

The american indian sovereignty essay sample



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Sovereignty is generally considered to be the right of the people to govern themselves. In the case of the American Indians, sovereignty was granted based on the fact that the Native Americans were pre-existing on the American continent. The Federal Government therefore recognizes them as a sovereign state based on existence. As sovereign entities, the Native American populations are able to create their own laws and jurisdiction and are not subject to Federal and State regulations. However, since the Native American communities exist within the boundaries of the United States of America, the legal systems of America dictate the framework of the relationship between the two sovereign nations. The idea of sovereignty has changed over the past 500 years; it is subject to negotiation and construction. For the Native American people, the idea of sovereignty must include how it interacts with the United States Government, how it manages its own people, and how it handles land rights.

The major threat to Indian sovereignty from the United States Government comes under the name of plenary power. Plenary power allows Congress to enact laws which negatively impact Indian tribes. The decision rendered by Chief Judge Marshall in the *Worcester v. Georgia* led to 3 principles: 1) the federal government has plenary authority to regular Indian affairs; 2) an Indian tribes does not lose its internal sovereign powers by becoming subject to the power of a stronger nation; and 3) Indian country is separate and distinct from the state in which it is located, and within its boundaries, state laws do not apply.

However, principle 1 has been applied to override the other 2. Tribal rights have been slowly eroded by the exercise of plenary power. In fact, tribes

can never remain idle; they must constantly monitor the United States government for laws which may negatively affect the tribes. During the 104th Congress, there was a very pronounced implementation of anti-Indian laws passed. These included amendments to the Indian Child Welfare Act, the Indian Gaming Regulatory Act, taxation on gaming and land sales, and environmental conservation acts. For the future, the Indian tribes must remain vigilant in the American legal system, even if they have no power to affect the laws. This is a great paradox of the lesser power of the tribes. The decisions of the United States Congress are declared to supersede the laws of the tribes, despite the fact that the Congress is established as a protector of Indian sovereignty.

Internally, Indian tribes struggle with the rule of their own people. Economic factors make it difficult for the nation to support itself within its boundaries. Traditionally, the Federal government has assisted the people with welfare programs as an honoring of treaty agreements. However, with the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the Federal Government began to shift welfare programs from the Federal Government to the States. The States have little or no obligation to the Indian Tribes within their borders, so some Indian tribes have suffered internally with the loss of assistance. Perhaps the most contentious area of internal governance is in the area of gaming. Tribes have a tax exempt status with the Federal Government; however, the States want to receive a share of the profits from the gaming industry. New Mexico desired 16%. This is still an area of contention and definition - despite the decision in 1953

via Public Law 280 which granted six states civil and criminal jurisdiction within tribes, but specifically states that the States have no right to taxation.

One of the most dangerous areas for Indian Tribes in the future revolves around land rights and land usage rights. Under new environmental concerns and legislation, the rights of Indian tribes to manage their land and natural resources are being taken away under environmental pretenses. In 1997, Minnesota's Northern State Power Company stored more nuclear waste on the on land of the Prairie Island Mdewakanton tribe's land, without notifying the tribe. These actions are clearly detrimental to the welfare of the tribe. Through policies such as the Clean Water Act, the Endangered Species Act, and Congressional resolutions focused on the definitions of what can be considered national monuments and land mining rights threaten the rights of Indian tribes to govern their land use in a sovereign manner. The Tribes must remain highly aware of all legislation being proposed in Congress and scanning it for possible negative impacts on tribal authority.

Overall, in the future, the maintenance of Indian sovereignty must be conducted through the courts. It is the extended use of plenary power that makes the United States Congress such a threat to the sovereignty of the Indian Tribes. Much of the actions of Congress are directed towards increasing the income of the United States. Therefore, as Tribal lands are developed and natural resources identified, they must be extremely diligent in the protection of their rights. The nations must focus their energies on their external sovereign status, their internal sovereign control, and their management of land.