

## Native American Heritage Month 2015: 7 FAQs about Native American Law and Tribal Governments

### 1) What “legally” makes someone an *American Indian*? Is there any difference (or similarity) to identifying as such versus another racial/ethnic minority? Is there a difference between a *Native American* and an *American Indian*?

- Generally, the factors that allow for someone to claim status as “American Indian” are:
  - They have to have some blood quantum from a federally recognized tribal nation
  - They have to be recognized as a member of a federally recognized tribal nation
  - They have to self-identify as either being a member of that federally recognized tribal nation or, at least, as “American Indian/Native American.”
  - (More for the purpose of being recognized by that tribal nation) They have to have some specific knowledge of that tribe’s culture and history.
- In terms of legal responsibilities or legal protections, American Indians have all the same rights and privileges as other U.S. citizens:
  - They can run for public office.
  - They can serve in the military.
  - They can vote in elections.
  - They pay (state/federal) taxes, depending on whether they live on a reservation.
- “Native American” and “American Indian,” on the whole, tend to be interchangeable; however, the federal government recognizes all descendants of indigenous American peoples as “American Indians” (i.e. “The National Museum of the American Indian”). There are a significant amount of vastly different tribes and tribal nations in the U.S., and some American Indians prefer to be identified by their specific tribe, such as Pawnee or Choctaw, rather than by the over-arching label.

### 2) What does it mean to be a *federally recognized tribal nation*? How many of them are there in the U.S. as of November 2015?

- A federally recognized American Indian or Alaskan Native nation is a sovereign (self-governing) nation within the borders of the United States. There’s a government-to-government relationship between the tribal government, the state(s) within which the tribal government is located and the federal government. Tribal nations are NOT subordinate to their neighboring or surrounding state governments.
- Here’s a short list of what tribal governments can do:

- Control the conditions of membership into the tribe
  - Levy taxes on its members
  - Regulate property
  - Impose and enforce stricter or more lenient laws based on their traditional values and codes
  - Collaborate with state governments on issues that affect both governments, such as the environment
  - Sustain their own judicial system
- Here's a short list of the limitations of tribal governments:
    - They cannot declare war
    - They cannot engage in foreign relations (i.e. with other countries, such as Canada)
    - They cannot print and issue their own form of currency
  - Tribal nations are federally recognized by one of three methods:
    - Act of Congress
    - U.S. Court decision
    - Going through the administrative procedures of 25 CFR Part 83
  - A tribal nation can be state-recognized, without being federally recognized. There are more than 500 federally recognized tribal nations, and just over 50 state-recognized tribes.

### 3) What are *reservations*? How have they been affected by U.S. law?

- A reservation is a plot of land within the internationally recognized territorial borders of the United States reserved for the residency and operations of a specific tribal nation by historic treaty, congressional act, or court decision. Not all reservation boundaries are based on traditional tribal homelands. Sometimes, the congressional act of establishing an Indian Reservation is an effort to reconcile the forcible removal of American Indians. Unfortunately, not every federally recognized tribe gets one.
- In some states, there's a partnership between the state government and the reservation, and, in these unique cases, individuals living on the reservation are subject to some aspects of state law, excluding, however, sales tax, property tax, and income tax.
- Activities that happen within reservation boundaries are traditionally under the jurisdiction of the designated sovereign American Indian government, but many U.S.

legal statutes and court cases in the mid-20<sup>th</sup> Century have conceded some of this power to govern to U.S. state governments.

#### 4) Which U.S. Supreme Court cases and federal laws have greatly affected American Indians and tribal governments?

- *Worcester v. GA* (1832) involved a white missionary and messenger to the Cherokee people, Samuel Worcester, and a GA state law that prohibited non-American Indians from being on Indian land. This was at a particularly interesting time, seeing that Georgia was trying to begin the removal of American Indian tribes residing in Georgia. While the Supreme Court held that a state law could not interfere with American Indian tribes, this victory on paper proved hollow as President Jackson refused to enforce it and approved the removal of the Cherokee people from their traditional lands (known as the Trail of Tears).
- In 1868, Congress ratified the Fourteenth Amendment to the U.S. Constitution, which was intended to give citizenship to freed African American slaves, but not to give citizenship to American Indians. Decades later, the General Allotment Act (Dawes Act) gave an opportunity for American Indians to earn U.S. citizenship, at a very high price—they would have to leave their tribe's reservation, learn English, abandon their traditional tribal customs, and completely assimilate to mainstream American society.
- *Talton v. Mayes* (1896) occurred when a criminal case of a Cherokee on Cherokee homicide evolved into a much bigger constitutional question of whether American Indians in the tribal court system receive any U.S. constitutional protections. The answer, based on this case, was no, and this remained the precedent until the Indian Bill of Rights of 1968
- Following the heroic exploits of many American Indians in the first World War, Congress was finally convinced to extend U.S. citizenship to all American Indians born in the United States.
- In the Mid-20<sup>th</sup> Century, the federal government became more involved into both enhancing state government in tribal affairs (Public Law 280 [1953]), as well as guaranteeing some U.S. constitutional rights to members of federally recognized tribal nations (Indian Bill of Rights of 1968).

#### 5) Who are some American Indian champions of law who students should know more about?

- **Arlinda Locklear** of the Lumbee Indians is the first American Indian woman to argue before the U.S. Supreme Court. In both her two Supreme Courts cases, *Solem v. Barnlett* (1984) and *Oneida Indian Nation v. County of Oneida* (1985), the Court decided in her favor by enhancing tribal sovereignty, tribal nation criminal jurisdiction on reservations, and the right of tribal nations to sue for stolen tribal land.

- **Stacy Leeds** of the Cherokee Nation is the first and only American Indian to serve as the dean of a law school (University of Arkansas). Over her career, Leeds has served on seven tribal courts in a number of roles and received the ABA's Spirit of Excellence Award in 2013, as well as recently co-authoring a guide to tribal law called Mastering American Indian Law.
- **Walter Echo-Hawk** of the Pawnee Indians is a lawyer, tribal judge, scholar and speaker who, over the course of his 53-year career, has helped secure the passage of the Native American Graves Protection and Repatriation Act (1990) and the American Indian Religious Freedom Act Amendments (1994). Echo-Hawk is also the author of a new book on historic American Indian legal battles called In the Courts of the Conqueror: The 10 Worst Indian Law Cases Ever Decided.

**6) What are some recent legal updates in the world of American Indian law and tribal governments?**

- In October 2015, the Bureau of Indian Affairs reported victory for the Yakima Nation in Washington State in the legal battle for criminal and civil jurisdiction on reservations.
- New legislation now allows American Indians living and working away from their tribes to vote in Secretarial elections (U.S. federal elections for federally recognized tribal nations).
- The Bureau of Indian Affairs has announced that it is looking to reorganize its proposal to establish a federally recognized tribal nation within Hawaii (among native Hawaiians). It's been over 120 years since the overthrow of the Kingdom of Hawaii was aided by the U.S. government.
- This September, federally recognized tribal nations across the U.S. won a 25-year legal dispute with Congress over a congressional funding gap which underfunded a number of crucial social services, including fire department and law enforcement staffing on Indian reservations, all of which were outlined to be paid in full by law. The U.S. Congress settled with this nationwide group of tribal nations for \$940 million.
- This December, the Supreme Court will hear a potentially landmark case about tribal court civil jurisdiction involving non-American Indians on Indian reservations. *Dollar General Corp. v. Mississippi Band of Choctaw Indians* (2015) has been called "the most potentially devastating case for Indian tribes in half a century," with the case centering on the alleged molestation of an American Indian minor who was interning with Dollar General on the reservation. Although attempts to have this civil tort resolved in tribal court failed, this Supreme Court case will set precedent on whether tribal courts have jurisdiction in civil cases involving non-American Indian on tribal lands.

**7) What are some extra resources teachers can use to talk more with their students about American Indian culture and history?**

- Non-Fiction Books
  - Takaki, R. (2012). *A Different Mirror for Young People: A History of Multicultural America*. Triangle Square.
  - Dunbar-Ortiz, R. (2015). *An Indigenous Peoples' History of the United States*. Beacon Press.
  - Bigelow, B. and B. Peterson (Ed.). (2008). *Rethinking Columbus: The Next 500 Years: Resources for Teaching about the Impact of the Arrival of Columbus in the Americas*. Rethinking Schools.
- Fiction Books
  - Alexie, S. (2009). *The Absolutely True Diary of a Part-Time Indian*. Brown Young Readers.
  - Erdrich, L. (2013). *The Round House*. Harper Perennial.
  - Van Camp, R. (2010). *The Moon of Letting Go: And Other Stories*. Enfield & Wizenty.
- Lesson Plans
  - *Teaching Activities (Free), High School, Native American*. (2015). Retrieved November 5, 2015, from the Zinn Education Project website:  
[http://zinnedproject.org/teaching-materials/?media\\_types=teaching-activity-pdfs&themes=native-american&levels=high\\_school](http://zinnedproject.org/teaching-materials/?media_types=teaching-activity-pdfs&themes=native-american&levels=high_school)

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[http://www.pbs.org/wnet/supremecourt/antebellum/landmark\\_cherokee.html](http://www.pbs.org/wnet/supremecourt/antebellum/landmark_cherokee.html)
- Remy, R. C., Ritchie, D. A., Arbetman, L., Hanson, M., & Morreale Scott, L. (2016). *United States Government: Our Democracy*. Columbus, OH: McGraw-Hill Education.

## One way to teach about Tribal Law in your class

The following teaching strategy is called *Jigsaw*; it allows for students to dive deep into smaller amount of textual information, summarize it, and find a way to teach it to the rest of the class. This strategy works well with understanding many different complex topics, without spending too much time mired in rote instruction of each and every concept.

1. Select the native law concepts or cases that you want the students to grasp. You should select 3-6 concepts or cases.
2. Put the students into groups. If you select 3 topics, you need three students in each group, if you select 4 topics, you need 4 students per group, etc. Assign a letter to each group. These are the students' HOME groups. Have them all write their home group letter at the top of their worksheet. Then, assign one student in each group to each case or concept. For example, if you were doing a jigsaw with concepts of tribal law, one student would be assigned to "what are reservations," one to "what does it mean to be federally recognized," one to "recent Supreme Court cases," etc.
3. Now have the students regroup by case or concept. All the students assigned to the first case or concept in one area of the room, and the second in another area, the third in another area and so on. These are the EXPERT Groups. If there are more than 4-6 students for each case or concept, have them split into two or more expert groups.
4. Give each expert group a reading about their topic or case. It should be a page or less in length. The expert groups should all read their material and then discuss it and answer any questions. They should then decide which portions of the material the students in the other groups need to learn about. They should create a list of points to teach other students.
5. After the allotted expert time, ask students to return to their HOME (letter) groups. Each student (or pair if you have uneven numbers) will be asked to spend 5-7 minutes teaching their other group members about their case or concept. Other students should take notes and ask questions.
6. At the conclusion, every student should have studied one case or concept in depth and learned about several others from their HOME group members.