

Origins of the Trust Doctrine

The Relationship between the
Federal Government and
Indian Tribes

Sources of the Trust Doctrine

The trust doctrine defines the relationship between the United States and Indian Tribes. The doctrine is derived principally from:

- Law of Nations
- Constitution
- Treaties
- Statutes

Law of Nations

During colonization, the British and many of the colonies treated Indian tribes as sovereign nations holding title to their lands and entered into treaties with the tribes recognizing their title.

However, the purpose of these treaties was also to establish the right of the so-called discovering sovereign to extinguish Indian title, and to control transfers to third parties.

Early Supreme Court Decisions

- Early Supreme Court decisions defined the relationship between Indian tribes and the Federal Government.

Johnson v. McIntosh (1823)

Cherokee Nation v. Georgia (1831)

Worcester v. Georgia (1832)

- These decisions acknowledge the sovereignty of Indian tribes, while at the same time acknowledging the obligation to protect the interests of Tribes, and defining the nature of Indian property interests

Nature of Title

- Title is held by the US in trust for tribes and individual tribal members (allotments)
- Title is held in fee by the Tribes with a restraint on alienation (Tribes within original 13 colonies and Oklahoma)
- Title is held in fee – Pueblos
- Alaska – Alaska Native Claims Settlement Act

Constitution

The Constitution establishes the primacy of federal authority over Indian affairs and both defines and limits that power

- Treaty power— Art. II, sec. 2, cl. 2
- Regulation of commerce with Indian tribes – Art. 1, sec.8, cl. 3.
- Supremacy clause – federal laws regulating Indian affairs supersede state laws— Art. 6, cl. 2

Treaties and Agreements

- Recognition of title
- Acknowledgment of the protection of the US
- Specific rights secured – beneficial ownership of land, hunting and fishing rights, water rights, federal services like health and education services

Other sources – congressionally approved agreements, executive orders

Specific Statutes

Fiduciary duties necessarily arise when the Government assumes control or supervision over tribal trust assets, even if nothing is said expressly authorizing the trust or a fiduciary relationship.

Nature and Scope of the Trust Responsibility

The federal government must support and encourage tribal self-government and economic prosperity, and protect tribes and their interests. The federal government has an obligation to ensure tribal resources are managed in a manner that promotes Indian interests. This is in addition to any specific duties in treaties and statutes.

Fiduciary Relationship

A fiduciary relationship exists between the Federal Government and Indian tribes.

- Requires the highest degree of responsibility
- Requires utmost loyalty
- Requires Federal Government and its agencies to advocate for tribes, act in good faith toward tribes and seek to make tribal resources productive and profitable.

Implementation of Trust Responsibility

- Consult with tribes in determining how best to use or develop resources
- Analyze all relevant information in determining how best to act in the interest of tribes
- Make decisions based on the tribe's best interests
- Provide accurate accounting of all transactions involving resources

Recent Supreme Court Decisions

- U.S. v. Mitchell, 463 U.S. 206, 225 (1983) - “Where the Federal Government takes on or has control or supervision over trust monies or properties, a fiduciary relationship normally exists with respect to such monies or properties.”
- U.S. v. White Mountain Apache Tribe, 537 U.S. 465 475 (2003) – A trustee is required to preserve and maintain trust assets and must not allow them to “fall into ruin on his watch.”
- U.S. v. Navajo Nation, 537 U.S. 488 (2003) – federal statutes did not give comprehensive control over the activity there, and therefore there was no violation of trust duties. In addition, federal laws giving tribes the lead role in protecting resources may affect the nature of the trust duty.
- United States v. Jicarilla Apache Tribe, 131 S.Ct. 2313 (2011) – reaffirms the fiduciary relationship and confirms that the relationship is similar to that of a private trustee, but emphasizes the necessity of an underlying trust creating statute.