



# Idaho Standards and Applications for 12<sup>th</sup> Grade Civics and Government

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## **Tribal Sovereignty: “Government-to-Government”**

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Indian tribes possess special political status in the United States. Early in the 19<sup>th</sup> century, in a series of decisions that came to be known as “[the Marshall Trilogy](#),” the United States Supreme Court, under the leadership of Chief Justice John Marshall, ruled that each Indian tribe in the United States was a “distinct political community.” Each tribe, according to the Court, possessed attributes of sovereignty, similar to yet different from individual countries or states. This sovereignty would enable tribes, subject only to oversight by the Federal Government, to govern their own internal affairs.

However, the Court also designated Indian tribes as “domestic dependent nations” in these early 19<sup>th</sup> century cases. While the tribes did possess tribal sovereignty, while they did enjoy the power and right of self-government, as “dependent nations” they were to be “protected” by the Federal Government, whose job it was to guarantee the political, legal and cultural survival of these dependent people.

Therefore, the Supreme Court established the principle in the 1830s that the essential relationship between the Federal Government and Indian tribes in the U.S. is one of trust; this trust relationship between the Federal Government and Indian tribes is central to the principle and practice of tribal sovereignty. This trust relationship means that the Federal



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Government is to protect tribes from interference by state governments and private individuals.

The trust relationship between the Federal Government and Indian tribes is considered a “government-to-government” relationship---an extraordinary, unique relationship within our system of federalism. This relationship stems from several sources, starting with the [Commerce Clause of the U.S. Constitution \(Article I, Section 8 – Powers of Congress, Paragraph 3\)](#), which gives to Congress the power “To regulate Commerce with foreign Nations, and among the several States, and with the Indian tribes; . . .” In addition to the Commerce Clause, the legal basis for this “government-to-government” relationship between the Federal Government and Indian tribes is found in treaties from the 19<sup>th</sup> century; laws passed by Congress; executive agreements with the President; and decisions handed down by federal courts.

Central to this trust relationship is the recognition and protection of tribal sovereignty by the Federal Government. Tribal sovereignty, the power of tribal self-government, has been recognized as an “inherent” power or right held by Indian tribes “from time immemorial;” such a power existed prior to the creation of the United States and the conquest of Indian tribes in the 19<sup>th</sup> century. Also, and perhaps even more important is



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the fact that tribal sovereignty has been recognized and largely protected by the Federal Government through treaties, laws, executive agreements, and court decisions.

Tribal sovereignty includes the right of Indian tribes to set up their own form of government; determine tribal membership; exercise police power; administer justice through tribal courts; charter businesses; levy taxes; and to enjoy the protective benefits of sovereign immunity. While the origins of tribal sovereignty are cultural, historical and legal, such sovereignty is not absolute.

Tribal sovereignty is subject to the plenary or complete power of the Federal Government; tribal sovereignty can be diminished or even eliminated by the Federal Government, but not by individual States. For instance, the United States Supreme Court ruled in 1980 that individual States cannot interfere with a tribe's self-government. Tribal sovereignty is dependent on and subordinate to only the Federal Government, not the States.

Tribes do not enjoy external sovereignty. They cannot, for example, sign treaties with foreign countries. Their power of internal sovereignty (as in regulating matters on Indian territory) is much more expansive; however, even Indian internal sovereignty, given the trust relationship between the tribes and the Federal Government, is limited by federal



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law.

Virtually anyone who studies tribal sovereignty searches (often in vain) for the most applicable phrase to describe accurately the nature and extent of tribal sovereignty. The very term itself is central to political thought and practice; its literal meaning signifies supreme power, autonomy, and freedom from outside or external controls. Yet, given the trust relationship and the “domestic dependent nation” status of Indian tribes in the United States, tribal sovereignty must be (and is) qualified somewhat.

The following phrases have been used, in a variety of sources, such as court decisions and scholarly publications, to explain tribal sovereignty today: limited inherent sovereignty; partial sovereignty; qualified sovereignty; conditional sovereignty; quasisovereignty; semi-sovereignty; and residual sovereignty. Seem confusing to you? If so, you’re not alone, for tribes are distinct political communities, self-governing nations, sovereign and self-determining, AND dependent on the protection of the Federal Government at the same time. To many observers, “partial sovereignty” is an oxymoron, something like “jumbo shrimp.”

Such qualified or limited sovereignty does, however, come pretty close to describing accurately the nature of the relationship between tribes, the Federal Government, and the



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States. All federally recognized Indian tribes, of which there are 562 in the United States, and six in Idaho, have had (and continue to have) a distinct, direct, and often decidedly dispute-driven relationship with the Federal Government and the States. Today, for instance, here in Idaho and in other states where tribes are found, the fundamental principle pursued by tribes is that of tribal self-determination. All tribes, such as those in Idaho----the Coeur d'Alene, Kootenai, Nez Perce, Northwestern Band Shoshoni Nation, Shoshone-Bannock, and Shoshone-Paiute---seek their very survival and revival, especially in cultural, economic, and political terms.

Tribal sovereignty is **not** simply an arcane or abstract legal concept whose meaning lawyers and scholars spend countless hours debating; rather, such sovereignty is part of the cultural, economic, legal, and political development of the United States, including the State of Idaho. Upon achieving statehood in 1890, the State of Idaho, as clearly seen in [Article XX1, Section 19 of the 1890 Idaho Constitution](#), divested or disclaimed all right and title to any lands in the State held by Indian tribes; such land, held by Indians prior both to 19<sup>th</sup> century conquest and Idaho statehood, was to be (and still is) held in trust for the tribes by the Federal Government.

The land was to be protected by the Federal Government, initially through treaties and executive agreements. With westward expansion and natural and mineral resource



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discovery and development, however, the land was opened to white settlers, then allotted or apportioned to non-Indians, with the result that land was “reserved” (Indian reservations) for tribal members. For instance, the aboriginal lands of the Nez Perce tribe alone once covered close to 14 million acres prior to the era of 19<sup>th</sup> century treaties, treaties that involved some of the largest real estate transactions in world history. Today the Nez Perce reservation is approximately 750,000 acres.

Nonetheless, the Nez Perce tribe, for example, is a key player in Idaho’s (and the Pacific Northwest’s) natural resource debate. The tribe is the first in the country to receive a contract from the U.S. Fish and Wildlife Service to aid in gray wolf recovery efforts. Also as an expression of tribal sovereignty, self-determination, economic development and cultural revival, the Nez Perce tribe is involved with other natural resource issues, such as logging plans and salmon runs; the tribe’s salmon hatchery plan, for instance, received 13 years of scientific review before the Northwest Power Planning Council approved it.

In terms of the “government-to-government” relationships that Indian tribes pursue with the Federal Government and the individual States (through tribal-State compacts, which are the equivalent of treaties), the vital principle for the tribes is self-determination. Disputes continue to arise within these relationships----disputes concerning tribal



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sovereignty, land use, fishing rights and natural resource management, among others.

As tribal sovereignty is asserted, some non-Indian entities, such as the North Central Idaho Jurisdictional Alliance, which is composed of twenty-three cities, counties, and local taxing districts, contest the exercise of that sovereignty. While such conflicts over land, finances, and resource development are unfortunate, they are equally unavoidable, given historical, legal, and political factors that have produced a jurisdictional checkerboard on and off Indian reservations and lands near them. Anti-tribal sovereignty efforts exist in numerous states, such as Idaho, Montana, and Washington.

The relationships between the Federal Government, the individual States, and Indian tribes in the United States are unlike any in our system of federalism. Each tribe is a distinct political community with its own tribal sovereignty; each possesses the right of self-determination, as protected by the likes of the [Indian Self-Determination Act](#) and the [American Indian Religious Freedom Act](#). Indian tribes are elaborate, complex entities that seek their survival and desire their cultural and economic revival.