

TRIBAL GOVERNMENTS

The dispatcher notifies the Reno Sparks, Nevada, tribal police officer of a robbery in progress. The Navajo health care worker drives for an hour over the mesa to make certain an elderly woman is properly taking her prescribed medication. The Quinault tribal biologist attends a national conference to discuss with other experts the latest techniques in salmon hatching. Banging down his beaded gavel, the Sac and Fox judge grants the couple's divorce petition. The Mississippi Choctaw Chief has requested the council to examine the feasibility of constructing a bingo hall on tribal lands. The Yakima delegation is in Washington, D.C. to lobby its congressional representatives for support against the proposed location of a nuclear-waste dump near their reservation in Washington state.

The scenarios sketched above illustrate the numerous roles tribal governments perform daily throughout Indian country. For thousands of years, tribes have served their people, providing for their safety, health, and economic well-being. Their structures, processes, and methods of governing have changed; the responsibilities have not. To best appreciate the current challenges faced by the more than six hundred tribal governments in the continental United States and Alaska, one must first understand the past pressures that tribes have endured.

Historically, tribal governments varied considerably in structure and complexity. The smaller bands of the Basin and California regions approximated truly direct great democracies. The Muscogee Confederacy of the Southeast, on the other hand, possessed an elaborate system of checks and balances guided by a dual clan and town system.

Contact between Indians and non-Indians altered in varying degrees--but without exception--the philosophy, structure, and powers of these traditional governments. The immigrants valued property, material progress, and individualism. Indian nations, with their extensive lands and resources, were both the source of and the obstacle to the attainment of the non-Indians' goals. Tedious negotiations with people who did not view land as a commodity to be sold, who cared little for the individual amassment of wealth, and who practiced consensus decision-making precluded the quick attainment of lands by the non-Indian. The federal government responded to this obstinacy with measures to destroy tribal cultures and sovereignty.

The federal government, like its European predecessors, initially recognized tribes as independent nations, with exclusive sovereignty over their external and internal affairs. England negotiated more than 500 treaties with tribes and the United States more than 370. Recognition for tribal rights declined, however, as the greed for Indian lands intensified and the power balance tipped favorably towards the United States, jeopardizing the tribes' ability to maintain their traditional structures and powers. Tribal governments, such as those of the Choctaw, Cherokee, and other Indian nations of the Southeast, responded to internal tribal demands and changed their governments, modeling them after those of their white neighbors. Other tribes, such as the Lakota (or Sioux), were subjected to continuous federal policies designed to undermine their leaders and governments.

By the late 1800s, the federal government's decision to solve the "Indian problem" by assimilating Indians into the dominant society had emasculated not just the government of the Lakotas, but most other tribal governments. Congress' unilateral decision in 1871 to end treaty making with the Indian nations deprived tribal governments of a voice in their relationship with the federal government. The virtual extinction of the buffalo and other game, a forced reliance on federal rations, and the allotment of reservation lands severely disabled the tribal governments' ability to secure their people's economic well-being. The authority of the Bureau of Indian Affairs agent and the establishment of Indian police forces and courts usurped the tribal government's responsibility to provide for public order and justice. Federal regulations outlawing tribal religious practices, efforts to convert tribes to Christianity, policies to extinguish Indian

languages, and the teaching of American values through education obscured the philosophical sources of traditional governments. Federal actions were indeed changing tribes from self-sufficient nations into wards.

By the 1930s, when Congress passed the Indian Reorganization Act, tribal governments had nearly ceased to exist. The Indian Reorganization Act of 1934 offered tribes constitutions drafted by the Bureau of Indian Affairs (BIA) and congressional funds for economic development. Although many experts praised the act for its resuscitation of tribal governments, others criticized it as assimilationist, charging that the government provided tribes with Western-derived political institutions rather than improving traditional systems.

Congressional support of tribal governments, however limited or misdirected, ended in the 1950s and early 1960s with the passage of several termination bills--legislation intended to solve the ever-present Indian problem by abrogating the federal government's relationship with tribes and integrating their lands and peoples into the surrounding states. Pursuant to this objective, Congress terminated its relationship with 109 communities, bands, and tribes before again altering its policies toward tribal governments in the mid-1970s. Congress' current approach toward tribal governments is to acknowledge and promote tribal self-determination. The implementation of this policy has translated into increased funds and training that enable tribal governments to administer programs and services formerly operated by the Bureau of Indian Affairs.

Congress refers to its relationship with tribes as a government-to-government relationship, a term signifying the inherent sovereignty of each party. As sovereigns, tribal governments receive their authority to operate from their own people, not from the United States Constitution as do state governments. (This has led one judge to write that tribal governments, in effect, have a status higher than states.) No longer viewed as wards, tribal governments are recognized by Congress and the states as the official representatives of domestic dependent nations.

As domestic dependent nations, tribes possess the inherent sovereignty to exercise all governmental power unless extinguished by treaty or congressional legislation or unless it is a power that is inconsistent with the tribes' dependent status. In practical terms this means that tribes have retained, with some limitations, the authority to structure their own governments, to administer justice, to regulate domestic relations, to manage and develop their lands and resources, to conduct businesses, and to tax individuals and commercial enterprises.

Differing cultures, histories, resources, and leadership abilities have created a diverse collection of tribal governments, each with its own structure, governing style, objectives, and tribal programs. Approximately half of all tribes operate according to the guidelines of the Indian Reorganization Act. Other tribes, such as the Onondaga and the Seneca of New York, the Yakima of Washington, and several Pueblos, have retained much of their traditional structures.

In general, tribal governments are headed by a council, referred to by some tribes as a legislature, or a business committee. Council members are usually elected, although such tribes as the Warm Springs of Oregon and the Miccosukee of Florida have a combination of elected officials and traditional band or clan chiefs. A community's cultural values may also be apparent in the council's composition, for instance in the ratio of young to old, educated to non-educated, and men to women council members. Governing styles and procedures differ too. The discussion of an economic-development proposal by one tribal government may continue informally for months until the council has achieved a clear consensus. A neighboring tribe's consideration of a similar proposal may last a shorter time, with discussions occurring according to Robert's Rules of Order, and the final decision determined by majority vote.

Although many are patterned after non-Indian institutions, most tribal governments do not possess clearly separated branches of government. Especially in smaller tribes, the council may be responsible for various, if not all, executive, legislative, and judicial functions. The independence and power of the executive (referred to as a chairperson, chief, governor, or president, depending on the tribe) is

determined by a tribe's history, constitution, and mode of election. The relocated Five Civilized Tribes of Oklahoma, who historically have possessed strong executives, elect their principal chiefs by popular vote.

The Menominees of Wisconsin have ceded the election of the chairperson to their legislature. More than 140 tribal governments have established separate judicial systems. These courts vary considerably in complexity, independence, and cultural orientation. Tribal legal systems may include one court or several, such as separate criminal, civil, family, or conservation courts. The Navajo Nation has developed the most elaborate system, consisting of an attorney general's office, a variety of specialized courts, and more than twenty codes, including laws pertaining to commercial enterprises and child welfare. On small reservations, the council may serve as the court of first and last resort. Other tribal constitutions vest the council with the right to hear appeals. A few tribes, such as the Lakota, have established a special supreme-court level to decide appeals from any of the several member reservations. Judicial review, a right not given to all tribal courts, and the selection process of judges, elected by the people or appointed by the council, are other factors affecting the independence of tribal judicial systems.

Whatever the particular system, most tribal courts employ and apply a combination of traditional and Anglo derived procedures and laws. For example, tribal regulations on the Blackfeet reservation require all lawyers and judges to speak the native language and to be members of the tribal bar; other reservations require lawyers and judges to be members of the state bar, while still others provide a more informal conflict-resolution process staffed by respected leaders who may or may not have formal legal training.

Tribal courts no longer exercise complete criminal and civil jurisdiction over all matters and individuals within their territory. Criminal and civil jurisdiction in Indian country is today a patchwork of exclusive and concurrent authority exercised by tribal, federal, and state governments. The federal government has assumed criminal jurisdiction over Indians committing any of fourteen major crimes. In addition, two recent Supreme Court decisions have ruled that the exercise of tribal criminal jurisdiction over anyone but a member is inconsistent with the tribes' status as domestic dependent nations. These court cases and laws, in combination with federal legislation limiting the penalties levied by tribal courts to one year in jail or \$5000 in fines, has severely undermined the ability of tribal governments to protect their people and others living on the reservation. Tribes have retained most civil jurisdiction over Indians and non-Indians within their boundaries. Civil-dispute settlement, marriage, divorce, zoning, and taxation are inherent powers properly exercised by all tribal governments. The Agua Caliente have passed zoning laws for their reservation lands, parts of which are located in Palm Springs, California. The Jicarilla Apache tax energy companies located on their property. Tribal courts, as clarified by the Indian Child Welfare Act of 1978, possess primary jurisdictional rights over state courts in procedures involving the custody and adoption of enrolled Indian children.

Historically, states had no jurisdiction over tribal lands. In the last thirty years, however, the federal government has allowed state governments to exercise increased authority within reservation boundaries. In 1953, Congress granted five (later six) states the authority under Public Law 280 to assume criminal and civil jurisdiction over most reservations within their borders. And as mentioned above, state courts now have the power to try nonmembers for criminal acts committed on the reservation. The states are also permitted to tax and regulate non-Indians hunting and fishing on non-Indian lands within reservation boundaries.

Ironically, as the courts chip away at the edges of tribal autonomy, Indian governments are developing into increasingly experienced and well-trained social-service providers. The Muscogee Creeks of Oklahoma own and operate their own hospital. Head Start, alcoholism, and elderly programs are basic services provided by tribal governments throughout Indian country. Support for cultural activities, the supervision of government housing programs, and job training are among other services administered by tribes.

Given the limited resource base of most reservations, the provision of social services and programs depends heavily upon the availability of federal funding. In communities where unemployment ranges from 20 to 80 percent and half of all jobs are tied to federal programs, budget reductions can have disastrous consequences. Attempting to free themselves from dependence on federal dollars, tribal governments have initiated a variety of entrepreneurial projects. Tribes fortunate enough to have mineral, timber, or fishery resources are investing considerable efforts, both individually and jointly, in their sustained exploitation. The Mescalero Apache, along with forty-three other tribes, compose the membership of Council of Energy Resource Tribes (CERT)--an organization that provides technical assistance to tribes in the development of their oil, gas, and coal reserves. The Pacific Northwest tribes are especially knowledgeable and proficient in all facets of the salmon industry, from hatcheries to processing. Washington tribes now raise more than 30 percent of all salmon produced in the state. The introduction of gaming operations in Indian country in the last two decades has offered many tribal governments, particularly those poor in land and resources, an opportunity to infuse needed jobs and money into the tribal economy. The tribal council of the Wisconsin Oneidas, to mention one of the more successful examples, has constructed a profitable bingo operation and hotel near Green Bay. With revenue generated from these businesses, the council has supplemented and improved the tribe's educational services, health and elderly care, and economic-development programs. In addition to their responsibilities to provide social services, ensure public safety, initiate economic development, regulate zoning and taxation, and protect members' rights, tribal governments possess one other extremely important obligation--defense of the tribe's sovereignty and culture. Tribal survival depends on more than improving tribal programs and services. Nor is tribal survival simply an issue of retaining the language, traditions, and crafts. Tribal governments must also adapt to and meet outside pressures while maintaining internal cohesion and integrity.

How does a tribal government reinforce its culture's traditional respect for the environment and engender responsibility for collectivity when surrounded by an alien culture that praises domination of the environment, measures progress and self-worth in terms of individual materialism, and emphasizes rights over responsibility?

It is this underlying and constant contradiction that forces tribal governments to analyze every decision for the long-term impact on the tribe's culture and independence, as well as for its pragmatic benefits. Decisions that for state and local governments involve primarily issues of funds and support have greater and more wide reaching consequences for tribal governments. For example, a tribal council is in the process of establishing a judicial system. Should it resurrect the tribe's traditional mediation model or install an adversarial system? The former is more culturally attuned but may deter investments by outside companies. Should resources be left undeveloped in keeping with traditional teachings, exploited by a tribal business, or leased to individual tribal members? Should a tribal government with limited resources request the county police to provide law and order on the reservation? How does a council balance the need for protection and safety against the potential loss of tribal authority to the state? Should a tribal business strive for maximum efficiency and profits, or sacrifice some degree of both to employ more tribal members?

It is this fundamental tension between two cultures, exacerbated by limited resources, that most challenges tribal governments today. Whether tribes can meet and survive this challenge is perhaps best answered by reference to a letter written by Benjamin Franklin in 1751:

It would be a very strange thing if Six Nations of ignorant savages should be capable of forming a scheme for such a union, and be able to execute it in such a manner as that it has subsisted for ages, and appears indissoluble; and yet that a like union should be impracticable for ten or a dozen English colonies.

Franklin's reference is to the Iroquois Confederacy, a political alliance of the Mohawk, Oneida, Seneca, Cayuga, and Onondaga nations (the Tuscarora joined later), which continues to operate today. Scholars estimate that the Iroquois established their confederacy around 1200 A.D. Whether the Iroquois

Confederacy, or the All Indian Pueblo Council, composed today of the nineteen Pueblos of New Mexico, deserves the honor as the oldest continuing political institution in the United States, remains unknown. What these institutions do illustrate is the cultural tenacity, human resourcefulness, and political ability of indigenous governments to survive.

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