

TRIBAL CIVICS 101: UNDERSTANDING THE TRIBAL-FEDERAL RELATIONSHIP



WINTER RTOC
FORT MOJAVE RESERVATION
FEBRUARY 5, 2026



TRIBAL CIVICS 101

- TRIBAL SOVEREIGNTY
- FEDERALISM
- HISTORY OF FEDERAL INDIAN POLICY
- KEY CONCEPTS
- COMMON QUESTIONS

TRIBAL CIVICS 101: TRIBAL SOVEREIGNTY THE INHERENT AUTHORITY TO SELF-GOVERN

“INDIAN NATIONS HAD ALWAYS BEEN CONSIDERED AS DISTINCT, INDEPENDENT POLITICAL COMMUNITIES, RETAINING THEIR ORIGINAL NATURAL RIGHTS, AS THE UNDISPUTED POSSESSORS OF THE SOIL... THE VERY TERM “NATION” SO GENERALLY APPLIED TO THEM MEANS ‘A PEOPLE DISTINCT FROM OTHERS.’”

- CHIEF JUSTICE MARSHALL, WORCESTER V. GEORGIA (1832)

TRIBAL CIVICS 101: TRIBAL SOVEREIGNTY

- TREATIES, EXECUTIVE ORDERS, AND LAWS AFFIRM INHERENT TRIBAL SOVEREIGNTY
- THE FEDERAL GOVERNMENT HAS A TRUST RESPONSIBILITY TO PROTECT TRIBAL LANDS AND TRIBAL SOVEREIGNTY

TRIBAL CIVICS 101: FEDERALISM

"THE MODE OF POLITICAL ORGANIZATION THAT UNITES SEPARATE POLITIES INTO AN OVERARCHING POLITICAL SYSTEM SO AS TO ALLOW EACH TO MAINTAIN ITS FUNDAMENTAL POLITICAL INTEGRITY." (CENTER FOR THE STUDY OF FEDERALISM)

U.S. GOVERNMENT - TRIBES - STATES: THREE-PART FEDERAL SYSTEM

TRIBAL CIVICS 101: HISTORY OF FEDERAL INDIAN POLICY

THE TREATY ERA (1778 - 1820)

- ARTICLES OF CONFEDERATION (1777): "THE UNITED STATES IN CONGRESS ASSEMBLED SHALL... HAVE THE SOLE AND EXCLUSIVE RIGHT AND POWER OF... REGULATING THE TRADE AND MANAGING ALL AFFAIRS WITH THE INDIANS..."
- NORTHWEST ORDINANCE (1787): TRIBES' LANDS AND PROPERTY SHALL "NEVER BE TAKEN WITHOUT THEIR CONSENT"
- U.S. CONSTITUTION (1787): PROVIDES CONGRESS WITH THE POWER TO "REGULATE COMMERCE WITH FOREIGN NATIONS, AND AMONG THE SEVERAL STATES, AND WITH THE INDIAN TRIBES"

TRIBAL CIVICS 101:

HISTORY OF FEDERAL INDIAN POLICY

THE REMOVAL ERA (1820 - 1850)

JOHNSON V. M'INTOSH (1823): ESTABLISHES THE DISCOVERY DOCTRINE: "...DISCOVERY GAVE TITLE TO THE GOVERNMENT BY WHOSE SUBJECTS, OR BY WHOSE AUTHORITY, IT WAS MADE, AGAINST ALL OTHER EUROPEAN GOVERNMENTS, WHICH TITLE MIGHT BE CONSUMMATED BY POSSESSION."

- DISCOVERING NATIONS HOLD TITLE TO THE LAND
- TRIBES ONLY HAVE RIGHT OF OCCUPANCY ("ABORIGINAL TITLE")
- INDIAN LANDS CAN ONLY BE TRANSFERRED TO THE FEDERAL GOVERNMENT

TRIBAL CIVICS 101: HISTORY OF FEDERAL INDIAN POLICY

THE REMOVAL ERA (1820 - 1850)

INDIAN REMOVAL ACT (1830): "AN ACT TO PROVIDE FOR AN EXCHANGE OF LANDS WITH THE INDIANS RESIDING IN ANY OF THE STATES OR TERRITORIES, AND FOR THEIR REMOVAL WEST OF THE RIVER MISSISSIPPI."

- THE ACT RELIES ON THE DISCOVERY DOCTRINE
- SUPPOSED TO BE VOLUNTARY BUT TRIBES ARE PRESSURED TO SIGN REMOVAL TREATIES

TRIBAL CIVICS 101: HISTORY OF FEDERAL INDIAN POLICY THE REMOVAL ERA (1820 - 1850)

CHEROKEE NATION V. GEORGIA (1831):

- ESTABLISHES FEDERAL TRUST RESPONSIBILITY TO TRIBES AS "DOMESTIC DEPENDENT NATIONS" WHOSE "RELATIONSHIP TO THE U.S. RESEMBLES THAT OF A WARD TO HIS GUARDIAN"

TRIBAL CIVICS 101: HISTORY OF FEDERAL INDIAN POLICY THE REMOVAL ERA (1820 - 1850)

WORCESTER V. GEORGIA (1832):

- STATES HAVE NO JURISDICTION OVER TRIBES
- TRIBES CANNOT BE FORCED TO MOVE

CHEROKEES AND OTHERS ARE PRESSURED INTO SIGNING REMOVAL TREATIES (E.G. TREATY OF NEW ECHOTA, 1835), LEADING TO THE TRAIL OF TEARS

TRIBAL CIVICS 101: HISTORY OF FEDERAL INDIAN POLICY THE RESERVATION ERA (1850 - 1887)

- FOCUSED ON REMOVAL AND SETTLEMENT OF TRIBES ON LANDS RESERVED FOR TRIBES
- CHARACTERIZED BY THE PEACE POLICY:
 - CHRISTIAN ORGANIZATIONS BROUGHT IN TO TAMP DOWN INDIGENOUS BELIEFS
 - MILITARY USED TO DISCOURAGE AND PUNISH TRADITIONAL PRACTICES
 - PROVIDED TOOLS AND SUPPLIES FOR TRANSITION TO AGRICULTURE
 - USED CHURCHES TO DISTRIBUTE GOODS AND TEACH U.S. MORAL VALUES

TRIBAL CIVICS 101:

HISTORY OF FEDERAL INDIAN POLICY

THE RESERVATION ERA (1850 - 1887)

- EX PARTE CROW DOG (1883): RULED THAT U.S. DOES NOT HAVE JURISDICTION OVER INDIAN-ON-INDIAN CRIMES ON RESERVATIONS
- MAJOR CRIMES ACT (1885): IN ANSWER TO CROW DOG, CONGRESS CODIFIES FEDERAL JURISDICTION OVER MAJOR CRIMES ON TRIBAL LANDS
- 1871: CONGRESS ENDS TREATY-MAKING IN FAVOR OF MAKING INDIAN POLICY BY STATUTE

TRIBAL CIVICS 101: HISTORY OF FEDERAL INDIAN POLICY THE RESERVATION ERA (1850 - 1887)

U.S. V. KAGAMA (1886): CHALLENGES THE MAJOR CRIMES ACT OF 1885

- THE "WARD TO HIS GUARDIAN" LANGUAGE FROM CHEROKEE NATION V. GEORGIA CONFERS CERTAIN RESPONSIBILITIES
- THE GUARDIAN RESPONSIBILITY PROVIDES AN EXTRA-CONSTITUTIONAL SOURCE OF POWER ENABLING CONGRESS TO CREATE INDIAN LEGISLATION
- PAVES THE WAY FOR THE GENERAL ALLOTMENT ACT

TRIBAL CIVICS 101:

HISTORY OF FEDERAL INDIAN POLICY

THE ALLOTMENT AND ASSIMILATION ERA (1887 - 1934)

GENERAL ALLOTMENT ACT OF 1887 (DAWES ACT)

- GOAL WAS ASSIMILATION OF INDIVIDUAL TRIBAL MEMBERS AND DESTRUCTION OF COMMUNAL LIVING BY CREATING PRIVATE PROPERTY
- INCLUDED CESSION OF ALL UNALLOTTED LANDS TO NON-INDIANS
- INTENDED TO RESULT IN DISAPPEARANCE OF TRIBAL GOVERNMENTS
- RESULTED IN THE LOSS OF 90 MILLION ACRES OF TRIBAL LANDS

TRIBAL CIVICS 101:

HISTORY OF FEDERAL INDIAN POLICY

THE ALLOTMENT AND ASSIMILATION ERA (1887 - 1934)

LONE WOLF V. HITCHCOCK (1903)

- ESTABLISHES CONGRESSIONAL PLENARY POWER OVER INDIAN AFFAIRS
- CONGRESS HAS THE POWER TO ABROGATE PRE-EXISTING TREATY OBLIGATIONS
- SPEEDS UP ALLOTMENT AND ASSIMILATION POLICIES BECAUSE THE U.S. NO LONGER HAS TO OBTAIN TRIBAL CONSENT TO ALLOT OR SELL TRIBAL LANDS

TRIBAL CIVICS 101: HISTORY OF FEDERAL INDIAN POLICY THE ALLOTMENT AND ASSIMILATION ERA (1887 - 1934)

INDIAN BOARDING SCHOOLS

- 1879: RICHARD HENRY PRATT ESTABLISHES THE CARLISLE INDUSTRIAL SCHOOL WITH THE GOAL TO "KILL THE INDIAN IN HIM TO SAVE THE MAN"
- INDIAN CHILDREN ARE KIDNAPPED AND FORCED INTO THE SCHOOLS

INDIAN CITIZENSHIP ACT (1924)

- INDIVIDUAL TRIBAL MEMBERS GRANTED U.S. CITIZENSHIP

TRIBAL CIVICS 101: HISTORY OF FEDERAL INDIAN POLICY THE SELF-GOVERNMENT ERA (1934 - 1953)

INDIAN REORGANIZATION ACT (1934)

- ENDS ALLOTMENT
- PUTS TRIBAL LANDS INTO PERMANENT TRUST STATUS
- ENCOURAGES TRIBES TO DEVELOP CONSTITUTIONS
- INTENDED TO ENHANCE TRIBAL SOVEREIGNTY, BUT...
- STILL REQUIRES OVERSIGHT AND APPROVAL BY THE DEPARTMENT OF THE INTERIOR

TRIBAL CIVICS 101:

HISTORY OF FEDERAL INDIAN POLICY

THE TERMINATION ERA (1953 - 1968)

HOUSE CONCURRENT RESOLUTION 108 (1953):

- SETS FORTH NEW POLICY: "TO MAKE THE INDIANS SUBJECT TO THE SAME LAWS AS ARE APPLICABLE TO OTHER CITIZENS OF THE U.S., END THEIR STATUS AS WARDS"
- MEANT TO TERMINATE TRIBAL TRUST STATUS AND ELIMINATE THE U.S. GOVERNMENT'S RESPONSIBILITY TO TRIBES

PUBLIC LAW 280 (1953) GIVES SOME STATES CONCURRENT CRIMINAL JURISDICTION OVER TRIBES, WITHOUT TRIBAL CONSENT

TRIBAL CIVICS 101:

HISTORY OF FEDERAL INDIAN POLICY

THE SELF-DETERMINATION ERA (1968 - PRESENT)

INDIAN CIVIL RIGHTS ACT (1968)

- RECOGNIZES TRIBES' INHERENT SOVEREIGNTY
- TRIBES ARE NOT REQUIRED TO ADHERE TO U.S. CONSTITUTION
- PROVIDES FEDERAL PROTECTION TO TRIBAL CITIZENS
- INCORPORATES MOST OF THE U.S. BILL OF RIGHTS, WITH A FEW EXCEPTIONS

TRIBAL CIVICS 101:

HISTORY OF FEDERAL INDIAN POLICY

THE SELF-DETERMINATION ERA (1968 - PRESENT)

MORTON V. MANCARI (1974)

- FINDS THAT TRIBAL CITIZENSHIP IS A POLITICAL RATHER THAN A RACIAL CLASSIFICATION
- INDIAN HIRING PREFERENCES ARE RELATED TO A RATIONAL END
- LANDMARK CASE THAT ALLOWS PROGRESS IN INDIAN LAW IN OTHER AREAS

TRIBAL CIVICS 101:

HISTORY OF FEDERAL INDIAN POLICY

THE SELF-DETERMINATION ERA (1968 - PRESENT)

SANTA CLARA PUEBLO V. MARTINEZ (1978)

- FINDS THAT ICRA DOES NOT WAIVE TRIBAL SOVEREIGN IMMUNITY FROM SUIT
- TRIBAL CITIZENS CANNOT SUE A TRIBAL GOVERNMENT IN FEDERAL COURT
- GIVES TRIBAL GOVERNMENTS AND TRIBAL COURTS JURISDICTION OVER ICRA VIOLATIONS
- PROVIDES THE LEGAL BASIS FOR TRIBAL SELF-DETERMINATION AND JURISDICTION

TRIBAL CIVICS 101: KEY CONCEPTS

INHERENT TRIBAL SOVEREIGNTY: THE RIGHT TO SELF-GOVERN

TRUST RESPONSIBILITY: THE OBLIGATION OF THE FEDERAL GOVERNMENT
TO PROTECT AND SUPPORT TRIBAL NATIONS

PLENARY POWER: CONGRESSIONAL AUTHORITY TO MAKE INDIAN POLICY

TRIBAL CIVICS 101: KEY CONCEPTS

GOVERNMENT-TO-GOVERNMENT: RELATIONSHIP BETWEEN TRIBAL OFFICIALS AND FEDERAL OFFICIALS WITH DECISION-MAKING POWER

CONSULTATION: REQUIREMENT THAT FEDERAL AGENCIES CONSULT WITH TRIBES ON ACTIONS THAT HAVE TRIBAL IMPLICATIONS (E.O. 13175)

TRIBAL CIVICS 101:
THANK YOU!

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