

**THE CONSTITUTION AND INDIAN LAW**  
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Language in the Constitution of the United States affirmed many of the rights of Indian nations, and it forms an important cornerstone of Indian Law.

The Constitution established treaty making as a prerogative of the federal government: The President “*shall have Power by and with advice and Consent of the Senate, to make Treaties, Provided two-thirds of the Senators present concur.*”(Article II, Section 2). The Constitution acknowledges three other governmental powers; foreign nations, the states, and Indian tribes, Article I, Section 8, known as the “*Commerce Clause*,” assigned to the United States Congress Authority to “*regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes*.” It is from this section that Congress has attributed to itself broad powers over Indian affairs. Responsibility for making and fulfilling treaties, then and conduction relations with Indian nations was given to the federal government, Article I, Section 10, specifically prohibited any state from entering into any treaty.

Article VI states that the “Constitution, and the Laws of the United States .. and all Treaties made, or which shall be made under the Authority of the United States shall be the Supreme of the Land” [emphasis added]. In the context of Indian law, under this “Supremecay Clause,” treaties are entitled to equal respect given to federal laws, and are superior to or “preempt” state laws and constitutions, in a conflict.

Another part of the Constitution to Indian law is the “just Compensation Clause” of the Fifth Amendment. The courts have held that treaty rights are form of property, that if those property rights are taken away, compensation is required.

## ***TREATY RIGHTS***

Indian nations made treaties with the United States just as they had with each other long prior to contact, and as they did with other European powers. The Indian nations viewed treaties as moral binding agreements, which could not be broken unless by mutual consent. Tribes were recognized as independent, separate nations, and treaties made with them were negotiated between equals as with any foreign nation.

The purpose of these intergovernmental contracts was not to give rights to the Indians; rights which as sovereign nations they already possessed, but to remove from them certain rights which they already had. In treaty-making Indian tribes were the **grantors** and the United States the **recipient**, and by or from Indians nations. Treaties limited only the external sovereign powers of Indians tribes, which tribes agreed, for example, not to make treaties with or go to war against foreign nations. Furthermore, rights to land, water, hunting, fishing, self government, food and medicine gathering rights, were not expressly granted away by tribes in a treaty, or taken away by a later federal statute. These were rights were reserved by the tribes to perpetuate their way of life for the benefit of the future generations, and did not diminish with the passage of time or change in technology.

## **TREATY of 1855**

Treaty of 1855 between the Northwest Tribes, Nez Perce, Umatilla, Walla Walla, Yakima (Yakama) and the United States was signed at Walla Walla, (copy) of Yakima (\*Yakama)Treaty. Twelve million acres of land was signed away by the party who represented their territory in the Yakima (\*Yakama) Treaty. Ten percent of that amount of acreage was reserved for the Yakima Indian Reservation.

Most Americans think, and are taught, that this country was purchased from the British, French, Spanish, Mexicans, and Russians. However, this is not true. America purchased the right to govern the lands held by other foreign nations. The actual ownership of the property was purchased from the natives (Indians) who owned the land by right of occupancy.

The sale of the land was negotiated through treaty with Indian tribes. Treaties ceded large tracts of land to the United States government and retained smaller tracts for continued Indian occupation. Also, the treaties determined payment for ceded lands, and they reserved certain rights “to gather foods, medicine; and to fish and hunt in their usual accustomed places.” In the East, the tribes learned the value of money, and they knew that cash money would soon be dissipated and leave the future generations helpless. Consequently, they set the precedent for negotiating for payment in goods, and with emphasis on education. The Yakima (\*Yakama) Confederated Tribes had horses, and they asked for a place to shod their horses. They were told they had to learn to farm, so they asked for a place to build implements and obtain seed, and they asked for teachers to teach them to do these things. They asked for medicine and health care, education, and housing. These necessities were explained to the Indian leaders by the missionaries for the betterment of their future generation.

Over half of the money was spent to provide services to American Indians is traceable to obligations based on land cessions. The Bureau of Indian Affairs was established to provide these services promised as payment for the land.

The United States negotiated approximately **400 treaties** with Indians. These treaties represent the bill of sale for this country.

Though the policy of treaty negotiations seemed to be a reasonable method for the land transfer of land titles, the implementation of this policy brought destruction to the Indian people. Indian history reads like a broken record, treaty violations after treaty violations.

Yet, to this day, the treaty is recognized as part of the **supreme law of the land, demanding the respect and honor of the American people.**

Justice Hugo Black of the U.S. Supreme Court stated:

“It may be hard for us to understand  
why these Indians cling so tenaciously  
to their lands and traditional tribal way of life.  
The record does not leave the impression  
That the lands of their reservations are the  
Most fertile, the landscape the most beautiful  
Or their homes the most splendid specimens of  
Architecture. But this is their home—their  
Ancestral home. There they, their children,  
And their forebears were born. They too,  
Have their memories and their loves.  
Some things are worth more than money.”

June 14, 1991 President Bush issued an Indian Policy Statement, affirming Government-to Government Relationship Between Indian Tribes.

March 3, 1993, Washington State signed a proclamation recognizing the Indian Tribes as a sovereign nations, reaffirming that is their policy to maintain government-to-government relationship within the governmental organizations and with the public.

October 26, 1993, The White House enhanced Government-to-Government Partnership between Indian Tribes and the United States to waive or alter the Federal regulations to make contracts with the Bureau of Indian Affairs for funds to manage their own affairs.

The Yakima(Yakama) Nation had not supported Self-Government policies because they felt the treaty made certain promises, and one of these promises was for the government to provide services.