



Understanding Treaties

A Guide for Non-Native Allies

Understanding treaty rights is a fundamental aspect to understanding and supporting Tribal sovereignty and the sustained rights of Native peoples. This resource seeks to provide allies and accomplices with a starting point to learn more about treaties and serve as a spark for ideas on how they might be able to support Native nations and sovereignty.

Introduction

Understanding treaty rights is essential to recognizing and supporting Tribal sovereignty and the enduring rights of Native peoples. Treaties are legally binding agreements made between sovereign powers—in this case, between Native nations and the United States. These treaties, over 300 of which have been ratified across the country, are as diverse as the Native nations themselves.

The presence or absence of treaties with a Native nation was influenced by historical timing, geographical location, shifting policies of the US. government, and diplomatic and political dynamics between Native nations and the US federal government. Not all Tribes have treaties, leading to varying levels of legal recognition by the US government and further challenging their inherent sovereignty. Even if a Native nation successfully negotiated a treaty with the US government, some were never ratified by the Senate. Others were broken or violated, failing to be fully honored.

Treaties that were negotiated and ratified include specific provisions that address land, resources, protection, healthcare, education, and the retention of cultural and sovereign rights. Today, these treaties continue to affirm the inherent sovereignty of Native nations and safeguard the rights of their citizens.

This resource guide aims to provide allies and accomplices with a foundational understanding of treaty rights, serving as both an educational tool and a source of inspiration for how to actively support Native nations and their sovereignty. By exploring the complexities and significance of these treaties, this guide seeks to spark meaningful actions that support Natives, their treaties, and sovereignty.

What are treaties?

Treaties are nation-to-nation agreements between two sovereign powers that must be upheld. In this context, we focus on treaty agreements of Native nations and the United States of America. Treaties are legally binding contracts between sovereign nations that establish those nations' political and property relations. Treaties between Native nations and the United States confirm each nation's rights and privileges.

Like the Constitution and Bill of Rights, treaties do not expire with time. They have the same power now as when they were originally created. Article Six of the United States Constitution holds that treaties “are the supreme law of the land” inferring that when a treaty is signed, it is a legal document that cannot be broken.

The United States used treaties mainly as a means to take land and legitimize the transactions from and with Native nations. Others were written to legitimize trade, military partnerships, and negotiate peace with Native nations. Treaties were not entirely foreign to Native nations prior to colonization as they had entered into treaties with other Native nations regularly. When treaties were made with the United States, Native nations often asked for specific provisions to be written into them. These provisions stipulated certain material items in exchange for land. Many Native nations also sought provisions that would retain a portion of land for permanent homes for their citizens. Lands would then be reserved for them and for their use leading to the term reservations which is used today.

For the United States government, some treaties with Native nations have historically been viewed as rights concerning land and property ownership. These treaties were created as a means of taking land from Native nations and “giving” them land for a reservation. Other treaties covered hunting and gathering regulations and set out what responsibilities the federal government had to that particular nation. Some treaties were implemented as ways to delegate land ownership to Native nations by the United States during the establishment of the country. Oftentimes, the land base for the Native nation to claim was designated a reservation. For Native nations lands are viewed as sacred and “ownership” is not based on laws or physical occupation. Instead, it is based on their relationship to the land, how they are living with the lands, and their traditions that were born from it throughout the generations.

Treaties were originally drafted and designed by the United States government early on in their journey to becoming a sovereign nation themselves. Establishing treaties with Native nations showed the world that the country was a sovereign entity of its own. Today, we see that many of these treaties have not been upheld or have been broken on behalf of the federal government, and that has been done by design. Some of these treaties were signed for performative measures or intended to not be followed through, unbeknownst to the Native nations who agreed to them at the time.

How do treaties impact me?

The treaties and treaty rights of Native nations sharing geography with the United States have significant impacts on non-Native people:

- **Legal + Constitutional Framework:** Treaties are considered the "supreme law of the land" under the U.S. Constitution, meaning they hold legal weight over state and local laws. This can affect land use, resource management, and jurisdictional authority, directly impacting non-Native people living near or within Native lands.

- **Public Lands:** Many treaties retain certain rights to resources like hunting, fishing, and gathering both within and outside their current reservation boundaries. Are you respecting tribal sovereignty when you travel and recreate?
- **Environmental Protections:** Native nations often use treaty rights to protect and defend natural resources as well as sacred spaces.
- **Business and Development:** Treaties can influence economic development projects, including infrastructure, energy, and real estate, especially when these projects overlap with treaty-protected lands or resources. Non-Native businesses and developers need to engage with Native nations to ensure compliance with treaty obligations.
- **Cultural Awareness:** Treaties and the rights they protect contribute to the broader cultural and historical education of non-Native people. Understanding treaty rights can foster better relationships and respect between Native and non-Native communities, encourage collaboration and mutual respect.
- **Supporting Sovereignty:** Non-Native people who support Native sovereignty and treaty rights contribute to the broader Native Nation Rebuilding movement.
- **Impact on State Laws:** Legal cases involving treaty rights often set precedents that affect state laws and policies.
- **Sustainable Practices:** Native nations often advocate for sustainable environmental practices based on treaty rights. These practices positively impact the broader ecosystem, benefiting non-Native communities by promoting cleaner water, air, and land.

Native nations treaties and treaty rights affect non-Native people by shaping legal frameworks, influencing land and resource management, impacting economic activities, fostering cultural awareness, and contributing to social justice efforts. Understanding and respecting these rights is crucial for building equitable and sustainable relationships between Native and non-Native communities. Keep in mind that treaties have a past of being broken or ignored, Native nations are constantly working to have their treaty rights affirmed, restored, and respected.

What are the most pressing challenges Native Nations face today in asserting and protecting their treaty rights?

Tribes and their citizens face many unique challenges in asserting and protecting their treaty rights. While we cannot include them all, we seek to provide a brief overview of some of the issues being faced:

Climate Change

Climate change disproportionately affects Native lands, threatening ecosystems, and traditional practices, resources, and places protected by treaties. For example, changes in fish populations due to warming waters can impact treaty-protected fishing rights.

Resource Extraction and Development

Industrial activities like mining, oil drilling, and logging on or near treaty lands can degrade natural resources that Tribes rely on, violating treaty provisions related to land, water, and wildlife.

Court Challenges

Conflicts between federal, state, and Tribal jurisdictions can complicate the enforcement of treaty rights, particularly in areas like law enforcement, land use, and resource management. Additionally inconsistent rulings can undermine treaty rights.

Erosion of Sovereignty

Efforts by state and federal governments to diminish Tribal sovereignty, often through legislation or executive actions, can undermine treaty rights. This includes attempts to impose state jurisdiction over Tribal lands or limit Tribes' ability to govern themselves.

Inadequate Federal Support

Despite the federal government's trust responsibility to uphold treaty obligations, there is often insufficient funding and political will to fully support the implementation of treaty rights, particularly in areas like healthcare, education, and infrastructure.

Public Awareness and Support

There is often a lack of understanding and support among the general public, which can influence political and legal outcomes. Misunderstanding or indifference to treaty rights can lead to resistance against efforts to uphold them.

How can I support the treaty rights of Native nations?

First and foremost, research the treaty rights of Native nations in your area. Oftentimes outsiders of Native nations call on Tribal leaders and citizens for educational resources or to provide training to help them learn. The reality is that Native nations, their leaders, and administration are extremely busy working on initiatives that support their community directly. Taking the initiative to educate yourself before speaking with leadership about ways you can support them shows a great amount of respect. Some Native nations may have resources on their respective nation's website to help you get started, but there is much more to dig into beyond that. Once you have a good understanding, expand your knowledge to Tribes outside of your region!

Do some more research. Are there demonstrations or events you could support? Do they need volunteers or folks to help advertise the event? Speaking with the Native nations directly about what their needs are and how you can help support their treaty rights is a big step in the right direction. Are they actively working with Council and non-Tribal governments to enhance these rights?

Are Native nations in your region actively involved in legislation to support and/or strengthen their treaty rights? Are they looking for folks to lobby Congress or help spread the word about a particular movement or initiative? Ask! Find out and see how you can get involved in the process! [Here](#) is an example of a legislative tracker from the Wabanaki Alliance, where voters and supporters can track bills related to Wabanaki Nations in the current legislative session and find out how to take action!

Additional Resources

- *Federal Indian Law* 7th Edition by Getches et al.
- Senate.gov: [About Treaties](#)
- BIA.gov: [What are Indian Treaty Rights?](#)
- BIA.gov: [Does the United States still make treaties with Indian Tribes?](#)
- Library of Congress: [Treaties](#)
- National Archives: [American Indian Treaties](#)
- History.state.gov: [Indian Treaties and the Removal Act of 1830](#)
- Office of the Administration for Children and Families: [American Indians and Alaska Natives - Treaties](#)
- National Museum of the American Indian: [Nation-to-Nation: Treaties Between the United States and American Indian Nations](#)
- *An Indigenous Peoples' History of the United States* by Roxanne Dunbar-Ortiz
- [Best Practices for Identifying and Protecting Tribal Treaty Rights, Reserved Rights, and other Similar Rights in Federal Regulatory Actions and Federal Decision-Making](#)
- *Rebuilding Native Nations: Strategies for Governance and Development* edited by Miriam Jorgensen



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