

STUDENT READING

The phrase “tribal sovereignty” refers to the right of American Indian tribes to determine their own future. American Indian tribes through elected tribal governments have the right to operate as self-governing nations.

FUNDAMENTAL POWERS OF INDIAN TRIBES STUDENT READING

Tribal governments possess inherent powers of self-government and exercise those powers. The following discussion will identify fundamental categories of tribal government power that have been affirmed under federal law.

POWER TO ESTABLISH A FORM OF GOVERNMENT

The power to establish a form of government is a basic element of sovereignty. American Indian tribes are not required to adopt forms of government patterned after the forms of the United States government. Since Indian tribes are not limited by the United States Constitution, they are not subject to such principles as the separation of powers or the religious establishment clause.

The constitution adopted by the majority of tribes, following passage of the Indian Reorganization Act (IRA), were based on sample governing documents developed by the Bureau of Indian Affairs. It has been held consistently that the exercise of these powers pursuant to IRA constitutions is founded not on delegated authority, but on a tribe’s inherent power of sovereignty. Other tribes have organized their formal governments pursuant to their inherent sovereignty, outside the IRA framework, and the courts have upheld the validity of such governments, whether or not a written constitution has been developed.

Power to Determine Membership

Also fundamental is the right of tribes to determine tribal membership. Membership determines, among other things, the right to vote in tribal elections, to hold tribal office, to receive tribal resource rights such as grazing and residence privileges on tribal lands, and to participate in distribution of per capita payments when they occur.

POLICE POWER

The authority of Indian tribes to legislate or otherwise adopt substantive civil and criminal laws follows from their status as sovereign political entities. This authority includes, but is not limited to, the power to regulate the conduct of individuals within the tribal government's jurisdiction, the power to determine domestic rights and relations, the power to dispose of non-trust property and to establish rules for inheritance, the power to regulate commercial and business relations, the power to raise revenues for the operation of the government through taxation, and the power to administer justice through law enforcement and judicial branches.

Tribal authority has been limited from time to time by actions of the Congress and by actions of the states exercising federally delegated powers. Tribal authority also can be limited by tribal action. Many tribal constitutions expressly limit tribal legislatures or courts.

Although federal statutes control most aspects of trust or restricted Indian property inheritances, tribal laws prescribing the manner of descent and distribution of such property have been recognized. As an attribute of property control, tribal authority to regulate land use through zoning also has been upheld. Tribal authority to levy taxes has been recognized in a variety of circumstances, including: license and use fees, property taxes, sales taxes, and most recently, mineral extraction or severance taxes.

POWER TO ADMINISTER JUSTICE

The maintenance of law and order on the reservation is another element of tribal government that has been upheld firmly by the courts. Tribal criminal jurisdiction has been limited statutorily in terms of sentencing power (Indian Civil Rights Act limits fines to \$5,000 and imprisonment to one year) and has been denied as applied to non-Indians since the Supreme Court's 1978 decision in *Oliphant v. Suquamish Indian Tribe*. Tribes nevertheless possess broad authority to administer civil and criminal justice in Indian Country.

Most tribal court systems have borrowed quite extensively from Anglo-American court systems. Many have developed quite extensive rules of procedure and evidence. On the other hand, Indian tribal courts also rely on tribal traditions and often look to informal methods of dispute resolution. Some tribal courts have asserted jurisdiction to review actions of tribal governing bodies.* A number of reservation courts still operate as "Courts of Indian Offenses," which are administrative courts established by the Secretary of the Interior rather than by the tribe.

Many tribes have created law enforcement departments. Tribal governments employ police officers with contracted federal funds under the Indian Self-Determination Act of 1975 and with funds appropriate by the tribe.

*Readers should note that tenets of individual tribal constitutions are the legal basis for resolving internal organizational disputes.

POWER TO EXCLUDE PERSONS FROM THE RESERVATION

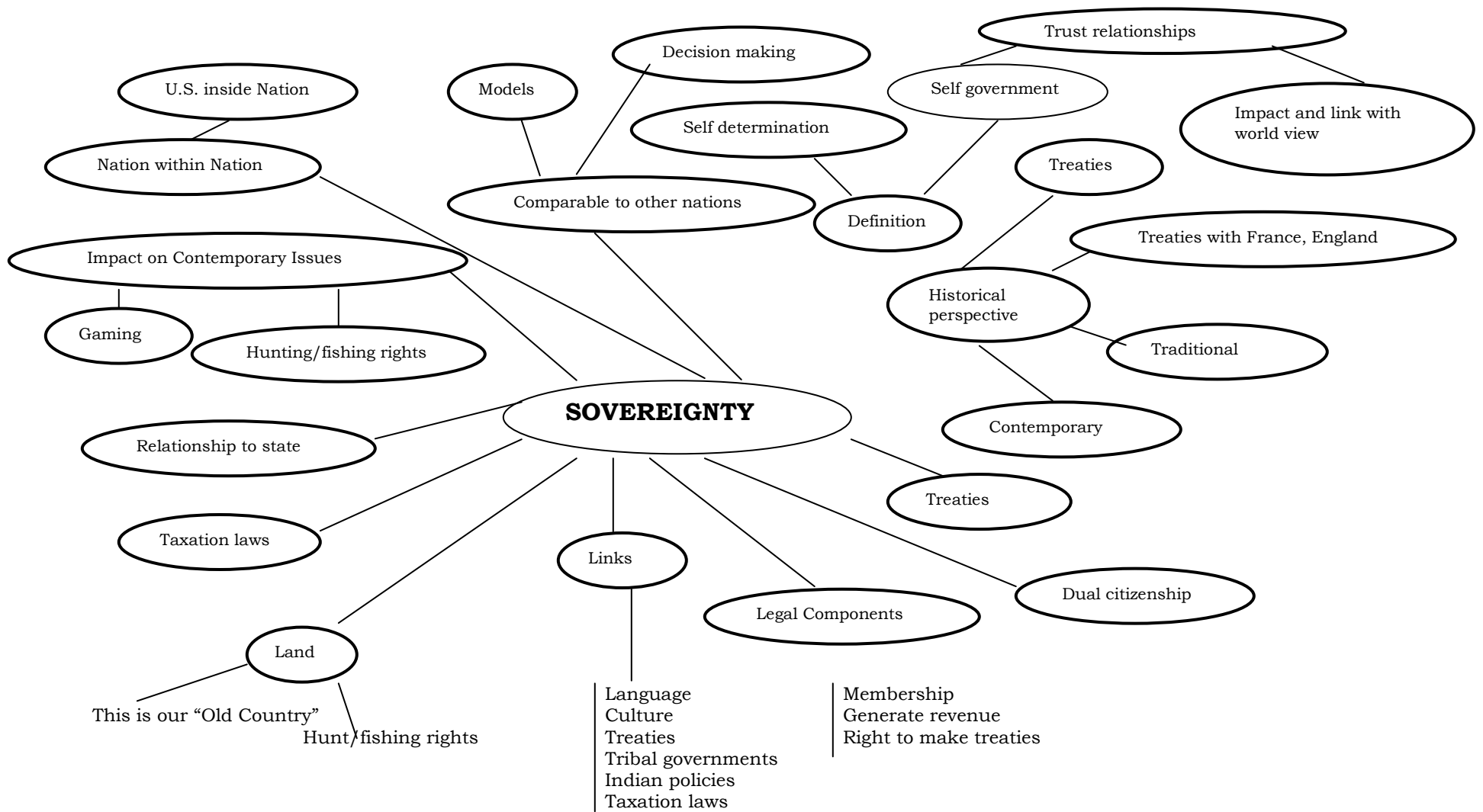
The power of Indian tribes to exclude persons from their territory, which is provided for specifically in a number of Indian treaties, has been recognized as an inherent attribute of sovereignty. This exclusionary power has been treated as a distinct right of sovereignty and given prominent recognition as a fundamental means by which Indian tribes can protect their territory against trespassers. The power to exclude persons is not unlimited, however, and non-members who hold valid federal patents to fee lands within the reservation cannot be denied access to their property. Roads constructed on the reservation with federal funds are required by federal regulation to be kept open to the public. Also, tribes may be required to give access to federal officials providing services to the tribes or its members.

POWER TO CHARTER BUSINESS ORGANIZATIONS

The power to charter business organizations is yet another aspect of sovereign power. Indian tribes possess the authority to establish, through charter or otherwise, business organizations for the purpose of managing tribal assets. Tribally chartered enterprises hold the same status as the tribe itself for purposes of federal income tax exemptions and sovereign immunity from suit...

Tribes, like states, also can charter private corporations under tribal law and regulate their activities.

—Adapted from *Indian Tribes as Sovereign Governments* AIRI Press
(Permission applied for to American Indian Lawyer Training Program, Inc.)



Learner Outcome

Student will be able to define tribal **sovereignty** and document the application of this concept in studying history and contemporary issues.

AMERICAN INDIAN HISTORY, CULTURE AND LANGUAGE

Curriculum Framework

Sovereignty

LESSON PLAN MODELS

Primary

Intermediate

Middle School

Senior High

Office of Indian Education
Minnesota Department of Education
1500 Highway 36 West
Roseville, MN 55113-4266

651-582-8831