

# Chapter 78

## Assessing the Interactions Between Native American Tribes and the U.S. Government in Homeland Security and Emergency Management Policy

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### ABSTRACT

*The working relationships between Native American tribes, the states, and the federal government have been strained for centuries. These intergovernmental interactions have led to a fragmented system whose attempt to deliver public service is consistently met with opposition. One area where this has become increasingly evident is within homeland security and emergency management policy. This study used a cross sectional survey to gather information about the beliefs tribes held about the various aspects of their working relationships with states and the federal government within the context of homeland security and emergency management. Analysis of the data revealed that the majority of the intergovernmental relationships that existed between tribes and the U.S. government did not possess the characteristics of an effective working relationship. Evidence also suggests that the intergovernmental relationships were actually having a negative impact on the U.S. government's goal to achieve a unified system of homeland security and emergency management on American soil.*

### BACKGROUND

#### Native American Tribes Within the United States of America

This study will help to provide a foundation upon which to build future studies in the field of public policy and homeland security focused on Indian country. As sovereign nations within the borders of the United States, Native American tribes hold a very distinct political and legal position. Native American tribes entered into agreements and compromises with the United States government; however, tribal

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nations never forfeited their sovereignty when entering into those agreements and as a result remain independent, occupying a position of sovereign immunity (Evans, 2011; McGuire, 1990) on U.S. soil.

Being sovereign nations within another sovereign nation, Wilkens (1993) acknowledges that from a theoretical and political perspective, tribes are in a legal and political quandary. As a result of these sovereign positions, much of the interaction between tribal nations and levels of the American government has been grounded in intergovernmental conflict for centuries. The conflict has consistently pit tribal governments against state, local, and the federal government regarding jurisdiction, gaming regulations, natural resources, tax obligations, and most recently, homeland security funding. In theory, tribes are to be sovereign, but in practice, they hold many other conflicting positions. As separate nations within another politically functioning nation they also simultaneously play subordinate roles.

Much of the existing literature on this topic paints a picture of hostility that is seated within the U.S. government, namely the states, and is directed towards tribal nations (Evans, 2001; Bays and Foubert, 2002). In fact, the interactions between states and the tribal nations have been cited as one of the most divisive intergovernmental conflicts within United States history (McCool, 1993; Mason, 1998, 2002; Wilson, 2002; Steinman, 2004). Scholars have sought to increase awareness of these conflicts and their harm to intergovernmental relations between the two systems of governance. They have classified the historical and contemporary components of these relationships as crucial. In this study's effort to explain ways to move past this conflict in the area of homeland security emergency management policy, it is important to engage the information put forth by these authors.

Aside from various treaties, Presidential Executive Orders, and Supreme Court rulings, the Constitution is the only formal document that acknowledges tribal governance as a system apart from the American system of federalism. Native American tribes are referred to in the Commerce and the Apportionment Clauses of the Constitution. Based upon the wording, the relationship between the federal government and tribes is one between sovereign nations and exclusive authority over Native American affairs lie with the federal government, not the state (Ortiz, 2002; Jarratt-Ziemski, 1999; National Council of American Indians, n.d.). However, there is concern that decision-making powers are shifting from the federal government to the states; this shift is giving states control over federal dollars and more say in how and where those dollars should be spent at the expense of the tribes (Ortiz, 2002).

Despite the existence of federal tribal policy, which intends that states should have no control over affairs in Indian Country, the federal government has often delegated many responsibilities to the states; thus, giving states decision-making and fiduciary control over many policy areas including emergency preparedness and homeland security. The creation of this indirect line of authority between tribes and the states has further complicated existing disagreements. It begs the question of whether or not the same interactions are taking place in the area of emergency management and homeland security.

In addition to tribes sitting outside the parameters of the federalist system, differences in culture and identity also influence the interactions between tribal nations and the U.S. government. Tribal governance incorporates such issues as tribal culture, history, social interactions, laws, jurisdiction, and sovereignty; therefore, it is critical to understand why Indian country wishes to retain their ways of governance (Ortiz, 1999). There is indeed a difference between the cultural and traditional aspects of American governance and that of tribal governance. These differences present very real barriers to conflict resolution between these two governance systems.

The culture and identity differences that make interactions difficult and conflict highly probable are not just about differences between Indian country and the U.S., but also include variations in culture and identity amongst tribal nations themselves. As Bays and Foubert (2002) articulate, culture, population,

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