

INDIGENOUS GOVERNANCE PROGRAMS IN AMERICA & NEW ZEALAND

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Introduction

The policy of the U.S. Government toward its population of American Indians has included a wide range of extremes. From policies of displacement and forced relocation,¹ to policies aimed at terminating tribal political institutions,² to the current policy of promoting tribal self-determination,³ American Indians have long been subject to the whims and caprice of government.

To rectify the ill effects of its Indian misadventures, over the years, the U.S. Government has developed an array of governance programs seeking to address such sundry policies as business development on reservations and the management of American Indian cultural resources. While the Bureau of Indian Affairs is tasked with managing the bulk of the relationship between the Federal Government and American Indian tribes, each of the 15 cabinet-level Departments has some Indian program housed within its statutory mandate.

Similarly, Māori governance programs under the New Zealand Government are largely housed within Te Puni Kōkiri – Ministry of Māori Development. The most significant difference between Māori and American Indian governance programs is the sheer volume of governance programs available in the United States. While some of the difference can be attributed to budgetary constraints and matters of legal personhood, this overview of some of the available governance training materials speaks to the opportunity for a broader vision of Māori affairs both within and outside of the New Zealand Government.

This overview proceeds in three parts. Part I provides a sampling of the major governance programs available to American Indian tribes in the United States of America. Part II outlines some of the governance programs available to Māori. Part III offers a brief concluding observations based upon the review of governance programs in parts I and II.

I. Indigenous Governance Programs in the United States

The Executive Branch of the Federal Government of the United States is a veritable labyrinth of Departments, agencies, bureaus and independent offices. The morass is most easily understood as consisting of fifteen cabinet-level Departments, each with its own statutory mandate, each headed by a Secretary who is directly accountable to the President of the United States. As the structure relates to Indigenous governance, because American Indian tribes have a political relationship with the Government of the United States,⁴ every Department of the Federal Government is in some way responsible for the administration of Indian affairs – though the bulk of Indigenous governance programs in the U.S. are administered by the Bureau of Indian Affairs, a division of the Department of the Interior.

¹ *The Indian Removal Act*, Act of May 28, 1830, ch. 148, 4 Stat. 411, § 1 (1830).

² ^ U.S. House of Representatives Resolution 108, 83rd Congress, 1953 (U.S. Statutes at Large, 67: B132).

³ 25 U.S.C. § 450 (2013).

⁴ *Morton v. Mancari*, 417 U.S. 535, 553 – 554 (1974).

What follows is a sampling of the major Indigenous governance programs from each Department of the U.S. Government that are available to American Indians, American Indian tribes and tribal entities.

A. Department of State

The U.S. Department of State is America's principle foreign affairs Department, tasked with managing American international relations. Because American Indian tribes are not considered "foreign nations"⁵ under U.S. law, the State Department has relatively limited influence over Indian affairs relative to other Cabinet-level Departments.

Of late, its major contribution to American Indian governance is through its support of emerging international law norms aimed at buttressing the rights of world Indigenous populations. The most relevant of these instruments is the recently adopted United Nations' Declaration on the Rights of Indigenous Peoples (UNDRIP). Through the Office of Global Intergovernmental Affairs, which works with state, local and subnational officials in the U.S. and abroad, the Department of State has undertaken significant consultation with tribal governments as it reconsidered the U.S. position on the UNDRIP.⁶

1. United Nations Declaration on the Rights of Indigenous Peoples

The United Nations Declaration on the Rights of Indigenous Peoples was originally adopted in September 2007.⁷ The measure was approved overwhelmingly by some 143 U.N. member states, while tallying only four votes in opposition. The four states opposed to the Declaration, however, included four Nations with some of the largest populations of Indigenous peoples in the world – the United States, Canada, Australia and New Zealand. After intense pressure from American Indian advocates, and following the lead of Australia, Canada, and New Zealand, the United States would reverse course and voice its support of the Declaration on December 16, 2010.

In announcing the policy change on behalf of the U.S. Government, the State Department released a comprehensive memorandum, which included a series of initiatives detailing its plan to implement the norms of the Declaration.⁸ The initiatives targeted some five areas of American Indian tribal governance.⁹ While the work of implementing the Declaration's principles is left to the various agencies and departments, the State Department has served as a coordinator for ensuring that the principles are being carried out across the Federal Government.

The first area of governance included in the State Department's dossier on the UNDRIP involves "strengthening the government-to-government relationship" between American Indian tribal nations and the Federal Government of the United States.¹⁰ The formulation is a

⁵ See *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831).

⁶ Reta Jo Lewis, *Remarks at the National Congress of American Indians*, available at <<http://www.state.gov/s/srgia/2011/157538.htm>> (last accessed May 20, 2013).

⁷ U.S. Department of State, *Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples*, 1, available at <<http://www.state.gov/documents/organization/184099.pdf>> (last accessed May 20, 2013).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 2.

bit obtuse in the Department report but functionally it amounts to the promotion of tribal self-determination. Of course, the American understanding of self-determination in this context is somewhat different than the way in which it is understood in international law.¹¹ In America, tribal self-determination is defined according to the government's "existing recognition of and relationship with, federally recognized tribes as political entities that have inherent sovereign powers of self-governance."¹² Such a policy is probably best understood as a general promotion of governance among American Indians rather than a self-determination leading toward secession. How this policy is carried out will be discussed throughout this overview in relation to the particular programs of other departments.

The second area in which the State Department promotes American Indian, tribal governance is in the protection of Native lands and natural resources.¹³ Here, the Department promotes the principles of the Declaration by supporting the call for "national laws and mechanisms for the full legal recognition of the lands, territories, and natural resources of indigenous peoples" that are communally possessed. As this relates to governance, the State Department supports the Declaration's provisions that protect American Indian lands and access to lands in which they have an interest.¹⁴ In turn, it affirms the incorporation of these principles into policies and procedures across the relevant Government agencies.

The third area of State Department interest in promoting tribal governance under the principles of the Declaration relates to its commitment to promote the better delivery of health care services for indigenous communities. The bulk of this commitment is administered by the Department of Health and Human Services as discussed in Section I below.¹⁵

Fourth, the State Department promotes tribal governance under the Declaration through the promotion of sustainable economic development. Similar to the implementation of the Declaration's principles related to health care, the Department supports the general governance principles under the Declaration related to economic development, but the actual work of administering tribal governance programs falls to the Department of Labor and the Department of the Treasury.¹⁶

Fifth, the Department of State promotes indigenous governance through supporting UNDRIP's provisions related to the protection of Native American cultures. While the State Department's role is limited, again, it coordinates the implementation of UNDRIP's provisions with "the activities of many U.S. agencies."¹⁷

In sum, the Department of State's role in the administration of indigenous governance programs is limited due to the Department's principal focus on international affairs. Even so, with the recent adoption of the U.N. Declaration on the Rights of Indigenous Peoples, the State Department has assumed greater responsibility in the promotion of the Declaration's principles in America's policy toward American Indians.

¹¹ *Id.* at 3.

¹² *Id.*

¹³ *Id.* at 6.

¹⁴ *Id.*

¹⁵ *Id.* at 10.

¹⁶ *Id.* at 11.

¹⁷ *Id.* at 13.

M. Department of Education

The Department of Education is the home Department of the White House Initiative on American Indian and Alaska Native Education.²⁹¹ The White House Initiative promotes the higher education of American Indians in a culturally appropriate manner by building “capacities of tribal colleges and universities.”²⁹²

N. Additional Agencies

Finally, there are only a handful of Independent agencies of the Federal Government that should be noted for their programmatic offerings to American Indians. The most important agency of note is the U.S. Environmental Protection Agency (EPA).

1. Environmental Protection Agency

The EPA’s American Indian Environmental Office provides a number of grants and funding to Federally recognized tribes for the development of tribal, environmental capacity-building activities.²⁹³

Additionally, the EPA’s Tribal EcoAmbassadors Program pairs EPA experts with professors at Tribal Colleges and Universities to fund research projects that aim to solve environmental problems on the reservation.²⁹⁴ The projects introduce students to environmental policy and science while also addressing needs in Indian communities.²⁹⁵

II. Māori Governance Programs in New Zealand

The literature in the preceding section outlines a sampling of the major governance programs available to American Indians in the United States. This section provides an overview of some of the available Māori governance training programs across New Zealand. The obvious difference of note is the differences in sheer quantity. The U.S. simply has a great many more programmatic opportunities available for American Indian tribes than New Zealand has for Māori. Some of the differences can be attributed to the quasi-sovereign legal status of American Indians under Federal law and the lack of a similar recognition for Māori under the laws of New Zealand. A second difference of note is the fact that American Indigenous governance programs are mostly creations of Government, whereas Māori governance programs span the gamut of sources, ranging from Government to academia to corporations to non-profit organizations and combinations of all of the above.

²⁹¹ Department of Education, *White House Initiative on American Indian and Alaska Native Education*, available at <<http://www.ed.gov/edblogs/whiaiane/>> (last accessed June 8, 2013).

²⁹² Department of Education, *Fact Sheet*, available at <<http://www.ed.gov/edblogs/whiaiane/files/2012/07/WHI-AIANE-Fact-Sheet.pdf>> (last accessed June 10, 2013).

²⁹³ American Indian Environmental Office, *AIEO Mission*, available at <<http://www.epa.gov/tribal/aieo/index.html>> (last accessed June 10, 2013).

²⁹⁴ Environmental Protection Agency, *About the Tribal EcoAmbassadors Program*, available at <<http://www.epa.gov/ecoambassadors/tribal/index.html>> (last accessed June 10, 2013).

²⁹⁵ *Id.*

A. Māori Governance Training & Education Programs

1. *The University of Waikato, Hamilton, NZ, Governance and Leadership Programme (2013)*.²⁹⁶

In February 2013, the University of Waikato School of Management, the Te Piringa - Faculty of Law, and the New Zealand Institute of Directors launched a first-of-its-kind Postgraduate Certificate in Management (Governance). The programme targets Corporate and executive education, making it ideal for directors, trustees, and board members who are interested in understanding the legal and ethical obligations imposed upon them in the execution of their duties.²⁹⁷

The certificate programme includes three modules of training and education, including “Financial and Managerial Accounting,” “Corporate Governance in Context: Legal and Ethical Issues in Law,” and “Leading Strategically.”²⁹⁸ Modules one and three will be taught by the School of Management and Module two will be taught by the Te Piringa – Faculty of Law. The modules are tailored to reinforce the four pillars of governance best practice: 1) Determining purpose, 2) An effective governance culture, 3) Holding to account, and 4) Effective compliance.

While not designed specifically for Māori executives, the new certificate programme provides an overview of law and policy that is nonetheless directly applicable to Māori entities. Examples include rules of liability, laws governing management operation, legal structure, fiduciary obligations, permissibility of communal ownership, and methods for accountability. The certificate programme leadership team hopes to offer a certificate of Māori governance in the near future.

2. *Gray, David, “Te Kete Kāwanatanga: A Resource for Governing High-Performing Māori Organisations,” (2012)*.²⁹⁹

Freelance management consultant, David Gray (former CEO of the Waikato/Tainui iwi authority), offers a range of services for Māori entities and organisations, including a manual and workshop on “governing high-performing Māori organisations.”³⁰⁰

Gray’s manual provides a bevy of information related to governance. Early chapters define governance, detail the duties of an entity’s board of directors, and suggest methods for developing a vision for the entity’s end policies. Subsequent chapters explore the metes and bounds of meeting policy objectives, methods for monitoring performance and tips for implementing governance systems.

²⁹⁶ The University of Waikato, *Governance Programme, 2* available at <<http://www.mngt.waikato.ac.nz/school%20publications/download/2013pgdipgov.pdf>> (last accessed June 10, 2013).

²⁹⁷ *Id.*

²⁹⁸ *Id.* at 3.

²⁹⁹ David Gray, *Te Kete Kāwanatanga: A Resource for Governing High-Performing Māori Organisations*, available at <<http://www.tekete.co.nz>>. (last accessed June 10, 2013).

³⁰⁰ David Gray, *The Workshop*, available at <<http://www.tekete.co.nz/theworkshop.html>>. (last accessed June 10, 2013).

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