

Remaking Tribal Constitutions Seminar
Session 4: What Kind of Constitution Does Our Nation Need?
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 THE UNIVERSITY OF ARIZONA
NATIVE NATIONS INSTITUTE
Founded by the Udall Foundation & the University of Arizona

Strengthening Indigenous Governance

Session 4: What Kind of Constitution Does Our Nation Need?

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What form should Indigenous self-governance take?



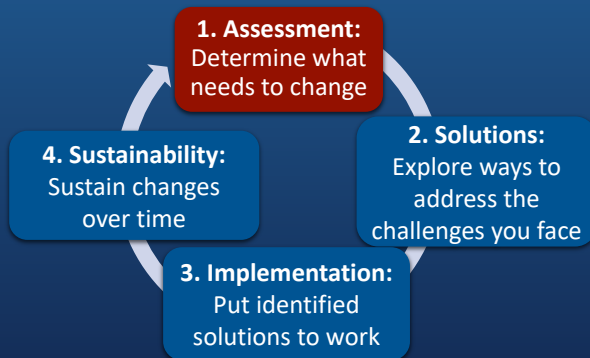
Governmental form varies tremendously across Indian Country.

There's no one-size-fits-all pattern today, and no one-size-fits-all solution tomorrow.

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How Can a Native Nation Strengthen Its Governing System

Four Important Steps:



Two Things You Want to Know

1. What is—and what isn't—working? (which governing tools need to be fixed?)
2. How comprehensive a change do you need to make? (a top-to-bottom overhaul? Some fine tuning of a good system? Something in between?)

Where should you look for solutions to governance challenges?

- In your own history and traditions, adapted to the contemporary world (you may have some solutions already in hand)
- In the experience and example of other Native nations, or even non-Native nations (you can borrow solutions from others)
- In the creativity of your people (you can invent solutions)



Government is a tool for achieving the nation's goals. If it going to be effective, then government will need:

clear goals, clear rules, clear roles.

Clarity on these things solved governance challenges 150 years ago.
It can help solve them today.



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Does our Native nation need to launch a constitutional process?



- What kind of nation do we want to be?
- What do we want to protect?
- What do we want to change?
- Do we have the governance tools in place to accomplish those things?
- What kind of a constitution do we need?



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Some key questions to consider in the assessment process:

- How well does our current governing system work? Would we describe it as effective or ineffective?
- Does our current constitution give our nation the tools it needs to achieve its goals?
- Is the constitution clear, and is it enforced? Do our citizens understand it? Do our leaders live by it?
- Where does our current (written or unwritten) constitution come from?
- Does it express our own core values?
- Does it effectively communicate who we are as a people and what matters to us?
- Do our people view the current constitution as *our* constitution or as someone else's idea of how we should govern?



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More questions:

What is and isn't working?

- Is the scope of governance appropriate?
- What's your relationship with off-rez citizens?
- Is the basis of representation appropriate?
- Are there adequate separations of power?
- Are disputes dealt with fairly and effectively?
- Does politics interfere with program or enterprise management?
- Does your community trust your government?
- Can the nation form lasting intergovernmental relationships?



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What is the Purpose of Constitutional Reform? What Need is Being Addressed?

- To strengthen the nation by creating a more capable set of governing tools
- To lay a foundation for sustainable development
- Not only to support sovereignty but to exercise it more effectively
- To better serve the people's needs
- What else are you trying to do?

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Key Issues a Constitution Needs to Address

- Who are we?
- How do we define nationhood and citizenship?
- Who has responsibility for what?
- How do we make law? Where does law come from?
- How do we resolve disputes?
- How do we choose our leaders and maintain quality leadership?

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Who are we? - Questions to Consider:

Constitutions can make statements about who they are and how they see themselves in relation to the world.

- How does our origin story inform who we are as a people?
- What core values and guiding principles does our origin story include?
- How do we express who we are?
- How should we articulate who we are in our written constitution?

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Who are we? (an example)



Coquille Indian Tribe (1999)

Preamble:

Our ancestors since the beginning of time have lived and died on the Coquille aboriginal lands and waters. The Coquille Indian Tribe is and has always been a sovereign self-governing power dedicated to:

1. Preservation of Coquille Indian Culture and Tribal Identity.
2. Promotion of social and economic welfare of Coquille Indians.
3. Enhancement of our common resources.
4. Maintenance of peace and order.
5. Safeguard individual rights of tribal members.

Our ancestors have passed on to us a sacred trust and obligation to maintain and safeguard these goals.

In recognition of this sacred responsibility, we, the members of the Coquille Indian Tribe, being a federally recognized Indian tribe pursuant to the Coquille Indian Restoration Act of June 28, 1989, 103 Stat. 91, hereby adopt this constitution in order to re-affirm our tribal government and to secure the rights and powers inherent in our sovereign status as guaranteed to us by federal and tribal laws.

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Nationhood and Citizenship - Questions to Consider:

Constitutions can specify criteria for citizenship and the obligations or responsibilities of citizens.

- How did we traditionally determine who was a part of us?
- Today, how do we determine who is a part of us?
- To what extent are our core values and guiding principles reflected in our current citizenship criteria?
- What is our long-term vision?
- What citizenship criteria do we need to realize our envisioned future?

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How do we define nationhood and citizenship?



Osage Nation (2006)

ARTICLE III - Membership:

Section 1. Base membership roll: The base membership of the Osage Nation shall consist of those persons whose names appear on the final roll of the Osage Tribe of Indians pursuant to the Act of June 28, 1906 (34 Stat. 539).

Section 2. Qualifications for membership: All lineal descendants of those Osages listed on the 1906 Roll are eligible for membership in the Osage Nation, and those enrolled members shall constitute the citizenry subject to the provisions of this Constitution and to the laws enacted and regulations approved pursuant to this Constitution.

Section 3. Dual enrollment: An enrolled member of the Osage Nation can choose to be dually enrolled as a member of another Indian tribe without forfeiting Osage membership.

Section 4. Membership laws: The Osage Nation Congress shall have the power and is required to regulate membership and maintain a correct roll of all Osages enrolled as members of the Osage Nation. The Osage Nation Congress shall enact laws, not inconsistent with this Constitution, prescribing rules and regulations governing membership, including application and appeal procedures, loss of membership, and the adoption of members.

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Who Has Responsibilities for What? - Questions to Consider:

Constitutions can specify how authority is organized within a government.

- Who should be doing what in terms of elected, or appointed, governance roles?
- Who has responsibility over what governance aspects?
- Which decisions should be made by our traditional leaders, elected council, a tribal court, or other governing body?
- Who makes the decisions in our community?
- Which decisions are best made by our nation as a whole?
- How are our citizens included in our decision-making processes?

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Who has responsibility for what?

Ho-Chunk Nation (1994)



ARTICLE III - ORGANIZATION OF THE GOVERNMENT

Section 1. Sovereignty. The Ho-Chunk Nation possesses inherent sovereign powers by virtue of self-government and democracy.

Section 2. Branches of Government. The government of the Ho-Chunk Nation shall be composed of four (4) branches: General Council, Legislature, Executive, and Judiciary.

Section 3. Separation of Functions. No branch of the government shall exercise the powers or functions delegated to another branch.

Section 4. Supremacy Clause. This Constitution shall be the supreme law over all territory and persons within the jurisdiction of the Ho-Chunk Nation.

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How do we make law? - Questions to Consider:

Constitutions can specify a nation's rules for behavior and action providing predictability in interactions with others.

- Where do our laws come from?
- What process do we use for making new law or, if necessary, reaffirming customary law? And what roles do citizens, legislators, and others have in that process?
- Do our laws reflect the core values of our community?
- What provision do we make for the effective enforcement of our laws?

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How do we make law? Where does law come from?



Grand Traverse Band of Ottawa and Chippewa Indians (1987)

Article IV - Powers of the Tribal Council

Section 1. Powers of the Tribal Council

The Tribal Council of the Grand Traverse Band shall be 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. Such powers shall include, but not be limited to, the following:

(c) To make all laws, not inconsistent with this Constitution, which shall be necessary and proper to carry out the sovereign powers of the Tribe, and to implement and enforce the same;

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How do we resolve disputes? - Questions to Consider:

Constitutions can specify the powers / responsibilities of the nation's courts or other dispute resolution mechanisms, their relationship to the others, how judges or other decision-makers will be chosen, how to assure competence and impartiality in decisions, etc.

- Traditionally, how did our nation resolve disputes?
- What core cultural values and principles should govern the administration of justice?
- What court(s) or other mechanisms for resolving disputes does our nation have? How are our dispute resolution mechanisms organized (appellate courts, inter-tribal courts, supreme court, wellness courts, peacemaking, etc.)?
- From where do such mechanisms get their authority (custom, constitution, statute, etc.)?
- How do we keep them free from political interference in decisions?

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How do we resolve disputes?



Mohegan Tribe (2002)

Article X

Powers & Duties of the Council of Elders

Section 2.

The powers of the Council of Elders shall include all judicial review powers reasonable and necessary to achieve the tribal goals recited in the Preamble hereof, and shall further specifically include, but not be limited to, the following powers:

- a) To rule over cases and controversies arising under this Constitution and arising under all laws of The Mohegan Tribe but not to issue advisory opinions or decisions in cases which are moot

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How do we choose our leaders? - Questions to Consider:

A constitution may specify qualifications for office (criteria such as age, residence, no criminal record, etc.), the processes by which elections take place, as well as how to hold leaders accountable.

- How are our leaders chosen?
- Is our current process of choosing leaders viewed by the community as fair, culturally appropriate, and free from damaging political interference? If not, what changes do we need to make?
- Do we make clear what we expect of our leaders in the way of knowledge, skills, integrity, and behavior?
- Once in office, how are our leaders held accountable to the community and its expectations?
- Does our constitution include enough information to effectively guide the nation's leadership selection process?

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How do we choose our leaders and hold them accountable?



Gila River Indian Community (1960)

ARTICLE VI—QUALIFICATIONS OF OFFICERS

Section 1. 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) years; (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. Additional qualifications may be prescribed by ordinance.

Sec. 2. No person who, within the year preceding the election, has been convicted of a crime involving moral turpitude shall be eligible to hold office in the Community.

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Other key questions to consider in the development/revisions of constitutions:

How do we relate to other peoples and governments?

- How do different layers of government within our nation relate to each other?
- What formal, cooperative agreements with non-Native governments does our nation have, and in what areas (trade, social services, law enforcement, taxation, natural resource management, etc.)?
- What process do we have for building such relationships? What part or parts of our government should carry responsibility for these relationships?

How specific should constitutions be?

- Are core governing principles defined?
- How specific do we want our constitution to be without risking becoming outdated as circumstances change?
- What can be left to legislation or other ways of establishing rules?



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Bear in mind the two tests of a governance system:

1. Cultural match.

Do your people believe this way of governing is appropriate for them? Do they see the system as theirs?

2. Effectiveness.

*Can this system deliver on the nation's needs and goals?
Can it get the job done?*



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Some Emerging Trends in Constitutions

- Integrating core values, language, history
- Rethinking the collective “self” in self-government
- Giving the community a greater voice in governance - including off-res citizens
- Longer and staggered terms for those in leadership positions
- In the United States, removal of the Secretary of the Interior approval



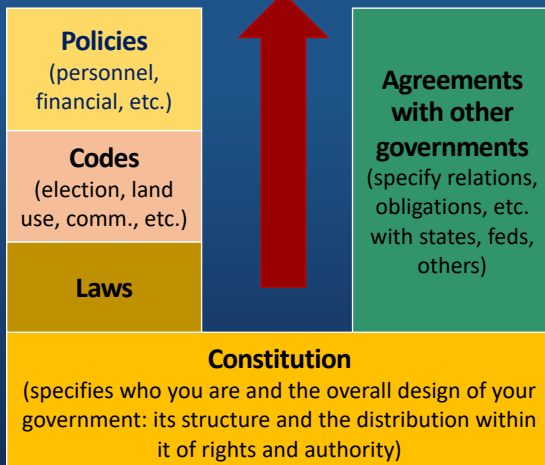
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Where You're Trying to Go



The Tools You Have to Work With

As you become more strategic, you also come up against a critical question:

Do you have the governing tools you need to make your vision come alive?



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