

Week 2 Presentation

Tribal Authority/Jurisdiction; Native Nation Constitutionalism;
and the Structure of Tribal Governments



Tribal Authority

- Tribes are sovereign nations: they have the right to make their own laws and to be governed by them
- Tribes have authority over their tribal lands (those lands in held in trust by the federal government on behalf of tribes)
 - Regulate activities of members and non-members within trust land boundaries
 - Regulate commerce and commercial activities
 - Determine appropriate uses for tribal lands
- Tribes have authority to regulate member conduct
 - Tribal laws can prohibit or limit conduct within tribal lands



Tribal Authority

- Authority to regulate member conduct
 - Tribal laws can prohibit or limit conduct within tribal lands
 - Traffic enforcement
 - Access to tribal lands
 - Environmental concerns (i.e., illegal dumping)
 - Burning/Fire
 - Criminal jurisdiction, subject to the Indian Civil Rights Act
- Authority to regulate non-member conduct
 - Traffic and access
 - Tribes lack criminal jurisdiction over non-Indians (*Oliphant v. Suquamish* (1978) 435 U.S. 191)



Native Nation Constitutionalism

- At the time of European contact in what is now the United States, Tribal Nations were strong, self-governing entities with well-developed social and governing structures
- Pre-contact tribal governing systems were based on custom and tradition – predicated on norms and rules of behavior



Native Nation Constitutionalism

- The Indian Reorganization Act of 1934 (IRA)
 - After decades of various destructive government policies, John Collier, the head of the Bureau of Indian Affairs sought to change the conditions of tribal communities
 - The IRA was meant to promote tribal self-sufficiency and tribal self-government
 - There are several components
 - Ended allotment
 - Protected tribal lands (trust)
 - Provided tribes the opportunity to adopt formal constitutions



Tribal Government Structure

- There are 573 tribes in the United States
- Each tribe has a different governing structure based on its culture, social structure, and traditional ways of resolving disputes
- Governing structures
 - Formal Constitutions
 - May have separation of powers: executive, legislative, and judicial
 - Formal Constitution + Custom and Tradition
 - Custom and Tradition

