

# AMERICAN INDIAN HISTORY, CULTURE AND LANGUAGE

## Curriculum Framework

### *Sovereignty*

#### LESSON PLAN MODELS

Primary

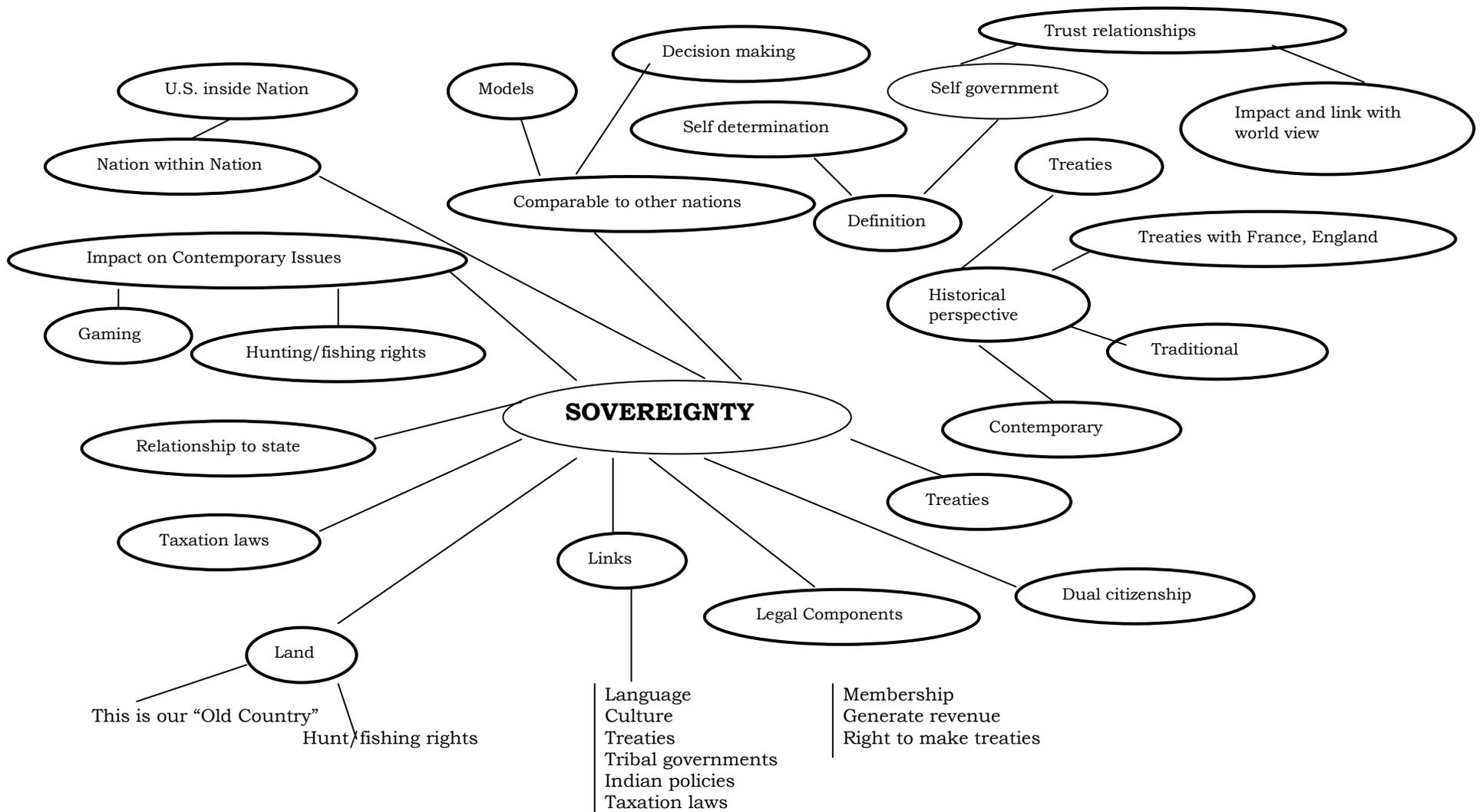
Intermediate

Middle School

Senior High

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

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**Learner Outcome**

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

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**ATTRIBUTES**

This outcome includes:

- defining tribal sovereignty;
- relating tribal sovereignty to the concept of dual citizenship;
- understanding impact on contemporary issues such as gaming and hunting/fishing rights; and
- recognizing historical link to treaties.

**RATIONALE**

Tribal sovereignty is a vital issue to American Indian tribes today. All students should have knowledge of this concept in order to understand American Indian cultures of the past and contemporary tribal issues. Students will be able to function as responsible citizens if they know how sovereignty affects interactions of tribes with the federal government, the state of Minnesota and local governing units.

**CULTURAL CONTENT/AMERICAN INDIAN WORLD VIEW**

American Indian nations possess an inherent and unique political status based on sovereignty. This legal political status conveys dual citizenship along with specific rights and responsibilities. This **inherent political status** sets American Indian nations apart from all other racial and ethnic groups in United States.

**TEACHER BACKGROUND INFORMATION****Tribal Sovereignty**

“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.

**Historical Perspective**

When the United States government signed treaties with tribal nations, it affirmed the inherent sovereignty of the tribes. American Indian tribes have always been sovereign nations and controlled their own destiny. The United States Congress acknowledged this under House Concurrent Resolution 331. Among the attributes of sovereignty are American Indian control of the land and inherent powers. The inherent powers include: the powers to determine the form of government; to define conditions for membership in the nation; to

administer justice and enforce laws; to tax; to regulate domestic relations of its members; and to regulate property tax.

One of the aspects of sovereignty is to be able to exert power to enforce the sovereignty.

The governments of these nations have always operated in accordance with democratic principles. An example is the Iroquois Confederacy. The framers of the U.S. Constitution based many of their basic concepts on this Confederacy. Each nation within the confederacy selected individuals to represent them at confederacy meetings. Issues were deliberated until all were in agreement on a common course of action. This method of decision-making still used today is called consensus democracy.

### **Treaties**

In all the treaties and agreements, which took place between American Indian nations and the United States government, the tribes retained the right to maintain their own governments. This right has been upheld since the 1830's when federal courts affirmed a trust responsibility to the tribes. That responsibility includes the protection of tribal rights and interests particularly with regard to tribal lands and resources. Federal Indian policy, however, followed an opposite course. In the treaties American Indian tribes agreed to cede vast segments of their homelands in exchange for honoring their right to retain small segments of this land for tribal members in common. The treaties included provisions which guaranteed the tribes government services in the areas of education, health and technical assistance. Some of the treaties guaranteed tribal members the right to hunt, fish and gather resources in a customary manner on ceded lands.

### **Federal Policies and Practices**

The federal government did not honor the treaties. Instead, the federal and state governments pursued policies and passed laws which led to the erosion of tribal political rights and the further confiscation of American Indian lands. Although the right of tribes to govern their own nations has been affirmed by treaty, federal laws, executive orders, federal policy and procedure have eroded the tribes' freedom to exercise this sovereign right.

Early in the relationship between American Indian Nations and the United States government, Congress used constitutional powers as justification for passing laws and approving treaties and agreements to regulate trade with Indian Nations. Later Congress arbitrarily passed legislation which interfered with the internal affairs of Indian Nations and assumed plenary power over Indian Nations. These actions attempted to exercise control over all aspects of American Indian life. United States courts have usually supported the plenary powers of Congress.

In 1970, the enactment of the first Indian Trade and Intercourse Act brought federal control over non-Indians on Indian land. The act was designed to “control” invasions of Indian land. This act and subsequent Trade Acts encouraged broader intrusions upon American Indian self-government.

The loss of the Indian land base through acts of the federal government has been enormous. Despite provisions of acts authorizing the acquisition of lands for American Indians, Congress did not appropriate money for the purpose of Indian land buy-back. The Dawes Act 1887 allotted Indian lands that resulted in the further loss of millions of acres.

Assimilation policies followed the loss of land. These policies sought to destroy tribal cultures and assimilate American Indians as individuals into mainstream society.

The exercise of sovereign powers by Indian Nations had already been eroded through legislation. The following methods were used:

1. **The political question doctrine:** Questions decided by the legislature or executive branch and not by courts.
2. **The guardian – ward relationship:** “Trust” responsibility supposedly allowed Congress extraordinary power to take actions to protect Indian Nations.
3. **Plenary power of Congress:** The courts have said that the power of Congress in Indian affairs is plenary (full and complete). Congressional power in Indian affairs is mentioned in the United States Constitution.

External controls are requested by American Indian governments, but often Congressional action has been prompted by special interest groups who oppose the exercise of tribal sovereignty.

From 1770 to 1870 Congress increased its role in Indian affairs from regulating trade with American Indians to controlling almost all facets of American Indian government. Treaty specifications were systematically reduced by subsequent acts of Congress.

One example is the reduction of land holdings of the Red Lake Reservation: Prior to 1863 to seven clans who comprise the Red Lake Chippewas owned and controlled more than 13 million acres of land in northwestern Minnesota. Land holding extended into North Dakota on the west and Canada on the North.

Red Lake was and is a separate and distinct nation. The treaty of 1863 officially recognized Red Lake as separate and distinct with the signing of the Old Crossing Treaty of 1863. In this treaty, the Red Lake Nation ceded more than 11 million acres of the richest agricultural land in Minnesota in exchange for monetary compensation and a stipulation that the “President of

the United States direct a certain sum of money to be applied to agricultural education and to other such beneficial purposes calculated to promote the prosperity and happiness of the Red Lake Indian.”

In the Agreement of 1889 and the Agreement of 1904, Red Lake ceded another 2,256,152 acres and the Red Lake Nation was guaranteed that all benefits under existing treaties would not change.

There are additional examples in the treaty deliberations with the other tribal nations.

### **Need for Historical Accuracy**

Tribal sovereignty has not been understood, therefore a prevalent concern among American Indian scholars is to present an accurate history. The Institute for the Development of Indian Law defines sovereignty as the supreme power from which all specific political powers are derived.

All of the sovereign powers were once held by tribes, not the U.S. government. Whatever power the federal government may exercise over Indian nations it received from the tribe, and not the other way around.

Included in the inherent powers are the following:

- The power to determine the form of government
- The power to define conditions for membership in the nation
- The power to administer justice and enforce laws
- The power to tax
- The power to regulate domestic relations of its members
- The power to regulate property tax

The law is clear that an Indian nation possesses all of the inherent powers of any sovereign government, except those powers that have been limited or qualified by treaties, agreements or an act of Congress.

Students will be able to function as responsible citizens if they know how sovereignty affects interactions of tribes with the federal government, the state of Minnesota and local governing units. All of the land in Minnesota was gained by the United States through a series of treaties with Anishinabe and Dakota sovereign nations. In order to understand issues of treaties, sovereignty or rights, one must first understand these very basic premises:

- No great war took these lands from American Indians
- No American Indian leader gave Minnesota to the United States. The nations of Anishinabe and Dakota made concessions as to specific land uses by the United States. These concessions were clearly to benefit the settlers who wanted to establish business and homes on Indian lands. The United States was obligated to carry out the specifications of the treaties.

- Anishinabe and Dakota nations clearly retain any and all rights not specifically mentioned in the contracts.

A common misconception is that the United States gave American Indian nations rights through treaties. In fact, American Indian nations gave land to the United States while retaining inherent rights and powers.

## RESOURCE LIST

### Upper Elementary:

Hirschfelder, Arlene. "Tribal Governments" "Termination and Self-Determination" in *Happily May I Walk: American Indians and Alaska Natives Today*. New York: Charles Scribner's Sons, 1986.

### Secondary:

Cohen, Felix. *Handbook of American Indian Law*.

Deloria, Vine Jr. *Custer Died for Your Sins*. New York: MacMillian Press, 1969.

*Of Utmost Good Faith*. Bantam Books, 1971.

*We Talk: You Listen*. Dell Publications, 1972.

Great Lakes Indian Fish & Wildlife Commission, (1999). *Treaty Rights 2000 Education*. GLIFWC's Public Information Office, P.O. Box 9 Odanah, WI 54861. Phone (715) 682-6619.

Great Lakes Indian Fish & Wildlife Commission, (1997). *Seasons of the Chippewa*. GLIFWC's Public Information Office, P.O. Box 9 Odanah, WI 54861. Phone (715) 682-6619. Discusses activities for off reservation tribal hunting, fishing, and gathering seasons.

Hirschfelder, Arlene. "Treaty Rights" "Native American-U.S. Government Relations" "Tribal Governments" "Termination and Self-Determination" and *Happily May I Walk: American Indians and Alaska Natives Today*. New York: Charles Scribner's Sons, 1986.

Institute for the Development of American Indian Law. *Indian Law Series*. "Indian Sovereignty" "Indians and the U.S. Government" "The Federal-Indian Trust Relationship" "Indian Jurisdiction" "Oil and Gas" "Indian Water Rights."

Jaimes, Annette. *The State of Native America: Genocide, Colonization, and Resistance*. South End Press, Boston, MA. 1992.

Pever, Steven. *Indian Rights*. Third Edition

CD-ROM: "Culture and History of the White Earth Ojibwe", 1993. Mahnomen Public Schools. P.O. Box 319. Mahnomen, MN 56557. Phone: (218) 935-2211.

Video: "Indian Treaties with Status—Force—And Dignity." Color. 30 min. Coleraine Public Schools.

Video: "Treaty Rights and Tribal Sovereignty" Native American Educational Series. Color. 30 min. Delta Vision Entertainment. 8158 Half Mile Road. P.O. Box 460. St. Germain, WI 54558.

Video: "Tribal Governments from Traditional to Contemporary." Color. 30 min. Coleraine Public Schools.

Video: "Tribal Governments: With Status, Force, and Dignity." Coleraine Public Schools.

Video: *Winds of Change*. "Sovereignty" Color. Madison, WI: University Film and Video. University Film and Video.

Website: American Indian Policy Center  
<http://www.airpi.org> (American Indian Research and Policy Commission)

Website: Great Lakes Indian Fish & Wildlife Commission  
<http://www.glifwc.org>

Website: Minnesota Indian Affairs Council  
<http://www.indians.state.mn.us>

## SOVEREIGNTY - PRIMARY LESSON

### 1. DEVELOPMENTAL CHECKPOINT

**Primary students** will be able to understand the concept of *nation*; distinguish nations from continents and identify nations in the Western Hemisphere, including American Indian nations within a nation.

### OUTCOME INDICATORS

- Checklist to record responses in class discussions.
- Matching activity in which students in cooperative groups identify nations in the Western Hemisphere and American Indian reservations and communities in Minnesota.

### CURRICULUM INTEGRATION

Social Studies, Geography, Map Study

### LESSON OUTCOMES

Students will be able to:

- define a nation as a group of people organized under a government and living on a certain location of land.
- name examples of nations; distinguish between nations and continents.
- locate North America, Canada, United States and Mexico on a map.
- locate Minnesota on a map and recognize that it is a division of a nation called a *state*.
- locate seven Anishinabe reservations and four Dakota communities on a map of Minnesota.

### INSTRUCTIONAL STRATEGIES

1. Lead class in a brainstorm session listing attributes or characteristics of a *nation*. (people, land, boundaries, government, leaders, laws, language, certain ways of doing things.)
2. Display characteristics of a nation on a transparency or flipchart.
3. Without benefit of the display, students in cooperative groups recall the attributes of nations. Students check accuracy by referring to the display.
4. Display a map of the Western Hemisphere or just North America without political boundaries and that shows the locations of American Indian nations before Europeans came.
5. Point out the vast territories on which American Indians live.
6. Ask students to infer what the organizations of the various groups might have been like. Would there have been governments? Leaders? Laws? Languages?

7. Display a map of the Western Hemisphere or North America showing current locations of American Indian nations, called reservations.
8. Discuss the fact that this map displays how much is left of the American Indian nations as far as land is concerned.
9. Focus with the students on a map of Minnesota which shows the seven Anishinabe reservations and the four Dakota communities. Name each reservation and community as it is located.
10. Distribute map activity to cooperative groups. Small groups locate Anishinabe reservations and Dakota communities on Minnesota map.

## VOCABULARY

nation – a people, usually the inhabitants of a specific territory, who share common customs, origins, history and frequently language or related languages.

a federation or a tribe, especially one composed of North American Indians ... the territory occupied by such a federation or tribe.

nation within nation – when one sovereign state exists within the boundaries of another sovereign state such as American Indian tribes.

## MATERIALS

- “A Nation: What does it have?” – graphic for transparency or flipchart
- “A Nation: What does it have?” – sheets for small groups
- Large map of Western Hemisphere or North America that shows location of American Indian tribes before arrival of people from other parts of the world.
- Large map of Western Hemisphere or North America showing current location of American Indian tribes.
- Small map activity for matching in cooperative groups or individual.

## ASSESSMENT TASKS

- Take part in discussion following presentations by teacher.
- Complete map matching activity

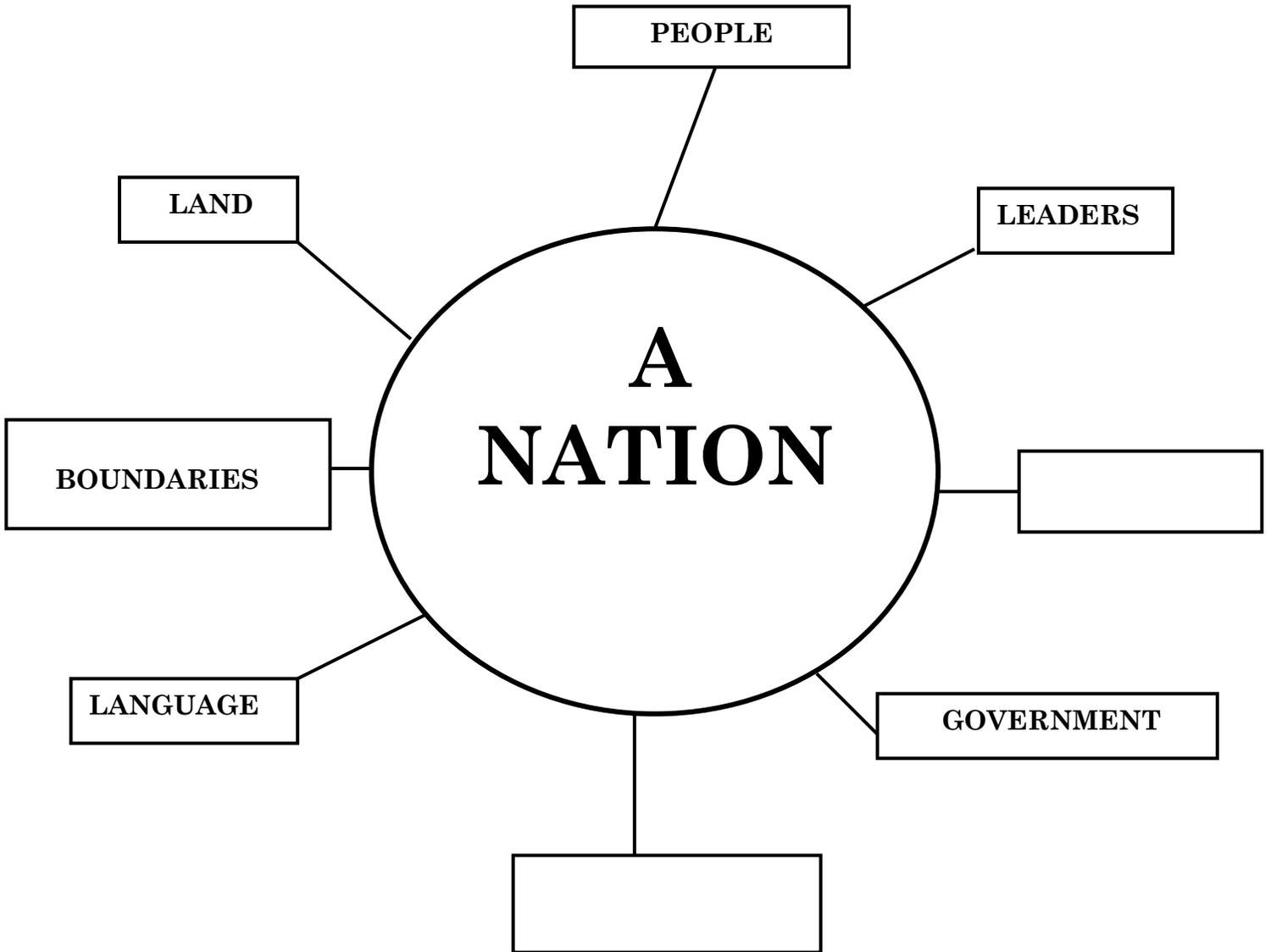
## ENRICHMENT ACTIVITY

Expand the matching activities to include nations beyond North America and American Indian tribes in Canada as well as states bordering Minnesota.

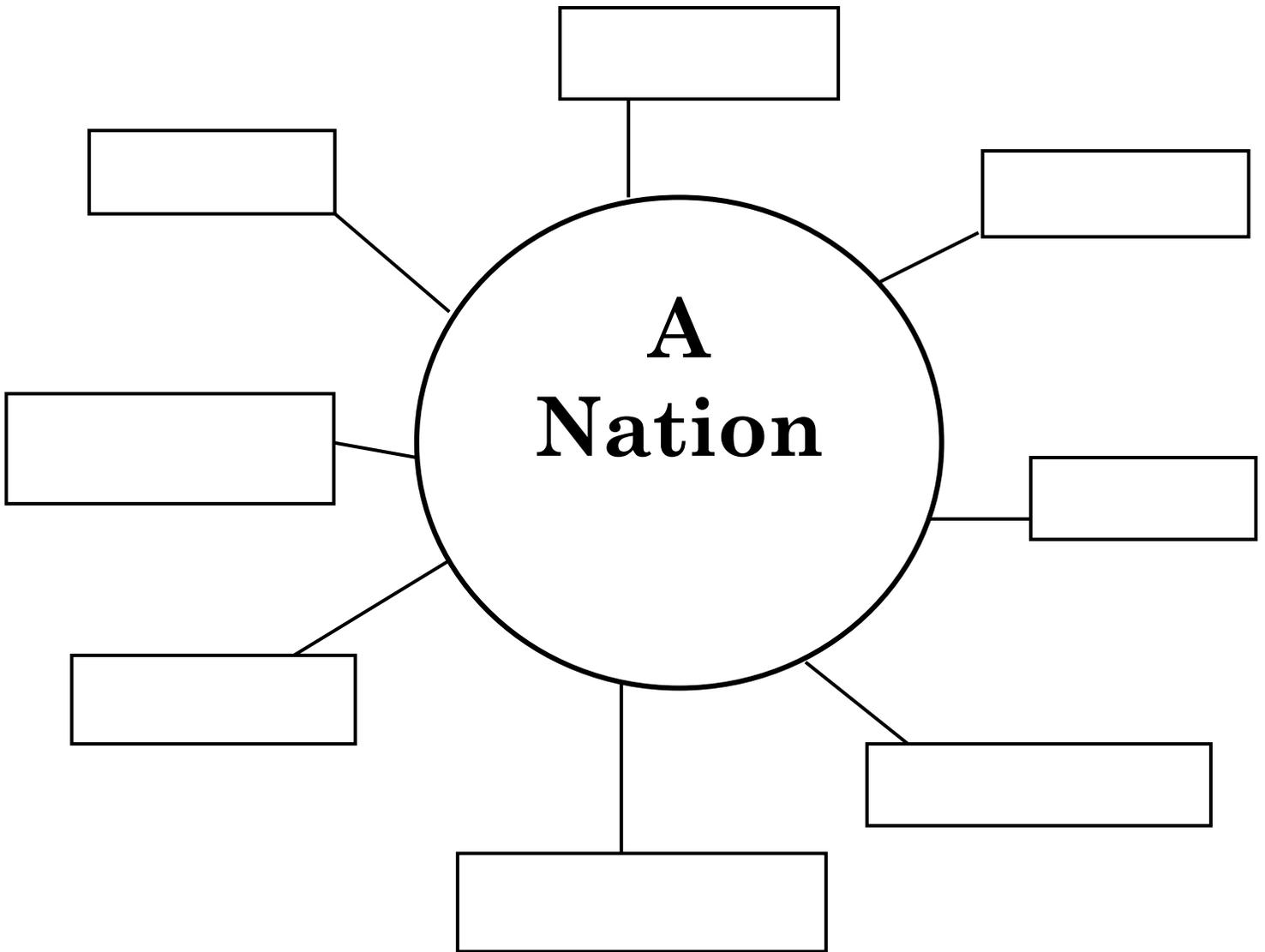
## LINKAGES

Language Arts

# A NATION: WHAT DOES IT HAVE?



**A NATION: WHAT DOES IT HAVE?**



## MAP ACTIVITY

Duplicate enough labels for individuals, pairs or cooperative groups. Use post-it notes or glue sticks to fasten these tags to maps. For more durability, glue to tag-board, laminate and use pieces of Velcro to fasten. Enlarge on copy machine for bigger displays.

**Red Lake  
Reservation**

**White Earth  
Reservation**

**Leech Lake  
Reservation**

**Mille Lacs  
Reservation**

**Fond du Lac  
Reservation**

**Grand Portage  
Reservation**

**Bois Forte  
Reservation**

**Upper Sioux  
Community**

**Lower Sioux  
Community**

**Shakopee  
Mdewakanton  
Community**

**Prairie Island  
Mdewakanton  
Community**

## SOVEREIGNTY - INTERMEDIATE LESSON

### 2. DEVELOPMENTAL CHECKPOINT

**Intermediate students** recognize physical and political entities such as continents, nations, nations within nation, states.

### OUTCOME INDICATORS

- Discussion checklists to note understanding of terms
- Cooperative classification

### CURRICULUM INTEGRATION

Social Studies, Government, History, Geography

### LEARNER OUTCOMES

Students will be able to classify:

- continents of Western Hemisphere
- nations in North America
- states (Minnesota, Wisconsin, Iowa, Illinois, North Dakota, South Dakota, Nebraska)
- Anishinabe Reservations and Dakota Communities in Minnesota.

### INSTRUCTIONAL STRATEGIES

1. Review geographic terms: continents, nations, nations within nation, states.
2. Distribute “Cooperative Classification Card Sort” to small groups of students. Each group is to sort the items in the way they think they go together. Everyone in the group must be able to explain why the items were placed together.
3. Distribute maps or atlases to the groups so they may verify their classifications. Some may use wall maps.
4. After the verification period, provide the correct classification.

### VOCABULARY

continent  
nation  
sovereign  
reservation, community  
nations within nation  
state  
Anishinabeg  
Dakota

## **MATERIALS**

“Cooperative Classification Cards”  
Blank Card Sort on which to organize cards  
Map and Atlases

## **ASSESSMENT TASKS**

- Recall definitions of geographic terms.
- Complete the cooperative classification activity.
- Verify sorting activity by using maps.

## **ENRICHMENT ACTIVITY**

Supply extra cards on which students may write additional continents, nations, states, reservations.

## **LINKAGES**

Language Arts

<b>North America</b>	<b>Anishinabe Reservations</b>	<b>State</b>
<b>United States</b>	<b>Dakota Communities</b>	<b>Minnesota</b>
<b>Mexico</b>	<b>Continents</b>	<b>Wisconsin</b>
<b>Canada</b>	<b>Sovereign Nations</b>	<b>Iowa</b>
<b>South America</b>	<b>Nations within Nations</b>	<b>Illinois</b>
<b>Red Lake</b>	<b>Bois Forte</b>	<b>Mille Lacs</b>
<b>Grand Portage</b>	<b>Leech Lake</b>	<b>Shakopee</b>
<b>White Earth</b>	<b>Fond du Lac</b>	<b>Upper Sioux</b>
<b>Prairie Island</b>	<b>Lower Sioux</b>	

## SOVEREIGNTY - MIDDLE SCHOOL LESSON

### 3. DEVELOPMENTAL CHECKPOINT

**Middle school students** can describe the attributes of a sovereign nation and explain the concept of nations within nation as it applies to American Indian tribes.

### OUTCOME INDICATORS

- Checklist to record responses in class discussions
- Verification and/or change statements following “Limited Prior Knowledge Strategy”

### CURRICULUM INTEGRATION

Social Studies, Language Arts, Critical Thinking

### LESSON OUTCOMES

Students will be able to:

- make predictive statements based on limited prior knowledge.
- verify and/or correct statements based on a reading assignment.

### INSTRUCTIONAL STRATEGIES

1. Distribute “Limited Prior Knowledge Strategy.” Tell students that all items on the sheet are related to American Indian sovereignty. Students are to work in groups of 3 or 4 to speculate how several of the items may be linked together.
2. Each group needs one pen and one sheet of paper. As statements are suggested, one student writes one statement on the paper. The pen and paper are then passed to the next student who records another statement. Each student, writing in turn, records one prediction made by someone else and passes the paper and pen. The end product is a series of predictive statements about the information that will be read.
3. **Traveling reports share with other groups:**  
After each group has recorded their predictions, a reporter is designated to go to another group and share speculations. A class list of speculations may be recorded on the board or on a flipchart. This pre-reading discussion and debate promotes setting purposes for reading and the curiosity to find out which of their statements are verified in the reading.
4. Students read “Tribal Sovereignty.”

**5. Students verify and change pre-reading statements:**

Students pass the paper and pencil around the group. The statements are again considered one at a time. Each student, in rotation, reads one statement. If it was validated in the text, that student checks the statement. If the prediction was refuted in the text, the group discusses how the statement could be changed to be true. That student revises the statement making any necessary changes. The paper and pen are passed to the next student. This is continued until all pre-reading statements have been considered.

## **VOCABULARY**

Contained within “Limited Prior Knowledge Strategy”

## **MATERIALS**

Copies of “Limited Prior Knowledge Strategy” for each student

Copies of “Tribal Sovereignty” for each student

One sheet of paper and one pen for each group

## **ASSESSMENT TASKS**

- Participate in discussions following “Limited Prior Knowledge Strategy.”
- Verify or change statements following the reading of “Tribal Sovereignty.”

## **ENRICHMENT ACTIVITY**

- Students seek additional information and other readings on the topic of Tribal Sovereignty.
- Students will pull together a collection of information concerning tribal sovereignty from various websites.

## **LINKAGES**

Tribal Government, Tribal Enterprises, Treaties

## **LIMITED PRIOR KNOWLEDGE STRATEGY**

All of these items are related to American Indian sovereignty. With your group members speculate on how several of these items may be grouped together. Take turns writing statements on a sheet of paper as the group agrees on a prediction. After statements are shared, you will read “Tribal Sovereignty.” With your group you will verify and/or correct your predictions according to the reading.

**sovereign**

**treaties**

**dual citizenship**

**majority rule democracy**

**1924**

**agreements**

**independent of all others**

**U.S. citizenship**

**self-governing**

**American Indian tribes**

**democratic principles**

**Nations within a nation**

**tribal government**

**Consensus democracy**

**nations**

## TRIBAL SOVEREIGNTY

### STUDENT READING

The term “sovereign” means “independent of all others.” When applied to government, sovereignty refers to independent self-governing nations. The sovereignty of American Indians tribes is a very important issue for American Indians today.

In 1492, when Christopher Columbus arrived in the Caribbean Islands, the Indian tribes of the Americas **were all sovereign nations**. Each nation maintained their own government. Most of these governments operated in accordance with democratic principles. The government of the Iroquois Confederacy of upstate New York is one example. The Iroquois represented a confederacy of five tribes or nations. These were the Mohawk, Oneida, Cayuga, Onodaga and Seneca. Later the Tuscarora arrived from North Carolina and joined the confederacy. Each tribe selected a certain number of individuals to represent them at confederacy meetings. These individuals, who are sometimes referred to as sachems, deliberated issues that came before the confederacy until all members agreed to a common course of action. To deliberate issues until all participants agree is called **consensus democracy**. The type of democracy practiced in the United States today is called **majority rule democracy**.

In agreements, called treaties, which took place between Indian nations and the United States government, the Indian nations have the inherent right to have their own governments or to periodically form new governments. The tribes may be thought of as nations within the larger American nation. Since the 1830’s the federal courts have recognized American Indian tribes. This trust responsibility should include federal protection of tribal interests. Based upon a long heritage as a free people, and based upon federal court decisions, American Indian tribes today have the right to run their own internal affairs.

American Indians who are enrolled members of tribes have dual citizenship. They are citizens of their tribe and citizens of the United States. Before 1924, some American Indian people, particularly those of mixed blood heritage, were given U.S. citizenship. In 1924, Congress passed a law, which declared **all** American Indians to be U.S. citizens. When this act was passed, tribal members were never consulted and were never allowed to vote on whether or not they wanted to become U.S. citizens.

# SOVEREIGNTY - SENIOR HIGH LESSON

## 4. DEVELOPMENTAL CHECKPOINT

**Senior High students** demonstrated an understanding and appreciation of sovereignty by participating in a simulation in which this concept is applied.

## OUTCOME INDICATORS

- Evaluate documents and discussions resulting from “The Classroom: A Sovereign Nation” simulation
- Checklists for essays evaluating the simulation experience

## CURRICULUM OUTCOMES

Social Studies, History, Government

## LESSON OUTCOMES

Students will be able to:

- research and examine representative democracy, consensus model of democracy, authoritarian systems.
- organize a model of government by creating and implementing such components as a declaration of independence, a system of laws, leaders, representatives, flag, emblem, tax system.
- list rights and responsibilities for this classroom government.

## INSTRUCTIONAL STRATEGIES

1. Set the stage for “The Classroom: A Sovereign Nation” simulation by proposing that the class declare independence and create a sovereign nation.
2. Assign research topics on government as needed for background information.
3. Assign a committee to write a declaration of independence which might be presented to the principal.
4. Lead class discussion on what form of government their sovereign classroom nation might choose. Ask for summaries on the various possibilities.
5. Brainstorm rights and responsibilities their classroom government should have after students have chosen a type of government.
6. Students design a flag or emblem to identify their sovereignty.
7. Students examine U.S. Constitution and Constitutions and By-laws on American Indian tribes as examples for drawing up their own laws.

8. Students decide how these laws are to be enforced. They may wish to form a court system or decide to appoint a mediator to settle disputes and enforce the laws in this way.
9. Brainstorm how basic needs will be provided for citizens of their sovereign nation. Decide how these needs will be met. Will there be programs, taxes, economic enterprises?
10. Operate the class under the chosen system for a designated time period.
11. Students evaluate the simulation activity in a written essay.

### **VOCABULARY**

sovereignty  
representative democracy  
consensus democracy  
authoritarian government

### **ASSESSMENT TASK**

- participate in discussions.
- participate in brainstorming activities.
- create documents in simulation activity.
- write summary statements in essays.

### **ENRICHMENT ACTIVITY**

Write reasons for not selecting any of the other forms of government for the simulation.

### **LINKAGES**

Language Arts

—Adapted from an idea by Pricilla Buffalohead

## 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.)