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Tribal Governance

Tribal Sovereignty

"Indian tribes have inherent powers deriving from a sovereign status. Their claim to sovereignty long pre-dates that of our own government." --McClanahan v. Arizona Tax Commission, 411 U.S. 164, 36 L.Ed. 2d 129 (1973).

"The basic sovereign power to the Indian tribes is still existent, but subject to restrictions which have developed through their relationship with the United States."-- Iron Crow v. Oglala Sioux Tribe, 231 F. 2d 89 (8th Cir. 1956).

Felix S. Cohen, in his authoritative and extensive work entitled Federal Indian Law (U.S. Department of Interior, 1944), explains the nature of the residual sovereignty of Indian tribes:

"Perhaps the most basic principles of all Indian law supported by a host of decisions...is the principle that those powers which are lawfully vested in an Indian tribes are not, in general delegated powers granted by express acts of Congress, *but rather inherent powers of a limited sovereignty which has never been extinguished*. Each Indian tribe begins its relationship with the Federal Government as a sovereign power, recognized as such in treaty and legislation. The powers of sovereignty have been limited from time to time by special treaties and laws designed to take from the Indian tribes control of matters which, in the judgment of Congress, then, must be examined to determine the limitations of tribal sovereignty rather than to determine its sources or its positive content. *What is not expressly limited remains within the domain of tribal sovereignty.*" (emphasis contained in original source)

Source excerpt from: American Indian Research and Policy Institute,
<http://www.airpi.org/pubs/leventh1.html>.

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Period _____ Date _____***Self-Determination***

“The term self-determination seems to have first entered the vocabulary of Indian affairs in 1966, when the National Congress of American Indians (NCAI) convened to develop an agenda to counter the threat of termination policy. Termination will be remembered as the last consolidated federal effort to assimilate Indians into the mainstream of American society. Reaching its zenith in the 1950s, termination policy purported to extinguish, once and for all, the so-called trust relationship that is, the political relationship of good faith--between the federal government and the Indian tribes. Thus, it must be concluded that when the members of the NCAI evoked the term self-determination, they were asserting the right of natives to be culturally distinct as well as politically autonomous.

It can be said, then, that in the context of Indian affairs, self-determination is a tribally-derived term. By the same token, the concept of self-determination entails a totality of tribal goals. These goals can be placed in three interrelated categories: 1) tribal self-rule; 2) cultural survival; and 3) economic development. The tribal pursuit of these goals is clearly reflected in the most visible issues in Indian affairs today—religious freedom and gaming, for example. But policy-makers often fail to realize the profound manner in which these goals are necessarily interrelated. This problem will be discussed in detail below.

If self-determination is a tribally-derived concept reflecting tribal goals, then it is only logical that self-determination policy should reflect native opinions and interests. Thus, a fourth tenet must be included in the definition of self-determination--Indian participation within and without the federal policy--making process. Federal legislation and other policies toward natives should be built upon Indian impetus, and when possible, natives should draft these policies. Moreover, the responsibility for implementing these policies, provided they do reflect the genuine will of tribes, rightly belongs in the hands of natives. The latter tenet has, unfortunately, been severely crippled by the powerful jaws of federal bureaucracies, notably the Bureau of Indian Affairs (BIA).

Self-determination should not, however, be confused with sovereignty. Rather, self-determination policy is ideally a means by which tribes can realize the full potential of their sovereign powers. Sovereignty may also be viewed in terms of political, cultural, and economic autonomy. Self-determination is the potential means to that end. It is imperative, however, that policy-makers (including tribal leaders) afford equal consideration to all of the tenets behind self-determination.”

Source excerpt from: "What is Indian Self-Determination?" by Samuel R. Cook in RED INK, Volume 3, Number One (1 May 1994).

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Sources Tribal Governance:

Virginia Treaty Rights, 1677

VIRGINIA COLONIAL RECORDS.

Govern'r & the Council of our Colony and
 Plantacon of Virginia in The West Indys.

Treaty Between Virginia And The Indians
 1677

Articles of Peace between the most Mighty Prince & our Dread Sovereigne Lord Charles the II by the Grace of God King of greate Brittain, France, and Ireland. Defender of the ffaith &c: And the severall Indian Kins and Queens &c Assentors and Subscribers hereunto made and Concluded at the Camp of Middle plantacon, the 29th day of May: 1677; being the day of the most happy birth & Restauration of our s'd Sovereigne Lord, and in the XXIX yeare of his said Ma'ties Reigne.

By the Right Honourable Herbert Jeffreys Esq'r Governour and Cap't Generall of his Majesties Colony of Virginia: Present the Hon'ble S'r John Berry Kn't & Francis Morrison Esq'r his most Sacred Ma'ties Commiconers appointed under the great Seale of England for the Virginia affairs, And the Hon'ble Council of State of the said Colony.

Whereas his most Sacred Ma'tie hath of his owne Royall grace and meer motion intrusted to my care and endeavours the Renewing management and concluding a good peace with the Neighbour Indians in order whereunto with the advice and Assistance of the hon'ble S'r John Berry Kn't and Francis Morrison Esq'r I have here caused to be drawne up these ensueing Articles and Overtures for the firme grounding and sure establishment of a good and just Peace with the said Indians, and that it may be a Secure and lasting one founded upon the strong Pillars of Reciprocall Justice by confirming to them their just Rights, and by Redress of their wrongs and injuries that soe the great God who is god of peace and Lover of Justice may uphold and prosper this our mutuall League & Amity. It is hereby Concluded, consented to & mutually agreed as followeth:

I. That the Respective Indian Kings and Queens doe from henceforth acknowledge to have their imediate dependancy on, and Own all Subjection to the great King of England Our now dread Sovereigne his heires and Successors, when they pay their Tribute to the Right hon'ble his Ma'ties Govern'r for the time being.

II. That thereupon the said Indian Kings & Queens and their Subjects shall hold their lands, and have the same confirmed to them and their posterity by Patent under the Seale of this his Magesties Colony, without any fee gratuity or Reward for ye same, in such sort, and in as free and firme manner as others his Magesties Liege Subjects, have and enjoye their Lands, and possessions, paying onely yearly for, and in Liew of a Quitrent or acknowledgement for the same three Indian Arrowes.

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III. That all Indians who are in amity with us, & have not land sufficient to plant up, be upon information forthwith provided for, and land laid out, and confirmed to them as affores'd never to be disturbed therein, or taken from them, soe long as they owne keep and maintaine the due obedience & Subjection to his Majestie his Govern'r and Government; & amity & friendship towards the English.

IV. Whereas by the mutuell discontents, Complaints, jealousies, and feares of English and Indians occasioned by the violent intrusions of divers English into their lands, forcing the Indians by way of Revenge, to kill the Cattle & hoggs of the English, whereby offence, and injuries being given, and done on boeth sides, the peace of this his Majesties Colony hath bin much disturbed, and the late unhappy Rebellion by this means in a great measure begunne & fomented which hath involved this Country into soe much Ruine, & misery, for prevention of which injuries and evill consequences as much as possible we may for time to come it is hereby concluded and enacted that noe English, shall seate or plant nearer then three miles of any Indian towne, and whosoever hath made or shall make any encroachment upon their Lands shall be removed from thence and proceeded against as by the former peace made when the Honourable Francis Morrison was Govern'r and the act of Assembly grounded thereupon is provided & enacted.

V. That the said Indians be well Secured & defended in their persons goods and properties against all hurts and injuries of the English, and that upon any breach or violation thereof, that the aggrieved Indians doe in the first place repaire and adress themselves to the Govern'r Acquainting him therew'th without rashly and suddainly betakeing themselves to any hostile course for Satisfaction who will inflict such punishment on the wilfull infringers hereof, as the Lawes of England or this Country permitt, and as if such hurt or injury had bin done to any Englishman, which is but just and Reasonable they owneing themselves to be under the Allegiance of his most Sacred Majestie.

VI. That noe Indian King or Queen be imprisoned without a Special Warrant from his Ma'ties Govern'r & two of ye Councill, and that noe other Indian be imprisoned without a warrant from a Justice of peace, upon Suffitient cause of Commitment.

VII. That the said Indians have and enjoy their wonted conveniences of Oystering, fishing, and gathering Tuccahoe, Curtenemmons, wild oats, rushes, Puckoone, or any thing else for their natural Support not usefull to the English, upon the English Devidends, Always provided they first repaire to some publique Magestrate of good Repute & informe him of their number and business, whoe shall not refuse them a certificate upon this, any other Lawfull occasion, soe that they make due returne thereof when they come back and goe directly home about their business without wearing or carrying any manner of weapon, or lodging under any Englishman's dwelling house on night.

VIII. That noe fforreigne Indian be suffered to come to any Englishman's plantacon without a friendly Neighbour Indian in his Company with such Certificate as aforesaid, And noe Indian King to refuse to send a safe Conduct with the fforrainger upon any Lawfull occasion of his Comeing in And that noe Indian doe paint or disguise themselves when they come in.

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IX. That all Indian Kings, and Queens tributary to the English having notice of any march of strange Indians neer the English quarters or plantacons doe forthwith repaire to some of the next officers of the militia, and acquaint him of their nation number and designe, and which way they bend their Course.

X. That if necessary a convenient party be presently sent out by the next Collo. of the Militia to aide strengthen and joyne, with our Friendly Indians, against any fforreigne Attempt, incursion, or depredacon upon the Indian townes.

XI. That every Indian fitt to beare armes of the neighbouring Nations in peace with us, have such quantity of powder and shott allotted him as the R't Hon'le the Govern'r shall think fitt on any occasion, and that such members of them be ready to goe out with our forces upon any march against the enemy and to Receive such pay for their good services, as shall be thought fitt.

XII. That each Indian King, and Queen have equall power to govern their owne people and none to have greater power then other, except the Queen of Pomunky to whom severall scattered Indians doe now againe owne their antient Subjection, and are agreed to come in and plant themselves under power and government, whoe with her are alsoe hereby included into this present League and treatie of peace, & are to keep, and observe the same towards the said Queen in all things as her Subjects, as well as towards the English.

XIII. That noe persons whatsoever shall entertaine or keep any Neighbor Indian as Servant or otherwise, but by licence of ye Govern'r and to be upon obligation answerable for all Injuries and damages by him of them happening to be done upon any English.

XIV. That noe English harbour or entertaine any vagrant or Runnaway Indian, but convey him home by way of pass from Justice to Justice to his owne towne under penalty of paying soe much per day for harbouring him as by the Lawe for entertaining Runnaways is Recoverable.

XV. That noe Indian of those in Amity with us shall serve for any longer time then English of the like Ages should serve by act of Assembly, and shall not be sold as Slaves.

XVI. That every Indian King and Queen in the month of March every yeare with some of their great men tender their obedience to the R't Honourable his Majesties Govern'r at the place of his residence, wherever it shall be, and then and there pay the accustomed rent of twentie beaver skinns, to the Govern'r and alsoe their quit rent aforesaid, in acknowledgment that they hold their Crownes, and Lands of the great King of England.

XVII. That due care be had and taken that those Indian Kings and Queens their great men and Attendance that come on any public business to the R't hono'ble the Governo'r Council of Assembly may be accommodated with provisions, and housroome at the publike charge. And that noe English Subject shall abuse revile, hurt or wrong them at any time in word or deed.

XVIII. That upon discord or breach of Peace happening to arise between any of the Indians in amity with the English upon the first appearance and beginning thereof, and before they enter into any open Acts of hostility or warr one against another they shall repaire to his Majesties Governo'r by whose Justice & wisdom, it is concluded such difference shall be made up and decided, and to whose finall determination the said Indians shall Submitt and conforme themselves.

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XIX. That for preventing the frequent mischeifes and mistakes occasioned by unfaithfull, & corrupt interpreters, & for the more Safetie satisfaciton, and adgvantage both of the Indians, and English, that there be one of each nation of our neighbouring Indians, that already can or may become capable of speaking of English, admitted together with those of y'e English to be their owne interpreters.

XX. That the severall Indians concluded in this peace forthwith restore to the Respective English parents & owners, all such children servants, and horses, which they have at any time taken from them, and now remaining with them ye said Indians, or which they can make discovery of.

XXI. That the trade with the said Indians be continued, Limited, restrained, or laid open, as shall make best for ye peace and quiett of the Country, upon which affaire the Govern'r will consult with the Counsell and Assembly, and conclude thereon at their next meeting.

XXII. That it is further agreed that all Indians and English in the Province of Maryland are inclined in these Articles of peace. And that neither partie shall offend the other without breach of his Majesties peace.

Signe and Tribe of the Indian representatives who witnessed the signing of the treaty.

Source: Bay Link Education Site, <http://www.baylink.org/treaty/>.

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Sources: State and Federal Criteria for Recognition

TRIBAL RECOGNITION CRITERIA Ratified by the Virginia Council on Indians - May 16, 2006

According to the *Code of Virginia*, § 2.2-2629, the Virginia Council on Indians “shall establish criteria for tribal recognition and shall recommend to the General Assembly and the Governor in its biennial report those tribes meeting the criteria that should be given official state recognition.”

The Council is to “report its findings and recommendations to the Governor and the General Assembly not less than 60 days prior to the convening of the session of the General Assembly held in each even-numbered year.” If the Commonwealth of Virginia extends “tribal recognition,” by an Act of the General Assembly, the recipient is then known as a tribe, that is, an Indian-descended group that has functioned in specific ways over time.

CRITERIA

Criterion 1. Show that the group’s members have retained a specifically Indian identity through time. Virginia state recognition of Indian tribes is the Commonwealth’s method of endorsing the Indian identity of tribal groups whose members have consistently declared their ancestry among themselves and in public. Petitioning groups must submit evidence supporting their longtime sustained practice of identifying as “Indians” within their group, as well as evidence of identifying themselves as “Indians” in public.

Criterion 2. Demonstrate descent from an historical Indian group(s) that lived within Virginia’s current boundaries at the time of that group’s first contact with Europeans. The tribe from which petitioners claim descent should have lived in an area within the current boundaries of the Commonwealth of Virginia at the time of that tribe’s first sustained, documented contact with Europeans.

Criterion 3. Trace the group’s continued existence within Virginia from first contact to the present. The petitioners should be able to document their group’s history within Virginia from their first Colonial encounter. If there has been movement from the originally recorded location to other places within Virginia, then records documenting the group’s existence along the route of movement will be considered. A geographical clustering of families should be demonstrated at least until the early twentieth century.

Petitioning groups should show that they have had a community existing within Virginia from historic times to the present. Any group of descendants that may have organized out of state will not be considered for state recognition. If the tribal group in Virginia has already obtained recognition from another state, its Petition will not be considered for Virginia state recognition.

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Criterion 4. Provide a complete genealogy of current group members, traced as far back as possible. The present members of the petitioner’s group should be shown, as far back as records permit, to descend directly from members of the original historical tribe(s). The petitioners should trace their tribal genealogies to at least the mid-nineteenth century.

Criterion 5. Show that the group has been socially distinct from other cultural groups, at least for the twentieth century and farther back if possible, by organizing separate churches, schools, political organizations or the like.

Among the recognized tribes, three hallmarks of cultural cohesion in the twentieth century were organized tribal governments, tribal churches, and, until desegregation, separate “Indian” schools. Any group petitioning for Virginia state recognition should present similar documentary evidence of being a culturally distinct, cohesive community.

Criterion 6. Provide evidence of contemporary formal organization, with full membership restricted to people genealogically descended from the historic tribe(s). The petitioning group should currently have a formally organized government, with established bylaws and with membership criteria restricting full membership to people proving their genealogical descent either from the historic tribe or from a historic membership roll.

Source: excerpt from the document entitled "Tribal Recognition Criteria" written by the Virginia Council on Indians, May 16, 2006, <http://indians.vipnet.org/stateRecognition.cfm>.

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**25 CFR Part 83:
Procedures for Establishing that an American Indian Group
exists as an Indian Tribe**

83.7 Mandatory criteria for Federal acknowledgment

The mandatory criteria are:

- (a) The petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900.
- (b) A predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present.
- (c) The petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present.
- (d) A copy of the group's present governing document including its membership criteria. In the absence of a written document, the petitioner must provide a statement describing in full its membership criteria and current governing procedures.
- (e) The petitioner's membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity.
- (f) The membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe.
- (g) Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.

Source: The seven criteria are presented here in abbreviated form. For the complete text of each criterion, please refer to 25 CFR Part 83,
http://www.access.gpo.gov/nara/cfr/waisidx_01/25cfr83_01.html.

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Sources: Bill Summary and Articles

H.R. 1385: Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2009

6/3/2009--Passed House amended. Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2009 - Extends federal recognition to the following Indian tribes (the tribes) in the Commonwealth of Virginia and establishes their relationship with the federal government as described below: (1) the Chickahominy Tribe; (2) the Chickahominy Indian Tribe--Eastern Division; (3) the Upper Mattaponi Tribe; (4) the Rappahannock Tribe, Inc.; (5) the Monacan Indian Nation; and (6) the Nansemond Indian Tribe. Makes the tribes and their members eligible for all services and benefits provided by the federal government to federally recognized Indian tribes. Establishes the service area of each tribe and requirements for each tribe regarding its membership roll, governing documents, and governing body. Requires the Secretary of the Interior, on request of any of the tribes, to take specified lands into trust for the benefit of that tribe, to be considered part of that tribe's reservation. Prohibits the tribes from conducting gaming activities. Prohibits this Act from affecting the hunting, fishing, trapping, gathering, and water rights of the tribes and their members. Requires Virginia to exercise jurisdiction over all criminal offenses committed, and all civil actions arising, on lands in Virginia owned by, or held in trust by the United States for, the tribes. Authorizes the Secretary to accept all or any portion of Virginia's jurisdiction over such offenses and actions on verification by the Secretary of a tribe's certification that the tribe possesses the capacity to reassume such jurisdiction. Prohibits the use of eminent domain to acquire lands in fee or in trust for an Indian tribe recognized under this Act.

Source: Congressional Research Service, a nonpartisan arm of the Library of Congress. GovTrack.us, <http://www.govtrack.us/congress/bill.xpd?bill=h111-1385&tab=summary>.

Article 1:

The Virginian-Pilot, June 10, 2009—"Virginia's Indian Heirs Cling to Sliver of Native Soil"

<http://hamptonroads.com/2009/06/virginias-indians-heirs-cling-sliver-native-soil>

Article 2:

The Virginian-Pilot, June 10, 2009—"Red Tape Separates Indian Tribes From Federal Cash"

<http://hamptonroads.com/2009/06/red-tape-separates-tribes-federal-cash>

Article 3:

The Virginian-Pilot, June 10, 2009—"Tribes Pay Rent to Virginia for 3 Centuries"

<http://hamptonroads.com/2009/06/tribes-pay-rent-va-3-centuries>