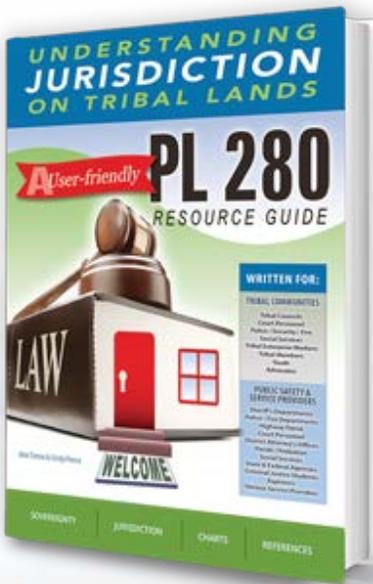


Government-to-Government

Is Tribal Sovereignty Individual or Collective?



An interactive article - excerpts from "A User-friendly PL 280 Resource Guide"



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One cannot say, "I'm a sovereign Indian." However, what can be declared is, "We are a sovereign Indian tribe/nation."

Think about that for a minute ... Do you see the difference?

This is an important concept in understanding **Public Law 280** [1] and Indian law in general. Tribal sovereignty is the basis for a tribe's political relationship with the United States. A tribe's government-to-government relationship is not based on individual **ethnicity**. Rather, it is based on the historical dealings of the United States government with sovereign tribal governments. Tribal governments represent their communities who collectively share a form of government, culture, tradition and values.

Treaty-making, an expression and exercise of sovereignty, was never individual. A treaty could only be made through governmental authorities representing their tribe as a whole. When you think about it, this is also true regarding



“The early journals of congress exhibit the most anxious desire to conciliate the Indian nations. Three Indian departments were established; and commissioners appointed in each, ‘to treat with the Indians in their respective departments, in the name and on the behalf of the United Colonies, in order to preserve peace and friendship with the said Indians, and to prevent their taking any part in the present commotions.’”

Worcester v. State of Georgia, 31 US 515, 549 (1832)

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the United States’ political relationship with other nations. The U.S. government does not deal with any country’s representative according to their individual ethnicity. If the federal government has formal dealings with such an individual, it is because that person is representing their nation in an official capacity.

From the very beginning of the history of the United States, the federal government has acknowledged the sovereignty of Indian tribes. As the colonies stood united in their common cause, with full intention of declaring their own sovereignty, they pursued government-to-government negotiations with the tribes by establishing three Indian departments. On June 30, 1775, the **Congress of the Confederation** created three departments of Indian Affairs: a northern department, a middle department, and a southern department. Commissioners were appointed to make treaties of peace with the Indians “in the name of and on the behalf of the United Colonies.” Congress showed the importance they gave to these departments by choosing well-respected men, such as **Benjamin Franklin** and **Patrick Henry**, to serve as Indian Commissioners.

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From the United States' first treaty with an Indian tribe until the official ending of such treaty-making in 1871, roughly 370 treaties were negotiated and ratified by the U.S. government with various Indian tribes. However, not all tribes have treaties. Other sources of the United States political involvement with the tribes are through various historical events, court decisions, federal statutes, and executive orders.

An illustration of the unique political status between the federal government and Indian tribes is seen in the [United States Code \(USC\)](#). When federal laws are enacted, they are compiled into the USC, the codification of all general and permanent federal laws in the United States. The USC is arranged by subject matter called "titles." The various laws are categorized and placed within the appropriate title. Of the more than fifty titles, one title – [Title 25](#), is solely dedicated to the federal government's dealings with Indians. Title 25 is therefore appropriately entitled, "Indians."

Over two hundred years of dealing with Indian tribes through treaties, agreements, statutes and executive orders has left no doubt that the federal government has, in fact, made specific commitments to the Indian tribes. These have established a trust responsibility on the part of the United States toward tribal governments and their communities. How that responsibility can best be fulfilled, however, is open to interpretation. [\[2\]](#)

The federal trust responsibility is recognized by all three branches of government: the executive, judicial and legislative branches. However, it is not so clearly defined or outlined in one particular way on how to exactly fulfill it. There is no box to open up, complete with instructions and a schematic showing how everything fits together regarding the administration of the federal trust responsibility. Therefore, leaving the "how-to" fulfill commitments to Indian tribes subject to debate.

"The United States, as the Tribes' fiduciary, is held to strict standards and is required to exercise the greatest care in administering its trust obligations." [Assiniboine and Sioux Tribes v. Bd. Of Oil and Gas, 792 F.2d 782](#) (US Court of Appeals, Ninth Circuit 1986)



“The special relationship between Indians and the federal government is a result ... of solemn obligations which have been entered into by the United States government. Down through the years through written treaties and through formal and informal agreements, our government has made specific commitments to the Indian people. For their part, the Indians have often surrendered claims to vast tracts of land and have accepted life on government reservations. In exchange, the government has agreed to provide community services such as health, education and public safety; services which would presumably allow Indian communities to enjoy a standard of living comparable to that of other Americans.”

President Nixon’s Special Message on Indian Affairs, July 8, 1970

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Endnotes

[1] Public Law 280 (PL 280) is federal law that was enacted by the United States Congress in 1953. PL 280 impacts over half of all the federally recognized Indian tribes. PL 280 transferred certain criminal and civil jurisdiction from the federal government to the states.

[2] *President Nixon’s Special Message on Indian Affairs, July 8, 1970*

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