programs.

With the complex history of Tribal/Federal relations and the impacts it's had on Tribal lands and the exercise of inherent Tribal sovereignty, the movement towards empowering Tribal governance and Tribally driven solutions provides a strong place for private philanthropy to support these efforts. Understanding the history and working with Tribes on potential solutions that fit their unique histories, realities, and concerns from a Tribal community level is essential to developing community based, sustainable solutions.

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1. National Congress of American Indians, Tribal Nations and the United States: An Introduction, May 8, 2019, available at: <http://www.ncai.org/about-tribes>.

2. Id.

3. U.S. Constitution, Article I, Section 8, Clause 3.

4. National Congress of American Indians, A Quick Guide to the American Indian Probate Reform Act, Apr. 13, 2006, available at: <http://iltf.org/wp-content/uploads/2016/11/A-Quick-Guide-to-AIPRA-NCAI.pdf>.