I. Background on Tribal Political History and Status

What are Indian treaty rights?

From 1778 to 1871, the United States' relations with individual American Indian nations indigenous to what is now the U.S. were defined and conducted largely through the **treaty-making process**. These "contracts among nations" recognized and established unique sets of rights, benefits, and conditions for the treaty-making tribes who agreed to cede of millions of acres of their homelands to the United States and accept its protection. Like other treaty obligations of the United States, Indian treaties are considered to be "the supreme law of the land."

What is the legal status of American Indian and Alaska Native tribes?

Article 1, Section 8 of the **United States Constitution** vests Congress, and by extension the Executive and Judicial branches of our government, with the authority to engage in relations with the tribes, thereby firmly placing tribes within the constitutional fabric of our nation. When the governmental authority of tribes was first challenged in the 1830's, U. S. Supreme Court Chief Justice John Marshall articulated the fundamental principle that has guided the evolution of federal Indian law to the present: **That tribes possess a nationhood status and retain inherent powers of self-government.**

What is the federal Indian trust responsibility?

The **federal Indian trust responsibility** is a legal obligation under which the United States "has charged itself with moral obligations of the highest responsibility and trust" toward Indian tribes (**Seminole Nation v. United States**, 1942). This obligation was first discussed by Chief Justice John Marshall in **Cherokee Nation v. Georgia** (1831). Over the years, the trust doctrine has been at the center of numerous other Supreme Court cases, thus making it one of the most important principles in federal Indian law. These cases are known as the **Marshall trilogy**. The federal Indian trust responsibility is also a legally enforceable fiduciary obligation on the part of the United States to protect tribal treaty rights, lands, assets, and resources, as well as a duty to carry out the mandates of federal law with respect to American Indian and Alaska Native tribes and villages. In several cases discussing the trust responsibility, the Supreme Court has used language suggesting that it entails legal duties, moral obligations, and the fulfillment of understandings and expectations that have arisen over the entire course of the relationship between the United States and the federally recognized tribes.

What is a federally recognized tribe?

A **federally recognized tribe** is an American Indian or Alaska Native tribal entity that is recognized as having a government-to-government relationship with the United States, with the responsibilities, powers, limitations, and obligations attached to that designation, and is eligible for funding and services from the Bureau of Indian Affairs (BIA). Furthermore, federally recognized tribes are recognized as possessing certain inherent rights of self-government (i.e., tribal sovereignty) and are entitled to receive certain federal benefits, services, and protections because of their special relationship with the United States. At present, there are 567 federally recognized American Indian and Alaska Native tribes and villages. Federally recognized status may be obtained through treaties, acts of Congress, presidential executive orders or other federal administrative actions, or federal court decisions, and the Federal Acknowledgment Process (FAP) created in 1978.

What does tribal sovereignty mean to American Indians and Alaska Natives?

When tribes first encountered Europeans, they were a power to be reckoned with because the combined American Indian and Alaska Native population dominated the North American continent. Their strength in numbers, the control they exerted over the natural resources within and between their territories, and the European practice of establishing relations with countries other than themselves and the recognition of tribal property rights led to tribes being seen by exploring foreign powers as sovereign nations, who treatied with them accordingly.

However, as the foreign powers' presence expanded and with the establishment and growth of the United States, tribal populations dropped dramatically and tribal sovereignty gradually eroded. While tribal sovereignty is limited today by the United States under treaties, acts of Congress, Executive Orders, federal administrative agreements and court decisions, what remains is nevertheless protected and maintained by the federally recognized tribes against further encroachment by

other sovereigns, such as the states. Tribal sovereignty ensures that any decisions about the tribes with regard to their property and citizens are made with their participation and consent.

What is a federal Indian reservation?
In the United States there are three types of **reserved federal lands**: military, public, and Indian. A federal Indian reservation is an area of land reserved for a tribe or tribes under treaty or other agreement with the United States, executive order, or federal statute or administrative action as permanent tribal homelands, and where the federal government holds title to the land **in trust** on behalf of the tribe. Approximately 56.2 million acres are held in trust by the United States for various Indian tribes and individuals.

II. The Nature of Federal-Tribal and State-Tribal Relations

What is the relationship between the tribes and the United States?
The relationship between federally recognized tribes and the United States is one **between sovereigns**, i.e., between a government and a government. This "**government-to-government**" principle, which is grounded in the United States Constitution, has helped to shape the long history of relations between the federal government and these tribal nations.

What is the relationship between the tribes and the individual states?
Because the Constitution vested the Legislative Branch with **plenary** power over Indian Affairs, states have no authority over tribal governments unless expressly authorized by Congress. While federally recognized tribes generally are not subordinate to states, they can have a government-to-government relationship with these other sovereigns, as well. Furthermore, federally recognized tribes possess both the right and the authority to regulate activities on their lands independently from state government control. They can enact and enforce stricter or more lenient laws and regulations than those of the surrounding or neighboring state(s) wherein they are located.

What is Public Law 280 and where does it apply?
In 1953, Congress enacted Public Law 83-280 (67 Stat. 588) to grant certain states **criminal jurisdiction** over American Indians on reservations and to allow civil litigation that had come under tribal or federal court jurisdiction to be handled by state courts. However, the law did not grant states **regulatory power** over tribes or lands held in trust by the United States; federally guaranteed tribal hunting, trapping, and fishing rights; basic tribal governmental functions such as enrollment and domestic relations; nor the power to impose state taxes. These states also may not regulate matters such as environmental control, land use, gambling, and licenses on federal Indian reservations.

The states required by Public Law 280 to assume civil and criminal jurisdiction over federal Indian lands were Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin. The states that elected to assume full or partial jurisdiction were Arizona (1967), Florida (1961), Idaho (1963, subject to tribal consent), Iowa (1967), Montana (1963), Nevada (1955), North Dakota (1963, subject to tribal consent), South Dakota (1957-1961), Utah (1971), and Washington (1957-1963).

Subsequent acts of Congress, court decisions, and state actions to retrocede jurisdiction back to the Federal Government have muted some of the effects of the 1953 law, and strengthened the tribes' jurisdiction over civil and criminal matters on their reservations.

III. Tribal Government: Powers, Rights, and Authorities

What are inherent powers of tribal self-government?
Tribes possess all powers of **self-government** except those relinquished under treaty with the United States, those that Congress has expressly extinguished, and those that federal courts have ruled are subject to existing federal law or are inconsistent with overriding national policies. Tribes, therefore, possess the right to form their own governments; to make and enforce laws, both civil and criminal; to tax; to establish and determine membership (i.e., tribal citizenship); to license and regulate activities within their jurisdiction; to zone; and to exclude persons from tribal lands. Limitations on inherent

tribal powers of self-government are few, but do include the same limitations applicable to states, e.g., neither tribes nor states have the power to make war, engage in foreign relations, or print and issue currency.

How do tribal members govern themselves?
For thousands of years, American Indians and Alaska Natives governed themselves through tribal laws, cultural traditions, religious customs, and kinship systems, such as clans and societies. Today, most modern tribal governments are organized democratically, that is, with an elected leadership. They also continue to utilize their traditional systems of self-government whenever and wherever possible.

How are tribal governments organized?
Most federally recognized tribes are organized under the **Indian Reorganization Act (IRA) of 1934** (25 U.S.C. 461 et seq.), including a number of Alaska Native villages, which adopted formal governing documents under the provisions of a 1936 amendment to the IRA. Many tribes have constitutions, others operate under articles of association or other bodies of law, and some have found a way to combine their traditional systems of government within a modern governmental framework. Some do not operate under any of these acts, but are nevertheless organized under documents approved by the Secretary of the Interior. Contemporary tribal governments are usually, but not always, modeled upon the **federal system** of the three branches: **Legislative, Executive, and Judicial**.

The chief executive of a tribe is usually called a **chairman, chairwoman or chairperson**, but may also be called a principal chief, governor, president, mayor, spokesperson, or representative. The chief executive presides over the tribe's legislative body and executive branch. In modern tribal government, the chief executive and members of the tribal council or business committee are almost always elected.

A tribe's legislative body is usually called a **tribal council**, a village council, or a tribal business committee. It is comprised of tribal members who are elected by eligible tribal voters. In some tribes, the council is comprised of all eligible adult tribal members. An elected tribal council and chief executive, recognized as such by the Secretary of the Interior, have authority to speak and act for the tribe as a whole, and to represent it in negotiations with federal, state, and local governments. Furthermore, many tribes have established, or are building, their judicial branch – the **tribal court system** – to interpret tribal laws and administer justice.

What is meant by tribal self-determination and self-governance?
Congress has recognized the right of tribes to have a greater say over the development and implementation of federal programs and policies that directly impact on them and their tribal members. It did so by enacting two major pieces of legislation that together embody the important concepts of tribal self-determination and self-governance: The **Indian Self-determination and Education Assistance Act of 1975**, as amended (25 U.S.C. 450 et seq.) and the **Tribal Self-Governance Act of 1994** (25 U.S.C. 458aa et seq.). Through these laws, Congress accorded tribal governments the authority to administer themselves the programs and services usually administered by the BIA for their tribal members.

IV. Our Nation's American Indian and Alaska Native Citizens

Who is an American Indian or Alaska Native?
As a general rule, an American Indian or Alaska Native person is someone who has **blood degree** from and is recognized as such by a federally recognized tribe or village (as an enrolled tribal member) and/or the United States. Of course, blood quantum (the degree of American Indian or Alaska Native blood from a federally recognized tribe or village that a person possesses) is not the only means by which a person is considered to be an American Indian or Alaska Native. Other factors, such as a person's knowledge of his or her tribe's culture, history, language, religion, familial kinships, and how strongly a person identifies himself or herself as American Indian, are also important.

Are American Indians and Alaska Natives wards of the Federal Government?
No. The Federal Government is a **trustee** of Indian property, not a guardian of all American Indians and Alaska Natives. The concept of the **ward-guardian relationship** appears in early Indian law cases and has changed over time.

Are American Indians and Alaska Natives citizens of the United States?

Yes. As early as 1817, U.S. citizenship had been conferred by special treaty upon specific groups of Indian people. In **1924**, Congress extended **American citizenship** to all other American Indians born within the the United States.