

Our Political Rights



I want my grandchildren to know their political rights as (i) citizens of the Mandan-Hidatsa-Arikara Nation and descendants of citizens of the Navajo Nation; (ii) citizens of the United States; (iii) citizens of Indigenous Nations in the United States; (iv) residents of their states; (v) residents of their states as citizens of Indigenous Nations; (vi) members of the world community; and (vii) members of Indigenous Nations of the world community. These rights vary between indigenous Nations, states and countries. This article does not address all of the political rights that pertain to Native Americans.

I. Indigenous Nation Rights

As registered tribal members and tribal Nation citizens, we are entitled to the rights afforded to us by our various tribal Nations.

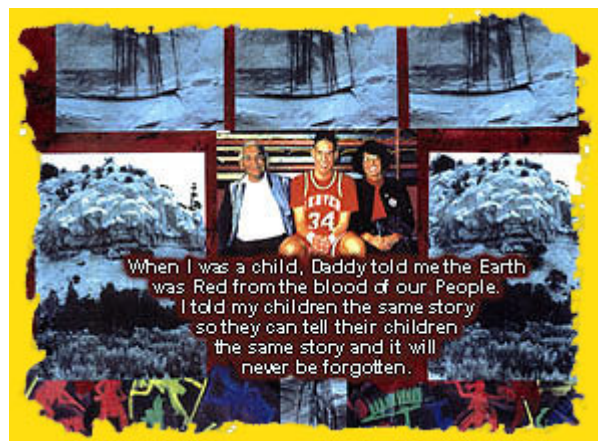


II. Federal Rights as Citizens of the United States

The 1924 Indian Citizenship Act, 8 U.S.C. § 1401(a)(2), extended citizenship and voting rights to all American Indians. In *U.S. v. Nice*, the U.S. Supreme Court held that U.S. citizenship is not incompatible with tribal membership or the federal trust relationship.

III. Federal Rights as Citizens of Indigenous Nations in the United States

Many do not understand or accept that many of the federal benefits Native Americans are entitled to were earned with the lives of our predecessors. As a child, my Daddy told me the Earth was Red from the blood of our People.



I want my grandchildren to know how their people fought the Americans ‘gallantly for years on years;’ how ‘they have defended their mountains and their stupendous canyons with a heroism

which any people might be proud to emulate;’ and how they earned for us the rights we are entitled to under the Navajo Treaty of 1868. The Treaty was negotiated following the Navajo American War of 1860-1868 during which about 10,000 Navajos were imprisoned at Fort Sumner Reservation. Twenty-five percent of the Navajos imprisoned died.

The Superintendent of Indian Affairs, New Mexico, A. B. Norton, on August 31, 1867, in reporting on Fort Sumner to the U.S. Commissioner on Indian Affairs, pronounced the soil unfit for cultivation of grain because of the presence of alkali. The water is black and brackish, scarcely bearable to the taste, and said by the Indians to be unhealthy, because one-fourth of their population have been swept off by disease. The reservation had cost the government millions of dollars. The sooner it is abandoned, Norton added, and the Indians removed, the better.

General William Tecumseh Sherman was sent from Washington to conclude a treaty with the Navajos which was signed June 1, 1868, allowing the Navajos to return to their homeland. Not all of their land was restored but at least they would not go to Oklahoma. They received 1/4 of their original homeland - 3.5 million acres.

The federal government fully recognized the magnificent and pastoral land the Navajos were surrendering to the United States following the eight-year Navajo-American as can be seen from the statement of Brigadier General Carleton, Commander of the U.S. Army of New Mexico Territory (‘Star Chief Carleton’):

“When it is considered what a magnificent pastoral and mineral country they have surrendered to us, a country whose value can hardly be estimated, the mere pittance, in comparison, which must at once be given to support them sinks into insignificance as a price for their natural heritage.

The exodus of this whole people from the land of their fathers is not only an interesting but a touching sight. They have fought us gallantly for years on years; they have defended their mountains and their stupendous canyons with a heroism which any people might be proud to emulate; but when, at length, they found it was their destiny, too, as it

had been that of their brethren, tribe after tribe, away back toward the rising of the sun, to give way to the insatiable progress of our race, they threw down their arms, and, are brave men entitled to our admiration and respect, have come to us with confidence in our magnanimity, and feeling that we are too powerful and too just a people to repay that confidence with meanness and neglect - feeling that having sacrificed to us their beautiful country, their homes, the associations of their lives, the scenes rendered classic in their traditions, we will not dole out to them a miser's pittance in return for what they know to be and what we know to be a princely realm." Quote from Through White Men's Eyes: A Contribution to Navajo History: A Chronological Record of the Navaho People from Earliest Times to the Treaty of June 1, 1868, (Volume I), J. Lee Correll, Navajo Heritage Center, Window Rock, Arizona, 1979 (Six Volumes)



See Notes on Navajo History. For the text of the Navajo Treaty of 1868 see <http://reta.nmsu.edu/modules/longwalk/lesson/document/treaty.htm>.

See Federal Indian Law Outline.

Also, their federal rights as Mandan-Hidatsa-Arikara citizens are expressed in several Treaties, Agreements and Executive Orders, including:

1825

The United States Government ratifies the Atkinson and O'Fallon Treaty with the Mandan, Hidatsa, and the Arikara.

1851

Various bands of Sioux, Cheyenne, Arapahoe, Crow, Assinaboine, Gros-Ventre Mandans, and Arrickaras sign the Fort Laramie Treaty.

1866

July 27, 1866, Agreement at Fort Berthold, Dakota Territory.

1870

Southern-most portion of the Mandan, Hidatsa, and Arikara Territory is taken by Presidential Executive Order. Fort Berthold Reservation is established.

1880

A majority of the reservation, a total of 1,193,788 acres, is ceded by Executive Order without consultation or consent of the tribes.

1886

Act of Congress passed May 15, 1886, ratified in 1891, provides for the allotment of the tribal land base. The U.S. Government obtains agreement of the tribes to relinquish lands. Under this allotment act, nearly two-thirds of the reservation is ceded leaving 965,620 acres. The tribes receive \$80,000 annually for 10 years “for their civilization and education.”

1894

Fort Berthold Reservation is officially surveyed and 949 allotments are made to individual tribal members.

1910

June 11—The Homestead Act is passed and Congress opens 21 townships (13 full townships and 8 partial townships) north and east of the Missouri River which opens up 320,000 acres of prime grasslands in the northeast quadrant of the reservation for homesteading.

1936

The Mandan, Hidatsa, and Arikara accept the Indian Reorganization Act and adopt a constitution, by-laws, and business charter. A 10-member tribal council is elected.

1937

The Mandan, Hidatsa, and Arikara adopt a corporate charter.

1944

The Flood Control Act of 1944 is enacted leading to the Garrison Dam construction, flooding of tribal homelands, relocation of tribal members to the uplands, and movement from a subsistence to a cash economy.

1947

Public Law 296 appropriates \$5,105,625 as partial payment for lands taken as a result of the Garrison Dam.

<http://www.ndstudies.org/resources/IndianStudies/threeaffiliated/timeline900.html>

See Biography of Duane T. Bird Bear.





1833 Prince Maximilian of Wied Neuwied and Karl Bodmer visit the Mandan and Hidatsa villages. Bodmer paints the Mandan Chief and several other Mandan scenes.

IV. Treaty Rights, Agreements, Legislation and Executive Orders

Treaties are agreements between the federal government and tribes or pueblos. Under the U. S. Constitution, treaties may only be entered into by the President with the advice and consent of 2/3 of the Senate and they are binding on states and others as the 'supreme law of the land.' (Article II, Sec. 2, Cl. 2, U.S. Constitution). Three hundred seventy treaties have been entered into. The last such treaty was in 1868 with the Nez Perce. The right of the federal government to enter into treaties with Indian governments was abolished by statute in 1871.

From 1871-1913, agreements requiring Senate and House ratification were the means used, rather than treaties (98 were entered into, 96 ratified by Congress). After that time, legislation is the formal action taken to deal with Indian issues. Settlement agreements may be entered into to resolve tribal land claims, water rights, resolution of conflicts between Indians and non-Indians, and other issues related to tribal self-determination. Executive Orders may be issued as well.

V. Political Basis of Our Federal Rights

The U.S. Supreme Court has ruled that the federal government has a legitimate interest arising out of its special relationship with Indian tribes and that the category Indian and the tribal subcategories are not racial categories at all but political ones, because they refer to the tribe constituted as a political body, not the tribe constituted as a racial group.

VI. State Rights

State laws generally are not applicable to Indians on a reservation, except where Congress expressly provides that state law shall apply. However, Indians are generally entitled to the same rights and benefits as other U.S. and state citizens. Indians living on tribal lands are residents of the state in which their reservation is located and cannot be denied benefits on the basis of their residence on a reservation. The absence of state jurisdiction to enforce certain laws against Indians or their property (taxation, zoning, etc.) is not a sufficient reason to deny state services to Indians; nor is the availability of federal substitutes a valid reason.



Equal Opportunity for All

Various states also have specific statues applicable to Native Americans living on or off their reservations, including urban areas. For example, Colorado recently amended its statute pertaining to the Colorado Commission of Indian Affairs to allow it to address Indian issues pertaining to Indian peoples on and off reservations.

24-44-101. Legislative declaration

The general assembly finds and declares that the affairs of the two Indian tribes whose reservations are largely within the state of Colorado, the Southern Ute tribe and the Ute Mountain Ute tribe, include matters of state interest and that the state of Colorado recognizes the special governmental relationships and the unique political status of these tribes with respect to the federal government and, further, that it is in the best interest of all the people of Colorado that there be an agency providing an official liaison among all persons in both the private and public sectors who share a concern for the establishment and maintenance of cooperative relationships with and among the aforesaid tribes and Indian peoples.

24-44-103. Duties and powers of commission

(1) It is the duty of the commission:

- (a) To coordinate intergovernmental dealings between tribal governments and this state;
- (b) To investigate the needs of Indians of this state and to facilitate the provision of technical assistance in the preparation of plans for the alleviation of such needs;

(c) To cooperate with and secure the assistance of the local, state, and federal governments or any agencies thereof in formulating and coordinating programs regarding Indian affairs adopted or planned by the federal government so that the full benefit of such programs will accrue to the Indians of this state.

Various state executives, such as the governor, also may address Indian issues. For example, Colorado's administrative regulations pertaining to Religious Programs, Services, Clergy, Faith Group Representatives and Practices issued by the Department of Corrections have exemptions which allow for the possession of Indian faith related property items or personal faith property, including tobacco for an American Indian pipe ceremony. These actions allow Colorado's Native American inmates to practice their traditional religious traditions, customs, and ceremonies while incarcerated in state penal facilities. The fire permit exemptions granted by the Governor during high fire risk seasons allow incarcerated Native Americans to conduct Indian sweat lodge ceremonies which require the use of fire, outdoor space on prison grounds and supervision. The Authority for these provisions is cited as: A. First Amendment of the Constitution of the United States: "Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof . . . B. The Religious Land Use and Institutional Persons Act of 2000. (RLUIPA). C. Cruz vs. Beto, 405 U.S. 319 (1972): Prisoners must be afforded "a reasonable opportunity of pursuing their faith comparable to the opportunity afforded fellow prisoners who adhere to conventional religious precepts." and D. CRS 17-42-101. Freedom of worship.

See <http://aren.org/prison/documents/CO-religious-programs-services.pdf>.

See Colorado State Statutes Associated With Indian Affairs; State of Colorado and Indian Tribal Legal Relationship.

Indian tribes and their members **when outside of Indian country** are subject to nondiscriminatory state law unless federal law provides otherwise.

States derive substantial economic benefits and tax revenue from tribal enterprises within the states, including gaming, hotel and other related enterprises, income, sales, gross receipts, use and excise taxes, natural resource severance taxes and heritage tourism.

Gaming Benefit to States

In 2008, Tribes generated \$25.9 billion in gross gaming revenues. That amount has increased annually.

Tribes produced another \$3.2 billion in gross revenues from related resorts, hotels, restaurants and other lodging or entertainment venues.

Tribal gaming stimulated 636,000 jobs nationwide, both at tribal enterprise and in related businesses.

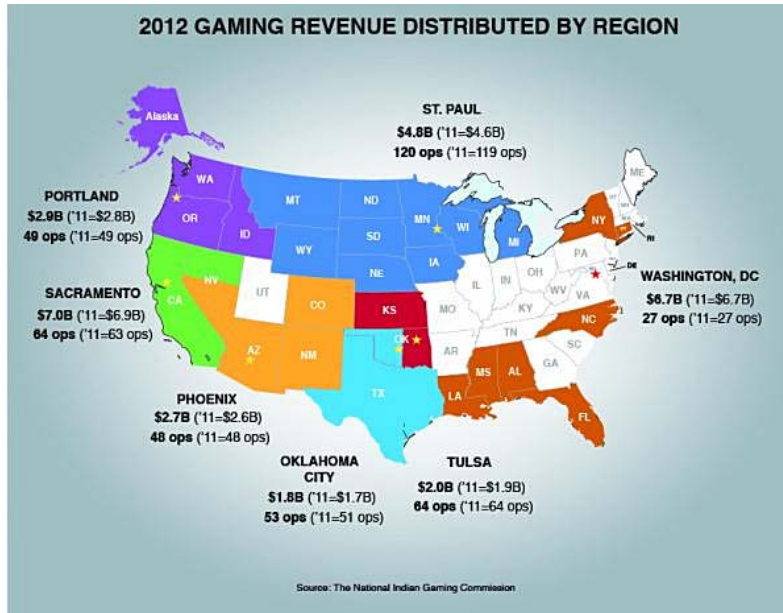
The United States government gained \$8.0 billion in federal taxes paid – for income tax, social security tax and excise tax -- and revenues saved from unemployment and welfare payments it didn't have to make.

States received \$2.5 billion in taxes, regulatory payments and revenue sharing, resulting from state tribal gaming compacts.

Local governments received more than \$100 million from gaming tribes.

Nationally, charities garnered \$150 million in contributions from gaming tribes.

http://www.indiangaming.org/info/pr/press-releases-2009/NIGA_08_Econ_Impact_Report.pdf



Income Taxation

In general, any income earned on an Indian reservation by a reservation tribal member (enrolled member) while domiciled on the reservation is exempt from a state's personal income tax.

Income earned on an Indian reservation by non-Indians or non-Indian tribal members though is subject to a state's personal income tax.

For example, income earned by a Native American or on a Native American reservation that is subject to Colorado's personal income tax includes:

- Income earned on a reservation by anyone not living on that reservation;

- Income earned by a reservation member while working off the reservation;

- Income earned by a tribal member on a reservation other than the reservation to which they belong and reside;

- Income earned by a taxpayer who is not a Native American Indian even if they live and work on a reservation.

State Sales, Gross Receipts or Use Taxes

Unless an exemption applies, states may impose their sales, gross receipts and/or use taxes on goods purchased that are not intended for resale. Counties, cities and special districts may add to the state base tax. States have varying exemptions from their state sales, gross receipts or use taxes applicable to reservation tribal members living on their reservation on purchases made on their reservation (e.g., Colorado and New Mexico) or sometimes on another reservation within the state (e.g., North Dakota). Special district taxes and state-collected taxes are also exempt. Several states have entered into Tax Compact Agreements with tribal Nations.

Excise Taxes

Unless an exemption applies, states may impose their excise taxes on certain goods purchased such as tobacco, alcohol, motor fuel, etc. States have varying exemptions from their excise taxes applicable to reservation tribal members living on their reservation on purchases made on their reservation or sometimes on another reservation within the state.

Natural Resource Severance Taxes

Certain states have entered into Tax Compact Agreements with tribal Nations regarding severance taxes upon nonrenewable natural resources that are removed from the earth lying within tribal reservation boundaries. Other states collect severance taxes upon nonrenewable natural resources that are removed from the earth lying within tribal reservation boundaries pursuant to case law (*Cotton Petroleum Corporation v. New Mexico*, 490 U.S. 163 (1968)).

Heritage Tourism

Certain states also generate revenue through the tourism generated from interest in Native American peoples and events. This impact is noted in *Livingston v. Ewing*, 601 F.2d 1110 (1979), regarding “the policy of the State of New Mexico and that of the City of Santa Fe, which permits the Indians to display and to sell their handcrafted jewelry, arts and crafts on the grounds of the Museum of New Mexico and the Palace of the Governors, and which prohibits any persons other than the Indians from offering for sale handcrafted jewelry and which specifically forbids sales by persons other than Indians within the Plaza.” *Livingston* at 1110. The Court noted that “acquiring, preserving and exhibiting historical, archeological and ethnological interests in fine arts” is a valuable state interest. It also recognized the salutary objects of the

“education of the public in the history and tradition of the area as well as the promotion of Indian arts and crafts.”

State Services Applicable to American Indians

State Health Care Services

Indians are entitled to state health care services on the same basis as all other state citizens. In *Penn v. San Juan Hospital, Inc.*, 528 F.2d 1181 (10th Cir. 1975), class-action plaintiffs obtained a consent decree enjoining a state hospital practice of denying Indians health care and forcing them to use an Indian Health Service (“IHS”) facility.

Medicare, Medicaid and the State Children’s Health Insurance Program (“CHIP”) must be fully available to Indian people, whether or not they are eligible for IHS.

Social Security and Welfare Benefits

Indians are entitled to social security and welfare benefits on the same basis as all other state citizens. No limitation may be placed on social security benefits because of an Indian claimant’s residence on a reservation. *Morton v. Ruiz*, 415 U.S. 199 (1974).

A significant source of individual financial assistance comes from programs authorized under the Social Security Act of 1935. These programs are typically administered by the states which receive federal funding in return for agreeing to run the programs in accordance with federal requirements. Because Social Security Act programs are not administered for the benefit of Indians because of their status as Indians, tribes may not enter into self-determination or self-governance compacts to run these programs.

These programs include Temporary Assistance for Needy Families (“TANF”) with children; Supplemental Security Income (“SSI”) for elderly people and people with disabilities; assistance for child welfare services, foster care and adoption assistance; enforcement of child support obligations; and general social services, including

Food stamps (administered by state agencies with federal funds);

Commodity food program (only administered by states if tribes cannot); and Special Supplemental Nutrition Program for Women, Infants, and Children (“WIC”). Tribes can, however, receive direct funding for WIC.

All state agencies are required to have plans to meet the special needs of Indians under these programs.

Public School Benefits

Indians are entitled to public school benefits on the same basis as all other state citizens. A limited amount of federal funding is provided to states for the education of Indian students (Johnson O’Malley Act programs; Department of Education impact aid funding; Indian Education Act funds; Elementary and Secondary Education Act funds for low-income students which includes No Child Left Behind Act; and Individuals with Disabilities Education Act funds).

VII. Universal Rights

Native Americans also enjoy the human rights provided to all peoples as well as those under the Declaration on the Rights of Indigenous Peoples which was adopted by the United Nations Human Rights Council in June 2006, followed by the General Assembly in September 2007.

The Declaration addresses the human rights of over 370 million indigenous people worldwide, providing a framework for combating discrimination and marginalization.

Many of the rights in the Declaration require new approaches to global issues, such as development, decentralization and multicultural democracy. In order to achieve full respect for diversity, countries will need to adopt participatory approaches to indigenous issues, which will require effective consultations and the building of partnerships with indigenous peoples.



Right to Self-Determination

Direct Input of Indigenous Peoples in Decision-Making



Earth Mandala

Subsistence Rights and Rights to Lands, Territories and Resources



Air Mandala

Subsistence Rights and Rights to Lands, Territories and Resources



Fire Mandala

Subsistence Rights and Rights to Lands, Territories and Resources



Water Mandala

Subsistence Rights and Rights to Lands, Territories and Resources

Highlights of the Declaration include:

Seventeen of the forty-five articles of the Declaration deal with indigenous culture and how to protect and promote it, by respecting the direct input of indigenous peoples in decision-making, and allowing for resources, such as those for education in indigenous languages and other areas.

Fifteen of the forty-six articles of the Declaration are about indigenous peoples' participation in all decisions that will affect their lives, including meaningful participation in a democratic polity.

The Declaration confirms the right of indigenous peoples to self-determination and recognizes subsistence rights and rights to lands, territories and resources.

The Declaration recognizes that indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Essentially, the Declaration outlaws discrimination against indigenous peoples, promotes their full and effective participation in all matters that concern them, as well as their right to remain distinct and to pursue their own visions of economic and social development.

UN Declarations are generally not legally binding; however, they represent the dynamic development of international legal norms and reflect the commitment of states to move in certain

directions, abiding by certain principles. The Declaration, however, is widely viewed as not creating new rights. Rather, it provides a detailing or interpretation of the human rights enshrined in other international human rights instruments of universal resonance –as these apply to indigenous peoples and indigenous individuals. It is in that sense that the Declaration has a binding effect for the promotion, respect and fulfillment of the rights of indigenous peoples worldwide. The Declaration is a significant tool towards eliminating human rights violations against the over 370 million indigenous people worldwide and assisting them and States in combating discrimination and marginalization.

For more information on the Declaration, please visit:

<http://www.un.org/esa/socdev/unpfii/en/declaration.html>

For text of the Declaration see: http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf