

**"Structuring Sovereignty Constitution of Native Nations By Melissa L. Tatum,
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Chapter 1. GOVERNMENTS AND CONSTITUTIONS

- A constitution is a form of expression of the relationship between a government and its people and of the fundamental principles that define that relationship.
- A written or unwritten document.
- Can a written constitution be consistent with customs, traditions, and style of government?
- Reducing certain customs or oral laws into writing is sometimes impossible, and some customary laws may be contained in unwritten traditional stories.
- A constitution, written or unwritten, is the fundamental law of a nation.

ELEMENTS OF THE CONSTITUTION

The primary purpose of a constitution is to set forth the structure through which a sovereign will govern itself and relate to other governments. They may exercise their sovereign powers to establish the best government forms that suit them **(Chapter 2.)**

- "The customs of the communal society are deliberately pervasive...using customs is essential for the cultural survival of...distinct people and as a governing entity. Cultural survival depends on the economic development of tribal resources: land, water, minerals, wildlife, and agricultural and natural resources... The government must implement policies and laws that make productive the members' use of the natural resources... in ways to promote personal well-being for members and economic gains for the community...
Gloria Valencia-Weber.
- Find a cultural match and provide democracy in the government.
- Consider the benefits of using external sources of international law.

When a nation enacts a constitution, it is considered the highest law, the foundation of its more detailed expression of law, and a chance to state explicitly what the nation must honor and respect.

The Preamble as a Statement of Identity **(Chapter 3)**.

- The content of preambles is often classified into five categories:
 1. The Sovereign
 2. Historical narratives
 3. Supreme goals
 4. National identity
 5. God of religion

THE GOVERNMENT NEEDS TO SERVE THE CITIZENS:

- Maintaining order
- Providing Services
- Safeguard cultural values

The Tribe needs to determine who qualifies for citizenship and receives tribal benefits. **(Chapter 4).**

- Citizenship and Ethnicity
 - Citizenship refers exclusively to a political status, to being accepted as a constituent of a recognized government. The acknowledgment of citizenship is a government act.
 - Being "Indian" (or Chippewa, Indigenous, Native, for example) usually refers to a person's ethnicity, which is the individual's act of claiming ethnic identity.
- Qualifying for Citizenship
 - Criteria
 - Tribal rolls
 - Ancestry
 - Residency(no tribe allows citizenship purely on residency on the Tribe's land. This distribution appears to be one of the themes underlying the US Supreme Court's decision reducing tribal sovereignty.
 - Specific rules that relate to the history of the tribal community
 - Dual citizenship, but prohibits those enrolled in another tribe from receiving tribal assets
 - Requirement of some bloodline
 - Use of different types of categories
 - Cultural connection
 - Surrendering or revoking citizenship
 - Who resolves citizenship questions?
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Once a nation has defined its citizenry, it may consider the contours of the relationship between the government and citizens, including the rights and responsibilities those citizens will possess **(Chapter 5).**

- Mutual protection for the government and the citizens
- Protecting citizens' rights and the government will be restricted from interfering with individual liberties unless the interference is absolutely necessary. Individuals will have rights but must work harmoniously with the community's goals.
 - Bill of Rights
 - Reserved rights

- Citizens' rights
- Draw upon traditions and culture and look to international human rights principles, such as those in the Covenant on Civil and Political Rights or the UN Declaration on the Rights of Indigenous People.
- Roles and responsibilities
 - If the community decides to address rights and responsibilities in the Constitution, think carefully about how the rights and responsibilities will apply to persons who are not citizens.
- External Constraints on Tribal Constitutions on the Rights and Responsibilities
 - If nation-state laws remove or impose certain rights, does a Native nation need to acknowledge those takings or additions in its Constitution?
 - Indian Civil Rights Act (ICRA) of 1968 provides an example.
 - Problems of referencing outside law
 - May make it binding on the Tribe
 - The constitutional language inadvertently may have given Congress and the federal courts the power to change Tribe's definition of civil rights as a matter of tribal, not just federal law.
 - A solution for a Native nation to adopt the language of the other government's law as part of its law (instead of simply referencing the law of the different government.) Then, the Native nation retains the flexibility to determine whether to accept or reject any changed implementation.
- Protecting individual rights through waivers of Tribal sovereign Immunity.

What are the boundaries of the government's authority over its citizens, geographic territory, and people within it (**Chapter 6**)?

- Territory and Jurisdiction
 - Territory is the physical, geographical boundaries claimed or controlled by the government—territorial lines drawn on a map.
 - Jurisdiction is the government's legal authority, the ability to make laws and enforce them through sanctions.
 - If the Tribe's Constitution adopts a federal definition of the Tribe's territory. The Tribe also may be inadvertently endorsing the federal government's limitation on tribal territorial claims.
 - If the Tribe chooses to define its territory independently, it may wish to consider its historical and traditional land base, its treaty rights, and what citizens currently understand the nation's "Aboriginal territory" to be.
- The extent of authority. A government generally has the authority to decide what happens when in its land base and related resources. Tribal authority typically extends to authority over people within the nation's territory. It may also Exercise authority over citizens outside that territory, especially regarding specific issues, such as treaty rights.

- Constitutional statements concerning the extent of their authority over land and people and issues external governments claim that tribal nations do not have authority over, such as minerals or criminal behavior, Indians on Indian lands, or specific economic transitions affecting the tribes and their citizens, which the external government tries to curtail.
- Ceding Authority

What specifically will the different parts of the government be, and how will the various parts relate to each other (**Chapter 7**)?

- Need a branches of government that:
 - Lawmaking
 - Implementation and enforcement of Laws
 - Resolve disputes about laws or decide when a law has been violated (Interpretation).
- Need a system that is consistent with the community's customs and traditions
- Determine the relationship between branches of government and separation of power/responsibilities.

Who will exercise legislative (**Chapter 8**)?

Who will exercise executive power (**Chapter 9**)?

Who will exercise judicial power (**Chapter 11**)?

How will officials be selected, held accountable, removed, and replaced (**Chapter 10**)?

- Requirements for Elected Positions
- Elections
- Holding Officials accountable
 - See The Drafting Committee's draft of a Code of Conduct, Ethics, and Conflict of Interest.

How will the Constitution be created, drafted, ratified, implemented, and revised (**Chapter 12**)?

- The Tribe's Constitution must reflect the shared values and norms of the Tribe more than any other governing document. This is only possible when the primary component of constitutional drafting becomes community involvement.
 - Constitutional Committee
 - Included elders, youth, women, men, traditional leaders, business people, and educators

Who will have the authority to interpret the Constitution and resolve disputes about its meaning (**Chapter 13**)?

- The community will identify who possesses the authority to answer those questions or resolve any ambiguities.
- Assign this to the judicial branch or give the judiciary limited authority.
- Common types of interpretation clauses:
 - Supremacy Clause The Constitution is the supreme law, and all statutes/codes/laws must conform to the requirements of the Constitution
 - Severability Clauses
 - Savings Clauses

So, **at a minimum**, according to this resource book, the Constitution shall have the following articles.

FDL Preamble

ARTICLE _____ TERRITORY AND JURISDICTION

ARTICLE ____ CITIZENSHIP

ARTICLE _____ SEPARATION OF POWER/GOVERNANCE STRUCTURE

- Lawmaking
- Implementation and enforcement of Laws
- Resolve disputes about laws or decide when a law has been violated (Interpretation).

ARTICLE _____ JUDICIARY

ARTICLE _____ ETHICS, REMOVAL, RECALL, AND VACANCIES

ARTICLE _____ SOVEREIGN IMMUNITY

i.e., The Maamawiino Anishinaabeg Nation, the _____ Band, shall not waive or limit the right to be immune from suit except as authorized by the _____.

ARTICLE _____ ELECTIONS

ARTICLE _____ AMENDMENTS

ARTICLE _____ SEVERABILITY

If a clause, or portion of a clause, in this Constitution is considered invalid under the rule of law, and shall be regarded as stricken. The remaining clauses shall continue to be in full effect.

ARTICLE _____ SAVINGS CLAUSE

i.e., Any previous ordinance or resolutions enacted by the Minnesota Chippewa Tribe shall continue in full force and effect to the extent they are consistent with this Constitution unless amended.

RATIFICATION

ADOPTION