

Get Informed – Get Involved

Governance Resources





Boozhoo!

While our stories and traditions vary from place to place and have changed over time, they remain an important foundation for who we are.

History tells us where we came from, history tells us how we got to where we are today, and history can tell us where to go in the future.

We hope you find the information shared here useful.

**-Miigwech,
Zaagibagaang**



TRADITIONAL GOVERNANCE



Clan System



“The Creator gave the Anishinaabe a system to live in a way that makes us feel good about ourselves and makes us feel good about life.”

- John Morrin, Grand Portage

The elders say that if we are to develop something for our future generations based on Anishinaabe perspectives, understanding, and worldview, we must understand our history. There is much to learn and this is just a starting point.

Our ancestors lived in a way of mino, which is often translated as good, but it's more than that. Mino is about a sense of feeling. They lived in a way that made them feel good about themselves, feel good about life.

The clan system set into motion a way of life and created important relationships that guided actions. The original clans were: fish, loon, crane, bear, marten, the hoofed, and bird. The spirits of all these clans give us guidance and direction. We are all born into one of these clans.

The elders say that originally the clan system was matriarchal, people got their clan from their mother. As more Europeans came to this land and imposed their traditions on us, the clan system became patriarchal. Today we get our clan from our fathers. For thousands of years, the women had conducted all the ceremonies and were the heart of our society. However, since European men did not even consult with their own women, they did not speak to Anishinaabe women, thus Anishinaabe men became the spokespeople and conducted negotiations and ceremonies. This was a difficult change.

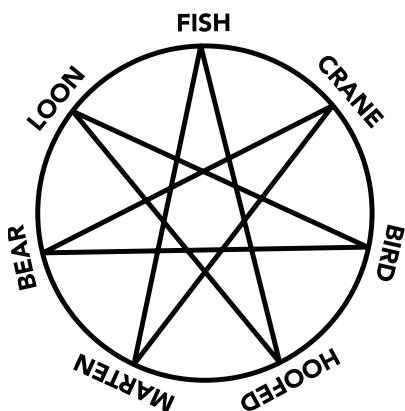


The clan system continued to guide the lives of our ancestors, including what we call governance today. Leadership took several forms. Often, the most knowledgeable people were sought out as leaders. These were people who demonstrated their expertise. Leaders had the characteristics of being good listeners, being able to put their own opinion aside, and being articulate. Historically, there was also hereditary leadership, often from the loon and the crane clans. Those selected for leadership positions were held accountable by the people. During this time, leaders were primarily spokespeople – they carried forward the word of the people. Decisions were made by the people and the leaders had the responsibility to carry out those decisions.



Watch Naabek (Leech Lake) discuss leadership in "What makes a Good Leader" at <https://zaagibagaang.com/media>

While our government didn't have assistance programs like today, there was a system to ensure everyone was cared for. In the clan system, everyone had a role as well as responsibilities to carry out. Everyone had to work together and make contributions. People were expected to use their gifts to help others. This was a reciprocal system where each person both gave and received help. They all worked together to keep balance and follow mino.



The roles of the clans have taken different forms in different places and changed over time. This system adapted to the needs of the people and still has important value today.

The Bear Clan had a protecting or guardianship role. Members of the Bear Clan often served as warriors. Many of them also had knowledge about plants,

medicines and roots. We might think of their role as doctors or healers today.

The members of the Marten Clan were the warrior society, willing to put their lives on the line for the people. But warriors also had a responsibility to help the people. They made sure everybody was taken care of. We might think of their role much like caretakers or counselors today.

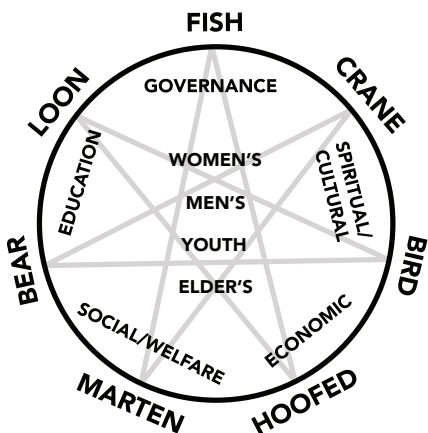
The Fish Clan were known as mediators. They were good at building consensus even when dealing with difficult issues. They resolved disputes. We might think of their role as judges or mediators today.

The Hoofed, such as the moose, bison, and deer, were the pacifists and poets. They were typically very gentle people. They were known for being kind and could be referred to as peacemakers today.

The Bird clans, such as eagle, heron, hawk, and loon, were the spiritual leaders and made sure all the ceremonies were conducted. They were known as excellent orators who knew and shared our history and also helped facilitate communications among the clans and with other groups.

Each person had a role within their clan that made the best use of their personal gifts and strengths. There was leadership in each clan and each clan was accountable to one another.

Leaders were appointed, it was usually the Clan Mothers of each Clan that picked the leaders and made recommendations to the people. The people chose the leader and the Clan Mothers bestowed leadership. When a leader did not speak the will of the people, they were removed from their position and someone else took their place.



This system also included women's councils, men's councils, youth councils, and elder's councils. Everyone in the society had a voice and a responsibility to participate. The system ensured there was representation.

There was a law, a natural law of our relationship to our creation and Mother Earth. That was the overall law and, of course, there were other customs that were created over time and in response to changing circumstances.

This was the kind of society our ancestors had. Everyone had responsibilities to participate and to do their share to ensure there was *mino* (a good life). Contributing made people feel good. Leadership took many forms and much time was spent discussing and debating decisions. The primary responsibility of leaders was to carry out the decisions made by the people.

Today we might describe the clan system and councils as a system of checks and balances. Sometimes people associate checks and balances with the U.S. Constitution, but our ancestors already had a structure with a division of duties and responsibilities for thousands of years. The U.S. founders actually used some of our ideas to create their system.



Watch John Morrin (Grand Portage) share his knowledge about how our clan system functioned in "Anishinaabe Governance" <https://zaagibagaang.com/media>



Our ancestors lived under this system, but major changes came, especially after the U.S. was created and started to gain power. Despite those changes the people adapted. The clan system and councils were still in place but started to be chipped away in the 1800s. The U.S. assimilation policies, including the devastating land allotment policy and the boarding school systems, disrupted our way of life and the systems that ensured mino.

These policies undermined the structure of our families as well as our clans and governance. In many cases, the leaders were unable to carry out the decisions of the people because the U.S. would not negotiate. There were unspeakable atrocities that happened in boarding schools. The U.S. policy of land allotment left reservation land bases in ruins. Our spiritual practices, which were completely intertwined with the clan system, were actually outlawed. Many spiritual leaders were arrested and put in prison. Together these policies created hardships and widespread poverty. Many people could no longer provide for themselves or their families. They could not fulfill their responsibilities and the systems that ensured everyone was cared for broke down. A lot of damage was done.

It is important for us to remember today that our ancestors tried their best to resist assimilation and to keep our way of life alive. They were courageous, and many held onto the worldview that we are all related. While they respected individuality, they also recognized the relationships people had with each other and the relationships with all of creation. We must care for each other, for the plants, for the animals, for the land, for the water, for the air, and for the whole Mother Earth.

Many Anishinaabe were deeply wounded during the U.S. assimilation efforts. Some went on living but were not able to recover in a spiritual way. They were unable to reconnect with their families and clans. Some internalized what they were told in the boarding schools. They began prioritizing the individual over the collective whole. They no longer carried out their responsibilities. It is hard to accept this but we must as it is our history – and it still affects us today. For example, the allotment

process devastated and broke up our communities and overall our way of life. We haven't yet recovered; we are still dealing with the impacts of allotment today.

We are now in a time when we can work towards healing, towards bringing back the values and principles that worked for our ancestors. We can bring back the values and principles into our families, our society, and our governance. We wouldn't be here today if it wasn't for the strength of our ancestors. They want us to fulfill our responsibilities and live mino. Be mindful of this as we go forward.



TRADITIONAL GOVERNANCE



The Seven Teachings



"As Anishinaabe people, we are a sharing people. They say that our spirit is in balance when our heart and our mind are working together."

- John Morrin, Grand Portage



The Seven Grandfather/Grandmother teachings guided our ancestors and still guide our decisions on both an individual and collective level today. These teachings reinforce the energy in our hearts and keeps us in balance in relationship to all of creation. As Anishinaabe, each of us has a responsibility to learn as much as we can about these teachings, to share our knowledge with others, and to do our best to follow these teachings. There are different versions of these teachings and all are valuable.



Minaadendamowin (Respect)



It is the responsibility of adults to teach the children respect. We have to respect ourselves before we can respect other people and before we can respect the nation and before we can respect the Creator in a true way.

To know respect is to know how to give. To honor all creation is to have respect. Live honorably in teachings and in your actions toward all things. Be mindful of the balance of all living things. Share. Treat all of creation the way you would like to be treated.





Zaagiidiwin (Love)



Anishinaabeg are to always act in love and compassion. A person must love themselves before they can truly love others as well as the Creator. When we are weak, we need your love and compassion the most without judgement or conditions. When we speak, we should speak out of love.

If you want peace you must be love. Then you will be at peace with yourself, in balance with life, all things, and also with the Creator.



Aakode'ewin (Bravery)



To have bravery or courage is to do that which is morally right. Be proud of being Anishinaabe. Everyone has fears, follow your heart, draw on your courage when making decisions. If you've made a mistake or a decision that is being questioned, have the courage and bravery to take criticism and admit if you've made a mistake.

To face life with courage is to know bravery. Find your inner strength to face the difficulties of life and the courage to be yourself. Defend what you believe in and what you know is right for your community, family, and self. Make positive choices and have conviction in your decisions.



Gwayakwaadiziwin (Honesty)



Be honest with yourself and have an understanding of who you are as Anishinaabe. You must also be honest with others. Accept who you are and know how to use the gifts you have been given.

To be honest with ourselves. To live in the spirit of how we were created. Never lie or gossip about one another. Speak the truth. Do not seek to deceive yourself or others.



Nibwaakaawin (Wisdom)



Learn all that you can. Study our constitution and study the laws that have affected us and still affect us today. Understand the American political system so when we have to advocate on behalf of our people and our governments that we know what we are up against and we can truly advocate in a wise way. We always have to be aware that we can learn more.

To live in wisdom is to know the gifts the Creator gave to everyone. To use these gifts to build a family and community filled with caring, sharing, kindness, respect, and love for one another. When we know how to use our gifts to serve others, we become an instrument of the Creator, helping to bring peace to the world. To have wisdom is to know the difference between good and bad, and to know the results of your actions.



Dabaadendiziwin (Humility)



Know you are a sacred part of creation, no better or no less than any other being. Recognize that human beings will make mistakes— try to learn from mistakes. Be modest and accepting of all people. Find balance within yourself and all living things.

One should always think about their family, their fellow beings, and their community first. To know humility is to know that there is a Creator who directs all life. Humble yourself and recognize that no matter how much you think you know, you know very little of all the universe.



Debwewin (Truth)



Always seek the truth. We first must understand our own truth. The truth lies in spirit. Prayer should be done every day at sunrise to give gratitude to the Creator for the gift of life. All gifts and ceremony are given by the Creator to the Anishinaabeg to help us live the seven teachings.

Show honor and sincerity in all that you say and do. Understand your place in this life and apply that understanding to the way that you walk. Be true to yourself and all others.



Many Anishinaabeg view the Seven Teachings as traditional knowledge that collectively represents what is needed for restoration of mino-bimaadiziwin.

Mino-Bimaadiziwin (The Good Life):

It takes dedication and discipline to follow these teachings on a daily basis. Keep all these principles in mind because this is what makes you Anishinaabe and enables you to truly live mino-bimaadiziwin. A good way of life. These teachings should be reflected in our governance system today. If we are to restore health and justice in our community, we have to work to practice these teachings that were given to us.

NATIVE NATIONS INSTITUTE



Five Core Principles of Native Nation Rebuilding



"We have to think about the things we really want, the things we really cherish, and we must make sure these principles are included and reflected in our governing structure."

- Sharon Day, Bois Forte



The Native Nations Institute's (NNI) understanding of Indigenous nation building emerges from 30 years of research by the Harvard Project on American Indian Economic Development (founded in 1986) and NNI (founded in 2001). The results of this research indicate that five elements are particularly important for understanding the conditions under which sustained development can be successful in Indigenous nations.

1. Sovereignty

Native nations that have been willing and able to assert self-governing power have significantly increased their chances of sustainable economic development.

2. Capable Governing Institutions

The chances of sustainable development rise as Indigenous nations put in place effective, non-politicized dispute-resolution mechanisms and build capable bureaucracies.

3. Cultural Match

Institutions that build and innovate upon Indigenous conceptions of authority fare better than those whose form departs from such conceptions.

4. Strategic Orientation

Successful Native nations tend to approach development not as a quick fix for poverty but as a means of building a society that works.

5. Leadership

In successful Indian nations, there is typically a group of individuals who recognize the need for fundamental change in the way things are done and can bring the community along with them in building that future.

Indigenous nations are engaging in Native nation building as they work to embrace and apply these principles.

NNI provides Native nations and other policy makers with accessible research and policy analysis of governance and development in Indian Country. They have a wealth of free resources available including:

- **Indigenous Governance Database**
- **Constitutions Resource Center**
- **Interviews with Tribal Leaders**

See nni.arizona.edu for more information

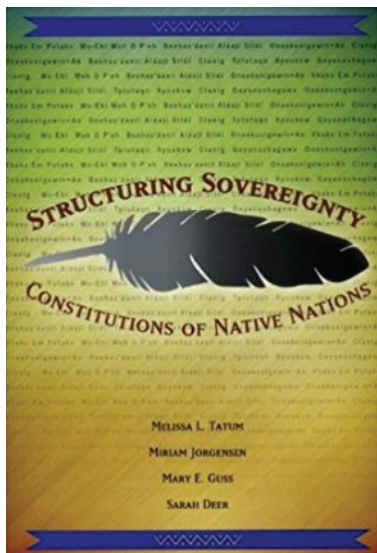
Questions for Discussion:

- *What is cultural match?*
- *Why does cultural match matter in the design of a government?*
- *Are historic governing systems still useful today?*
- *In whole, or in part?*

STRUCTURING SOVEREIGNTY



Constitutions of Native Nations



This section contains summaries and excerpts from the published book, which is a valuable resource of information regarding Constitutions of various Nations. Additional information is provided as it pertains specifically to the Minnesota Chippewa Tribe (MCT).

*By Melissa L. Tatu, Miriam Jorgensen, Mary E. Guss, Sarah Deer
Published by American Indian Studies Center, Los Angeles, California,
2014*

Governments and Constitutions

Over the last twenty or thirty years, multitudes of new constitutions have come into existence as communities around the world, both Indigenous and non-Indigenous, have exercised their powers of self-determination to govern themselves and say, "This is who we are as a people." Adopting a constitution is an act of sovereignty, and Native nations, like other sovereign governments, possess the power to write their own constitutions. A misconception about constitutions involves their intended duration—are they supposed to last forever? While some communities have that intention, others include a regular schedule for review.

Minnesota Chippewa Tribe: The period of duration of the tribal constitution shall be perpetual...

State of Connecticut: The question of "Shall there be a Constitutional Convention to amend or revise the Constitution of the State?" shall be submitted to all the electors of the state at the general election held on the Tuesday after the first Monday in November in the even-numbered year...

Federated States of Micronesia: At least every 10 years, Congress shall submit to the voters the question: Shall there be a convention to revise or amend the Constitution?"

Questions for Discussion:

- *What are the purposes of government?*
- *What are the purposes of a constitution?*
- *Should a Constitution last forever?*
- *What elements should be included in the Constitution?*

CONSTITUTIONS IN CONTEXT

Both practical experience and research demonstrate that a government can accomplish more for its citizens when its organizational structure resembles the community's customs and traditions. When there is cultural match, citizens are able to trust in government and work with it to achieve desired community results. When government institutions allocate power and decision-making in a way that does not match the culture of the community, citizens tend to ignore government, criticize it, disrupt its functioning, or use it for self-interested purposes. It is one thing to observe that a community's government is more functional if citizens view its structure as culturally legitimate. It is quite another to actually construct governing institutions with a cultural match.

It is critical for a community to study and rely on its own internal law when drafting or revising a constitution. Cultures change and

evolve over time, as do a community's governance needs. Forces ranging from colonialism to the development of an international legal system have redrawn governmental boundaries, changed political and legal philosophies, and redefined the scope of governmental authority. Vast technological advances, from railroads to computers and satellites, have shrunk the world and connected it in ways unimaginable only a century ago.

These differences have also changed the concept of sovereignty. Indigenous governments are now subject not only to their own law but also (and often in significant ways) to the laws of the nation-state(s) in which their territories or populations are located.

A community may want to consider those external laws when drafting or reforming its constitution and make a determination about whether it wants to clearly recognize the ways those laws affect its own governance.

Questions for Discussion:

- *How does cultural match make a difference in the design of a government?*
- *How have norms concerning the distribution and exercise of governmental power changed over time?*
- *What sources of law might be used in drafting or reforming a constitution?*

THE PREAMBLE AS A STATEMENT OF IDENTITY

Drafting a constitution requires a nation and its people to think about who they are and how they want to relate to one another and to the rest of the world. Some nations chose to include this thinking in the constitution itself in the form of a preamble. A preamble is an introduction that sets forth the constitution's purpose, the foundational principles of government, and the nation's aims or key goals.

Mohegan Tribe: We, The Mohegan Tribe of Indians of Connecticut answerable to our ancestors, in order to secure to ourselves and our descendants the management of our own affairs as a sovereign American Indian Nation, to ensure the maintenance of our basic human rights, to exercise our sovereign rights as a federally recognized Indian tribe, including the right of self-determination and self-governance, and to promote the general welfare of The Mohegan People, do hereby establish, adopt and proclaim this Constitution.

Grand Traverse Band of Ottawa and Chippewa: We, the members of the Grand Traverse Band of Ottawa and Chippewa Indians of Michigan, in order to organize for our common good, to govern ourselves under our own laws, to maintain and foster our tribal culture, to protect our homeland, to conserve and develop our natural resources, and to insure our rights guaranteed by treaty and the federal government, do establish and adopt, as an incident of our sovereign powers, this Constitution for the government, protection, and common welfare of the Grand Traverse Band under the authority of the Indian Reorganization Act of June 18, 1934, (48 Stat. 984), as amended.

Hopi Tribe: The Constitution is adopted by the self-governing Hopi and Tewa Villages to provide a way of working together for peace and agreement between Villages and of preserving the good things of Hopi life, and to provide a way of organizing to deal with modern problems, with the United States Government and with the outside world generally.

Questions for Discussion:

- *What purpose(s) is served by a preamble?*
- *Should a constitution have a preamble? Why or why not?*
- *What does the preamble of the Minnesota Chippewa Tribe say?*

DEFINING THE CITIZENRY

Sovereign nations have the authority to determine who their citizens will be, and as the document that describes the structure of a government, most constitutions provide this information. Acknowledgement of citizenship is a governmental act (a government recognizes its citizens). Some tribes have different types or categories of citizenship.

Citizen Potawatomi: Members shall be all persons who were enrolled or entitled to be enrolled on the official census on January 1, 1937.

Fort McDermitt Paiute and Shoshone Tribe (1936):

Membership shall consist of all original allottees and their descendants who maintain a residence on the former Fort McDermitt Military Reserve or every child of 1/4 or more Indian blood of whose parents are members.

The Alabama and Coushatta Tribes of Texas (1938): Any Coushatta Indian who marries a Coushatta or Alabama Indian living on the Alabama and Coushatta Reservation shall be a member of the tribe but no such person may vote in any tribal election unless he is 21 years of age or over and has maintained a continuous residence within the reservation for a period of one year immediately prior to the date of such election.

In addition to defining who is eligible for citizenship, a nation may want to define the grounds for revoking (taking away) or surrendering citizenship. Most nations do not have any option for revocation or surrendering citizenship—once a citizen, always a citizen but some Tribes do have grounds for revoking citizenship, which is also known as disenrollment.

Questions for Discussion:

- *Should different categories or levels of citizenship exist? If so, what would they will be?*
- *Do you think blood quantum should be a factor in citizenship? Why or why not?*

- *Do you think there should be a citizenship test? If so, what would the requirements be?*
- *Once a person has been determined to be a citizen, do you think there are any circumstances under which the person's citizenship should be revoked? What are they? Who should make that decision?*
- *What are the current membership requirements in the Minnesota Chippewa Tribe Constitution? How have those requirements changed over time?*

RELATIONSHIP BETWEEN GOVERNMENT AND CITIZENS

What is the balance between government power and citizen power in a nation? What rights and responsibilities might a Native nation's constitution include to clarify citizens' role and government's role? There are different aspects of the government-citizen relationship, and the constitutional excerpts highlight a variety of ways that a tribal government can choose to describe and define the relationship.

Many Western countries embrace the idea that governments exist, in part, to protect individual rights. According to this line of thought, individuals existed before governments, and individuals tend to join together to create governments as a means of mutual self-protection. If a government is obligated to its citizens, then the government possess only those powers that are assigned to it by the citizens. Those powers will be ones related to protecting citizen rights and the government will be restricted from interfering with individual liberties, unless that interference is absolutely necessary. The United States is an example of this kind of political thought.

By contrast, some governments are organized to focus on protection of the community as a whole. This "communitarian" approach to government prioritizes group rights over individual rights and may encourage or require individuals to adhere to certain duties and responsibilities. Citizens still have individual

rights, but rights must work in harmony with the goals of the community. In addition, some government structures reflect multiple political theories, protecting both group and individual rights. Some Tribal constitutions make no mention of individual or group rights at all.

A Native nation will need to consider external constraints on the rights and responsibilities of its citizens. In the U.S., the Indian Civil Rights Act (ICRA) of 1968 provides a useful example. The Act prevents tribal governments from interfering with federally recognized individual rights (which tribal members have by virtue of their US citizenship) and affirms tribes' responsibility to uphold a particular set of civil rights. In other words, ICRA specifies a minimum set of rights that a tribal government must provide.

Changes to an external government's law may require changes to a Native nation's constitution. Changes that the Tribal Law and Order Act of 2010 (TLOA) made to ICRA are an example. Under TLOA, tribes with appropriate judicial system capacity can sentence offenders for up to three years for one offense, but tribes that wrote the old ICRA limitation of "up to one year" into their constitutions must amend their documents before they can exercise the jurisdiction that TLOA restores.

Some tribes do not acknowledge federal laws in their tribal constitution and some specifically mention the federal law, others simply include a list of the rights contained in the federal law and frame the language as tribal law.

Sovereign immunity is the legal principle that governments may not be sued in their own courts unless they voluntarily waive or surrender, that privilege. US-based Native nation governments are entitled to invoke sovereign immunity—and, likewise, they may choose to waive it.

Questions for Discussion:

- *Why can it be problematic for a tribe to incorporate the law of another nation into its constitution? How can those concerns be alleviated?*

- *If a constitution specifies citizen rights, what is that language actually saying about where the government's power comes from?*
- *Do you think constitutional rights should apply equally to tribal citizens and those who are visitors to the nation? Should some constitutional rights apply to both groups?*

SCOPE OF GOVERNMENTAL AUTHORITY

The words, territory, and jurisdiction sometimes are used interchangeably. In law, however, territory and jurisdiction are two different things. Territory is the physical, geographic boundaries claimed or controlled by a government—the lines that can be drawn on a map. Jurisdiction is the legal authority of the government, the ability to make law and enforce it. Many Native nations' constitutions explicitly recognize this difference.

Including a definition or description of the nation's geographic area in the constitution can be particularly important for nations whose identity is closely tied to a land base or to other aspects of geography. In such cases, the description is part of the community's statement of peoplehood. At the same time, it is common for an Indigenous nation's description of its territory to differ from the geography recognized by other governments.

A government generally has the authority to decide what happens with its land base and related resources. It generally can exercise authority over people within the nation's territory. It also may exercise authority over its citizens when they are outside that territory, especially with regard to certain issues (ex. treaty rights).

Many external governments try to limit the authority of Native nations. Under these anti-sovereignty laws, the external government may claim that Native nations do not have authority over minerals, or the criminal behavior of non-Indians on Indian land, or certain economic transactions affecting the tribe or its citizens. In fact, there may be any number of Indigenous government powers that external governments try to restrict. Regardless, a Native nation still can choose how much or how

little of the authority within these limits that it wishes to exercise and whether it is possible to establish current jurisdiction (over land, people, or issues) outside the limits.

Tohono O’odham Nation: The sovereign powers, authority, and jurisdiction of the Tohono O’odham Nation and its government shall extend to all lands within the boundaries of the Tohono O’odham Nation... the sovereign powers, authority and jurisdiction of the Tohono O’odham Nation and its government shall extend to all persons and activities carried on within the boundaries of the Tohono O’odham Nation consistent with federal law... the sovereign powers, authority and jurisdiction of the Tohono O’odham Nation and its government over members of the Tohono O’odham Nation shall extend beyond the geographical boundaries of the Tohono O’odham Nation.

Like other nations, most tribes are not eager to voluntarily give up any authority but select portions of sovereign authority may be useful in specific circumstances. For example, a Native nation may wish to cede authority to help spur economic and community development. Since tribes often rely on revenue from tribal government-owned enterprises as an alternative to tax revenue, they need to enter into contracts with outside parties. Those parties often want assurance that if a contract is broken or an employee suffers a harm for which the tribal government bears responsibility, the company or the individual has rights for recourse. Without such assurance, companies are less likely to partner or transact with the tribal government enterprise, making tribal economic development and tribal government revenue generation much more difficult. Increasingly, Native nations are strategically yielding a bit of their power and authority, through limited waivers of sovereign immunity, for exactly this reason.

Osage Nation: As a sovereign Indian nation, the Osage Nation and all administrative offices, departments, agencies, and instrumentalities of the Osage Nation shall be immune from suit or process in any forum except to the extent that the Osage Nation Congress expressly waives its sovereign immunity. The Osage Nation’s sovereign immunity shall extend to officials and employees of the Osage Nation when acting within the scope of their duties and authority.

Questions for Discussion:

- What is jurisdiction and how does it differ from territory?
- What should a Native nation consider when deciding how to define its territory?
- Are there different types of jurisdiction? If so, can you describe some of them?
- What is sovereign immunity? Under what circumstances may it be useful to grant a limited waiver of sovereign immunity?

GOVERNMENTAL STRUCTURE

Three basic governmental functions are making law, implementing and enforcing law, and resolving disputes. These three functions give rise to the three important general types of governmental action—legislative, executive, and judicial.

Legislative action consists of making laws, example, when a tribal council passes a law or an ordinance making child abuse illegal, it is exercising legislative authority. Executive action implements and enforces laws, example, when the Council appoints someone to prosecute people for violations of the child abuse law. Judicial action involves resolving disputes about laws or deciding when a law has been violated. When a tribal court judge hears a case about alleged child abuse, determines guilt, imposes a sentence, and/or mandates restitution, they have exercised judicial authority.



Watch Tadd Johnson (Bois Forte) explain the roles of the TEC and RBCs in "What do the MCT and RBCs do Today?" at <https://zaagibagaang.com/media>

Every government needs a mechanism for making laws, implementing and enforcing laws, and resolving disputes. A community can choose a system of government that has a single branch, two branches, three branches, or four or more branches. It can choose a system that includes an Elder's council, a youth council, a role for traditional or spiritual leaders, or any number of other possibilities.

In addition to allocating functions across areas of government, constitution drafters or reformers also might consider how the

various parts of government will relate to each other: Will they have overlapping or independent functions and authorities? The idea of separating the various functions and authorities of government among different and relatively independent units of government often is referred to as a “separation of powers”; another way of thinking about it is a “separation of responsibilities.”

There are good reasons not to vest all governmental functions, authorities, and responsibilities in a single unit of government (one branch). By allocating responsibilities across units, it is possible for one unit to minimize or even stop (“check and balance”) the inappropriate actions of another unit. Separation diminishes the opportunity for any one community faction to gain control over all government operations. A related concern is that a consolidated power structure makes it easier for a small number of leaders to engage in corruption or manipulate the government for personal reasons.

Ho-Chunk Nation: The government is organized in four branches: General Council, Legislature, Executive and Judiciary.

Saint Regis Mohawk Tribe: The government is divided into three separate and independent branches of governing consisting of the Legislative, Executive and Judicial Departments.

Questions for Discussion:

- *What are the primary functions and authorities of governments?*
- *What does it mean to have a “separation of powers” or “separation of responsibilities”? Why might it be useful to a organize government this way?*
- *Is a separation of powers or separation of responsibilities part of Indigenous traditions? Or is it only a European/Western concept?*
- *Does the constitutional structure provide a way to resolve disputes between citizens, between citizens and the government, and between parts of the government?*
- *Are government responsibilities organized in such a way that, as the government produces decisions and actions, even individuals who disagree with those decisions and actions*

agree with the process that led to them?

How many branches of government are included in the MCT

► *Constitution? How does this impact our members?*

LEGISLATIVE FUNCTIONS

Legislative power is the power to determine laws and policies for a community. All governments, including tribal governments, make law. Native nation governments have always made law, although those historic systems for doing so generally did not resemble modern (western) processes.

In the United States, a series of federal government policies have put pressure on Native nations to transition away from traditional law-making systems. In the early to mid-1800s, as settlers increasingly were allowed to occupy Indian territories, several southeastern Native nations strategically adopted constitutions and legislative processes that would be more familiar to their American neighbors. A century later, in order to comply with the Indian Reorganization Act, more tribes reformed their constitutions and adopted western legislative processes.

From the mid-1970s onward, many tribal governments wanted to take advantage of the self-government opportunities provided by contracting and compacting under the Indian Self-Determination and Educational Assistance Act. Because tribes needed new laws to implement those self-government duties, many tribal legislatures created new systems using the westernized constitutions and practices that were already in place. With increased use, these legislative practices became much more familiar to tribal leaders, and many tribal governments have embraced them as their own.

Legislative responsibility can remain with the broad electorate (voters), be shared between the community and the government, be assigned to a specific branch of government, or be split among two or more units of the government. Legislative power can remain with the community itself to serve as the legislative

body. This method may work in smaller communities, but can break down as the size of the community increases. On the other hand, a community can create a legislative body with broad lawmaking responsibilities. There are also several options that lie in between the two models. For example, a community can create a legislative body and assign it a limited set of powers, retaining other legislative responsibilities at the community level. Many tribes have both a general council (composed of all voting-age citizens) and a tribal council (composed only of elected or otherwise appointed representatives). These dual systems work best when there are clear statements about the powers of each body and when constitutional provisions prevent either the general council or the tribal council from interfering with the other's powers.

A Native nation may also create an additional legislative body to deal with a particular topic. The Osage Nation Minerals Council is such a body. It, not the Osage Nation Congress, has legislative authority over the tribe's mineral estate.

Crow Tribe: The Crow Tribal Council shall be composed of the entire membership of the Crow Tribe.

Santa Clara Pueblo: The legislative power shall be vested in the pueblo council and the said power shall be exercised in accordance with, and not in conflict with, the constitution or any laws of the United States of America.

Grand Traverse Band of Ottawa and Chippewa Indians: The Tribal Council is vested with all of the sovereign governmental executive and legislative powers of the Tribe not inconsistent with any provision(s) of this Constitution or federal law.

Mohegan Tribe: The members of the Tribe reserve to themselves the power to propose ordinances and resolutions and to enact or reject the same at the polls independent of the Tribal Council upon petition of thirty-five (35) of the registered voters within seven (7) days of such action.

Mohegan Tribe: The Mohegan Tribe shall be governed by The Mohegan People, and represented by a Tribal Council, consisting of nine tribal members, and a Council of Elders, consisting of seven tribal members, unless and until said number of members is increased through the enactment of a joint ordinance, approved by a majority of the Tribal Council and a majority of the Council of Elders.

Even when a community creates a legislature with lawmaking powers, it may want to provide quite specific directives for the use of that power. Such specific directives tend to concern issues of great importance to the nation. For example, the community may want to make sure the authority of traditional chiefs is fulfilled or directions provided in the constitution about what the government can (and cannot) do with the community's land. Information on the procedures by which laws will be proposed, discussed, and enacted may also be included in the constitution.

Muskogee (Creek) Nation: Every bill which shall have passed the Muskogee (Creek) National Council, before it becomes ordinance, shall be presented to the Principal Chief of The Muskogee Nation. If he approves, he shall sign it; but, if not, he shall return it with his objections to The Muskogee National Council, who shall enter the objections at large on their journal and proceed to reconsider it, if, after such reconsiderations, two-thirds (2/3) of the full membership of the Muskogee National Council shall pass the bill, it shall become an ordinance in such cases, the votes shall be determined by yeas and nays, and the names of the person voting for and against shall be entered on the journal of The Muskogee National Council.

Questions for Consideration:

- *What legislative powers do you think should be in a constitution?*
- *Do you think there should be limits on the use of initiatives or referendums? If so, what limits are most appropriate?*
- *Will votes be recorded? If so, how? How will tie votes or deadlocks be handled?*
- *How will legislation be implemented?*
- *Does the Minnesota Chippewa Tribe Constitution specifically*

list powers of the legislature? How are laws made now under the MCT Constitution? What role do members play in the legislative process?

- *What laws do the MCT Bands follow for the expenditure of funds or the decisions made to spend enterprise revenue?*

EXECUTIVE FUNCTIONS

Executive power is the authority to implement and enforce laws enacted by the legislative functions. In almost all societies—Indigenous societies included—the performance of executive functions is not the task of a single person. These responsibilities are carried out by the executive officers, who are empowered to implement and enforce the government's policies, regulations, and laws.

Organizationally, the executive powers are often divided into two general categories—those exercised by elected officials or political appointees who serve for a set period of time and those exercised by administrative agencies staffed with government employees whose jobs, theoretically, are not tied to political cycles. Historically, there is a precedent for both kinds of executives (political and nonpolitical) in some Native communities and for quite complex systems of leadership in which many individuals shared their leadership talents. Today most written tribal constitutions define and describe elected and appointed officials. Some mention cultural or hereditary leaders. Some also address the administrative agencies necessary for executing governmental responsibility.

A constitution can identify which portions of the government will exercise executive responsibility and how each role will be structured. Issues to consider include: Who are the executive officers? What is the nature of their responsibilities? How will compensation be considered?

Many tribal governments today find that administrative agencies are necessary to accomplish day-to-day government work. One

way to create this capacity is to establish departments and agencies of tribal government in the constitution. However, naming every administrative agency in the constitution has a cost: it limits the government's ability to quickly adapt to changing administrative needs. Alternatively, a constitution can establish a core set of administrative agencies and provide for the statutory creation of other agencies on an as-needed basis.

Questions for Consideration:

- *What administrative agencies might a Native nation opt to establish in its constitution? If it does not establish them in the constitution, how should they go about establishing them?*
- *What would be some advantages of setting the compensation of government officials in a nation's constitution? What would be some disadvantages?*
- *What executive offices are designated in the Minnesota Chippewa Tribe Constitution? What are the roles given to each of those executive officers?*

GOVERNMENTAL OFFICIALS

A government can operate only through the people who work for it, both those who are selected to serve as government officials and the employees who work for various government agencies and departments. Constitutions typically establish specific roles and qualifications for these government officials, procedures for their selection, and processes for holding them accountable. Qualifications for holding office may vary depending on the office, and often include matters such as citizenship, age, residency, ancestry or blood quantum, and lack of a criminal record.

Gila River Indian Community of Arizona: No person shall be elected or hold office as Governor, Lieutenant Governor, Chief Judge, Associate Judges, or Councilmen unless he 1) is a member of the community; 2) has reached the age of twenty-five (25); 3) has been living in the particular district he is to represent for at least sixty (60) days immediately preceding the election;

4) has been living on the Reservation for at least one year immediately preceding the election.

The duration or term of each office and the conditions for turnover should be given serious consideration. If terms are short, a new official may not have time to learn the job well before another election is due. Short terms also make it more difficult for officials to think about the long-term health of the nation. On the other hand, citizens may feel that short terms help them hold elected officials accountable. Constitution framers and redrafters need to find a balance between these perspectives.

Staggered terms ensure that legislators are not all subject to new elections at the same time. This helps provide stability and continuity in government functions. Otherwise, every new election has the potential to bring in an entirely new set of government officials who have no institutional memory and for whom there will be a learning curve. A tribe also may want to consider whether to overlap the terms of executive officials, such as having the governor (or principal chief, chair, or president) overlap with the outgoing attorney general, or having the terms of executive officials start and end at different times than those of the tribal council members.



Check out our three part series, "What do you know about the MCT election process?" at <https://zaagibagaang.com/media>

Many written constitutions specify a process for selecting government officials. The procedures may be the same for each type of government official or they may vary. Possible procedures range from traditional or ceremonial processes to the type of one-person, one-vote election

processes used by many nations. Regardless of the method chosen, the community's sense of its legitimacy and fairness will be key factors.

Nothing tears a community apart or paralyzes a government faster than an election that is perceived to be unfair. It is important to establish mechanisms for ensuring that candidates are qualified to hold office, voters are eligible, elections are free

and fair, and that election disputes can be resolved. Some Native nations address these practicalities in statutes or regulations, while others do so in their constitutions.

Citizens need ongoing methods for holding officials accountable, methods that help hold government officials to their jobs and refrain from misconduct. Certain constitutional provisions can be helpful in this regard. They include establishing a code of ethics, requiring an oath of office, defining grounds for removal, and creating a process for removing, recalling, or replacing government officials. To promote fairness, there is an appropriate order to these processes: Standards of conduct should be clear before any sanctions or removal proceedings come into play. Tribes have relied on both traditional and contemporary language and rules in describing the conduct that is expected of elected officials. One of the more common requirements is that government officials do not engage in anything that involves a conflict of interest while in office. A number of tribes' constitutions define specific conflicts of interest. In general, the concern is that the official not put personal interests ahead of the interests of the tribe.

A constitution might also include what the consequences will be if an official fails to comply with what is expected or required and how those consequences should be carried out. Critically, a nation should clarify who has the authority to remove a person from office and what safeguards exist against improper removal. Provisions also can be made in the constitution for replacing elected officials who resign or can no longer continue serving.

Questions for Consideration:

- *Do you think all elected officials should be required to take an oath of office? If so, what sorts of things should be in that oath?*
- *What should the minimum qualifications be in order to hold a government office?*
- *What standards should be established for holding government officials accountable for their conduct?*
- *What provisions should be made to replace officials who resign or are removed from office before the end of their term?*

➤ *Who resolves the MCT's election disputes? Is there another way for election disputes to be resolved?*

JUDICIAL FUNCTIONS

Judicial power is a third aspect of a government's power and refers to the authority to resolve disputes. American Indian dispute-resolution systems existed before any European settlers arrived in North America. Tribes largely operated under their traditional dispute-resolution procedures until the late nineteenth century, when the U.S. government established Courts of Indian Offenses to undermine the authority of these systems by claiming that they needed to "maintain law and order" and bring "civilization" to reservations.

After the Indian Reorganization Act was passed in 1934 and tribes began to reform their governments, many were not in a position to recreate their systems of justice. Instead, tribal governments established legal systems closely fashioned after the U.S. So, a number of tribal judicial systems now resemble their U.S. counterparts.

But this does not mean that all tribal systems are the same. Some tribes continue to use traditional dispute-resolution processes, like peacemaking. Others have hybrid systems, which have both traditional and western elements. And some tribes are adopting more western elements (juries, public defenders) because for them it provides a way to exercise criminal justice authority more effectively today.

Regardless of its form, a successful judicial system is one that is able to protect the public, enforce contracts, help restore families, and address claims fairly. It is one that holds the respect of tribal citizens, noncitizens, and external governments alike. It is able to play a critical role in the creation and maintenance of a safe and thriving Native community.

- *What kinds of forums and processes best fit the nation's values and needs?*
- *Who will oversee and engage in the dispute-resolution process?*
- *What authority will the courts and/or other dispute-resolution mechanisms possess? For example, will a tribal court be able to declare laws unconstitutional or invalid?*
- *Who shall be subject to the court's authority (tribal citizens, all Indians, non-Indians, those who live on reservation, those who live off-reservation, etc.)?*
- *How will judges or other presiders be selected? What qualifications will be required to hold that office?*
- *What process will be used for removing judges from office and to fill unexpected vacancies?*

Judicial power can be established in a variety of ways. Some Native nation constitutions from the Indian Reorganization Act era establish tribal judicial power simply by noting that the legislature has the power to create a court or provide a means of settling disputes.

Judicial power can be established in a variety of ways. Some Native nation constitutions from the Indian Reorganization Act era establish tribal judicial power simply by noting that the legislature has the power to create a court or provide a means of settling disputes.

Haida Nation: A Judicial Tribunal will be convened to resolve internal conflicts in a timely way.

Ft. McDowell Yavapai Nation: The judicial power of the Fort McDowell Yavapai Nation shall be vested in the Fort McDowell Yavapai Judiciary which shall consist of a Trial Court and Supreme Court and such other lower courts or lower alternative dispute resolution forums as are deemed necessary by the Tribal Council.

Grand Traverse Band of Ottawa and Chippewa Indians: The Tribal Judiciary shall be independent from the legislative and executive functions of the tribal government and no person exercising powers of the legislative or executive functions of

government shall exercise powers properly belonging to the judicial branch of government.

Some tribes have only one level or type of Court. Others have both a trial court and appellate court, and still others may call for a wellness court, drug court, veterans' courts, or any other special court that accomplishes their goals. The structure of the judicial function can be specified—in whole or in part—in the nations' constitution.

Constitution drafters will want to consider the process for selecting judges or other presiders over dispute-resolution processes, including what their qualifications should be. Does a trial court or appellate court judge need to be a licensed attorney with a law degree? Should the judge be a citizen? Over a certain age? Admitted to the tribal or state bar?

Although each tribe possesses the ability to define the qualifications necessary to serve as a judge, the federal government's Tribal Law and Order Act of 2010 expanded the sentencing options only if the tribal judge presiding over the case possesses certain minimum qualifications; the key qualifications are "sufficient legal training to preside over criminal proceedings" and being "licensed to practice law by any jurisdiction in the United States." Again, the relationship desired with external governments may play a role in the decision-making of a Tribe's constitution.

Questions for Consideration:

- *How does the MCT Constitution address courts or judges?*
- *What is the evolution of tribal courts within the MCT Bands/Reservations?*
- *What judicial powers should be stated in the constitution?*
- *Would you write the language of these powers narrowly or broadly, and why?*
- *Should judges be appointed or elected, and by whom?*
- *When should a sitting judge recuse themselves or be subject to disqualification because of a conflict or an interest that may affect their ability to be impartial?*

- *Should a judge be subject to a term of office? What happens if a sitting judge is unable to complete their term?*

THE PROCESS OF CONSTITUTIONAL DEVELOPMENT

A constitution exerts a powerful legal, cultural, and historic force: It expresses and preserves a nation's sovereignty, and in doing so, it describes the structure of the government that will exercise that sovereignty. The process of drafting or revising a constitution is just as important as its content and it is a time-consuming and demanding task with no one "correct" set of procedures.

Often a committee is assigned to develop and implement a plan for drafting the constitution and for submitting the draft to the citizens for approval. Most constitution-drafting processes rely on meaningful community involvement and input, a tribal constitution committee should consider its needs for community involvement and structure its plan accordingly.

Questions for Consideration:

- *What information will be gathered? What do people want from their government? What do they think is working well? What should be changed?*
- *How will the information be gathered in an open, transparent, and inclusive processes?*
- *When will the information be gathered? How many opportunities will be given to provide input and what is the timing?*
- *Who will draft the wording of the constitution? An individual or a working group?*
- *What is the timeline for completion and plan for referendum?*

INTERPRETING THE CONSTITUTION

When a community adopts a wholly new constitution, it must be concerned about the interpretation of that constitution, especially about how various parts of the document relate to each other and how the constitution relates to existing laws. A nation can provide guidance for these questions in the constitution itself, thereby smoothing the path of constitutional interpretation in the future. Once a new constitution is ratified, parts of it may be challenged or questions may arise about how to interpret the provisions. A community will need to identify who possesses the authority to answer those questions or resolve disagreements.

Some nations assign that power to the judicial branch:

Ho-Chunk Nation: The judicial power of the Ho-Chunk Nation shall be vested in the Judiciary. The Judiciary shall have the power to interpret and apply the Constitution and laws of the Ho-Chunk Nation.

Afghanistan: The Supreme Court upon request of the Government or the Courts can review compliance with the Constitution of laws, legislative decrees, international treaties, and international conventions, and interpret them, in accordance with the law.

Although constitutions generally are considered to be the foundational documents of a government, questions can arise concerning the relationship of the constitution to other laws. Some constitutions specifically provide that the constitution is the primary or supreme law of the community and that all statutes must conform to the requirements of the constitution.

If one section of the constitution is found to be invalid, what happens to the rest of the constitution? Is it automatically invalid as well? A severability clause states that if one part of the constitution is struck down, it is “severed” from the rest of the constitution, and the rest of the constitution remains valid.

Mohegan Tribe: In the event any sentence, paragraphs, section, or article of this Constitution is subsequently held invalid by a

court of competent jurisdiction, the remainder of this Constitution shall remain valid and in full force and effect.

Since a constitution defines the fundamental structure of a government, when a sovereign nation adopts a new constitution or amends an existing one, it is by definition making changes to its governmental structure and may be creating an entirely new government. When a government system changes, or when a new one comes into existence, questions arise about the relationship of the new government to the prior government and, in particular, whether the laws enacted by the old government are still good laws. A savings clause is a way to reaffirm that laws adopted prior to the new constitution are still good law. Without a savings clause, a tribe may find its entire set of laws eliminated.

A constitution may provide still other types of guidance regarding how to interpret the document, such as a section describing the role of the constitution in relation to other aspects of the nation's government or in relation to the rights of its citizens. Some communities include a list of definitions to guide the interpretive task. Ultimately, constitutional interpretation occurs as a constitution is used—which happens as a community relies on its government to organize society and assist the community to achieve its goals. But neither a constitution nor the nation's government is a "magic bullet." All nations have challenges and struggles, and its people will still encounter problems. A constitution and the government can provide a clear structure and an institutional framework for possible solutions to concerns. The citizens must participate in their government; they must work together to create a better future for the tribe as a whole.

Questions for Discussion:

- *In what circumstance might a tribal government need to interpret provisions of its own constitution?*
- *Why aren't disputes regarding how to interpret a constitutional clause resolved by simply reading the language of the constitution?*
- *Who has the authority to interpret the MCT Constitution?*
- *Where is this authority found?*



ANISHINAABE VALUES IN ACTION

Zaagibagaang is a grassroots effort focused on governance and nation building. With our Anishinaabe teachings guiding us, we bring our gifts together to provide information and work towards mino-bimaadiziwin today as well as for the next seven generations.

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