Asimilation: The biological, cultural, social, and psychological fusion of distinct groups to create a new, ethnically homogenized society.

Balancing test: A process of judicial decision making in which a court weighs the relative merits of the rights of the individual against the interests of the government.

Brief: A written argument of law and fact submitted to a court by an attorney representing a party having an interest in a lawsuit.

Bureau of Indian Affairs (BIA): A federal agency established in 1824 and moved to the Department of the Interior in 1849. Originally, BIA personnel served as a diplomatic corps responsible for overseeing trade and other relations with Indian tribes. By the 1860s, however, it had evolved into the lead colonizing agent for the federal government and dominated virtually every aspect of tribal life within reservations. Today, the BIA is more involved in advocating programs focused on tribal educational, social, economic, and cultural self-determination.

Burden of proof: The need to establish a claim or allegation; in a criminal case, the state has the burden of proof.

Canons of construction: The system of basic rules and maxims which are recognized as governing the construction or interpretation of written instruments. In federal Indian law, for example, treaties, agreements, and laws are to be construed in a manner favorable to Indian tribes or their members. See also Treaty.

Categorical allowance: Legal mask which holds that state governments, despite evidence to the contrary, have been authorized by Congress to tax Indians in certain situations.

Certification, writ of: A procedure whereby a lower court requests that a superior court rule on specified legal questions so that the lower court may correctly apply the law.

Certiorari, writ of: A writ issued from the Supreme Court, at its discretion and at the request of a petitioner, to order a lower court to send the record of a case to the Court for its review. There is a requirement that four Supreme Court justices agree to hear a case before it can be considered by the Supreme Court.

Circuit court of appeal: An intermediate level appellate court in the federal system having jurisdiction over a particular region.

Civil law: The body of law dealing with the private rights of individuals (e.g., negligence, contracts, property), as contrasted with criminal law.

Clan: A division of a tribe tracing descent from a common ancestor. Typically, a clan shares a common identity, level of organization, and property base.

Collateral estoppel: A legal rule that prohibits an already settled issue’s being re-tried in another form.

Commerce clause: The provision of the federal Constitution, Article I, section 8, clause 3, which gives Congress exclusive powers over interstate commerce. It states that “The Congress shall have the power to ... regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”

This clause is one of the two bases (the other being the Treaty Clause) considered sufficient to empower the federal government to deal with Indian tribes.

Communal land ownership: A system of community ownership rather than individual possession.

Compelling state interest: One which the state is forced or obliged to protect. Term used to uphold state action in the face of attack grounded on Equal Protection or First Amendment rights because of serious need for such state action. See also Strict scrutiny test.

Concurring opinion: An opinion by a justice that agrees with the result reached by the majority in a case but disagrees with the Court’s rationale for its decision.

Conquest, doctrine of: Legal doctrine under international law which entails the acquisition of territory by a victorious state from a defeated state in warfare. The state acquiring by conquest is regarded as the successor to the rights and duties previously applicable to the territory.

Consent: A concurrence of wills. Consent always implies freedom of judgment, deliberation, and freely given acquiescence in what is considered desirable. Consent is a material element in the political relationship between tribal nations and the U.S. established in the 1787 Northwest Ordinance; which said that “the utmost good faith shall always be observed toward the Indians, their lands and their property shall never be taken from them without their consent.” The political principle of consent holds that the U.S. may validly take political or legal actions towards tribal rights or resources only with the express consent of the tribe or tribes involved.

Consent decree: A regulatory agency procedure to induce voluntary compliance with its policies. A consent order usually takes the form of a formal agreement whereby an organization or industry agrees to stop a practice in exchange for the agency’s cessation of legal action against it.

Criminal law: Law governing the relationship between individuals and society. It deals with the enforcement of laws and the punishment of those who, by violating laws, commit crimes.

Declaratory judgment: A court rule determining a legal right or interpretation of the law but not imposing any relief or remedy.

Demonstrably serious: Legal test which holds that states can exercise jurisdiction over fee land within a reservation unless the tribe can prove that the impact of the state action will be “demonstrably serious” and will imperil the political integrity, economic security, or the health and welfare of the tribal members.

Demurrer: A motion to dismiss a lawsuit in which the defendant admits to the facts alleged by the plaintiff but contends that those facts are insufficient to justify a legal cause of action.

Dependency status: Legal mask which unilaterally reduced tribes from a status as independent nations to a position of subservient dependency in their relation to the U.S. government. See also Guardianship/wardship.

Dichotomization of federal Indian law: Theory that tribal nations cannot expect any consistent political relationship with the federal government because of
the conflicting goals, policy orientations, and legal perspectives wielded by the three branches of the federal government and the states (e.g., whether tribes are delegated sovereigns or inherent sovereigns; whether tribes are included in general congressional acts or are excluded from the force of those measures; whether tribes are incorporated in the U.S. constitutional framework or remain largely extraconstitutional politics in their relationship to the federal government.

**Discovery doctrine**: This doctrine was first fully articulated in U.S. law in the seminal Supreme Court case *Johnson v. McIntosh* in 1823. The Court held that European explorers' "discovery" of land occupied by Indian tribes gave the discovering European nation (and the U.S. as successor) "an exclusive right to extinguish the Indian titles of occupancy, either by purchase or conquest." This meant that the "discovering" nation had preempted other European powers' involvement with the tribes in a particular geographic area. More importantly, as interpreted by western policymakers and legal scholars, this doctrine effectively excluded Indian tribes from direct participation as national entities in the process of international community development.

**Dissenting opinion**: A formal written opinion by a justice who disagrees with the result reached by the majority.

**Domestic-dependent nations**: Phrase coined by Chief Justice John Marshall in the 1831 case *Cherokee Nation v. Georgia* to describe the status of tribal nations vis-à-vis their relationship to the federal government. The Court concluded that tribes lacked foreign national status because of their geographic proximity in the United States, were not states within the meaning of the U.S. Constitution, but still had a significant degree of internal autonomy as "domestic-dependent nations."

**Due process**: Government procedures that follow principles of essential fairness. The Fifth and Fourteenth amendments guarantee persons that they will not be deprived of life, liberty, or property by the government until fair and usual procedures have been followed.

**Equal footing**: Doctrine which holds that states newly admitted into the Union are on an equal footing with the original states in all respects. Every new state is entitled to exercise all the powers of government which belong to the original states. This condition of equality applies primarily to political standing and sovereignty rather than to economic or property rights.

**Equity**: Law based on principles of fairness rather than strictly applied statutes.

**Error, writ of**: An order issued by an appeals court commanding a lower court to send up the full record of a case so that it may be reviewed for error.

**Establishment clause**: That provision of the First Amendment to the U.S. Constitution which provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ." This language prohibits a state or the federal government from creating a church, or enacting laws which aid one, or all, religions, or giving preference to one religion, or forcing belief or disbelief in any religion.

**Ex parte**: A hearing in which only one party to a dispute is present.

**Excise tax**: A tax on the manufacture, sale, or consumption of a product. It embraces every form of tax burdened not laid directly upon persons or property.

**Exclusion**: Theory that congressional laws do not apply to tribal nations unless Congress expressly writes them into the legislative measure. See Inclusion.

**Exclusive powers**: Powers reserved for either the federal government, state government, or tribal government, but not exercised by all three.

**Extraconstitutional**: Outside the constitutional framework. Tribes were preexisting and original sovereigns and did not participate in the creation of the U.S. Constitution which focused on the establishment of the federal government and the relationship between the central government and the constituent states. Thus, tribal sovereign rights do not arise from and are not protected by the provisions of the Constitution. The Indian Civil Rights Act of 1968 modified the relationship slightly because portions of the Constitution's first ten amendments, for the first time, were made applicable to tribal governments in their treatment of persons under tribal jurisdiction.

**Federalism, dual**: A nineteenth-century concept that the functions and responsibilities of the federal and state governments were theoretically distinguished and functionally separate from each other.

**Federally recognized tribes**: Indian tribes recognized by the federal government as self-governing entities with whom the U.S. maintains a government-to-government political relationship. This relationship may be established by treaty or agreement recognition, congressional legislation, executive order action, judicial ruling, or by the secretary of the interior's decision. Recognized tribes are eligible for special services and benefits designated solely for such tribes (e.g., Bureau of Indian Affairs educational and law-enforcement assistance, Indian Health Service care), but they also benefit by and are subject to the federal government's trust doctrine and plenary power.

**Fee-simple ownership**: An estate in land of which the inheritor has unqualified ownership and sole power of disposition.

**Five Civilized Tribes**: A term coined by whites for the remarkable social, educational, economic, and political progress made by the Cherokee, Choctaw, Chickasaw, Seminole, and Creek Indians after their coerced removal from the Southeast to lands west of the Mississippi during the Indian Removal era of the 1810s and 1840s.

**Free Exercise Clause**: The First Amendment to the U.S. Constitution, which provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." See also Establishment clause.

**Geographic incorporation**: Legal doctrine that tribes, by residing within what are considered the territorial boundaries of the U.S., are subject to the political jurisdiction of the federal government.

**Good faith**: Legal doctrine first articulated in the Northwest Ordinance of 1787 which expressly states that the federal government shall always observe "the utmost good faith towards the Indian tribes . . ." Good faith is a state of mind denoting honesty of purpose, freedom from intention to defraud, and, generally speaking, means being faithful to one's duty or obligation. According to
the federal courts, an act is done in good faith if done honestly, even though negligently.

Guardianship/wardship: The legally spurious characterization of the political relationship between tribes and the federal government, now largely defunct, often attributed to Chief Justice John Marshall in his 1831 ruling in Cherokee Nation v. Georgia, where he asserted that Indian tribes were not foreign nations but were “domestic-dependent nations” whose relationship to the United States “resembled that of a ward to a guardian.” As the federal government’s allotment and assimilation campaign mushroomed in the 1880s, Marshall’s analogy of Indian wardship to federal guardianship became reified in the minds of federal policymakers and Bureau of Indian Affairs officials, who popularized the phrase and relied on it to justify any number of federal activities (e.g., suppression of Indian religious freedom, forced allotment of Indian lands, unilateral abrogation of Indian treaty rights) designed to hasten the assimilation of Indian people into mainstream American society. Despite the federal government’s reliance on the phrase, Indian wardship and federal guardianship remained an illusion which was unsupported by legal authority or tribal consent.

Harmless error: Legal doctrine that minor or harmless errors during a trial do not require reversal of the judgment by an appellate court. An error is considered “harmless” if reviewing court, after viewing the entire record, determines that no substantial rights of the defendant were affected and that the error did not influence or only slightly influenced the verdict.

Implicit divestiture: Legal doctrine that tribes, by becoming subject to the dominant sovereignty of the U.S. via geographic incorporation, implicitly surrendered or were divested of certain sovereign powers, for example, criminal jurisdiction over non-Indians. According to this doctrine, unless a tribe has been affirmatively delegated governing powers via express treaty (or agreement) provisions or explicit congressional enactments, then it is assumed that those non-specified powers have been “impliedly” lost to the tribes. See also Affirmative delegation.

Implied repeal: The superseding of an existing law, rule, or treaty provision without an express directive to that effect.

Incidental effect: Legal test which holds that if, for example, prohibiting the exercise of religion is not the object of the law but merely the incidental effect of a generally applicable and otherwise valid provision, then the First Amendment has not been offended.

Exclusion: Theory that congressional laws apply to tribal nations unless Congress explicitly states in the measure that tribes are to be excluded from the act’s provisions. See Exclusion.

Civil Rights Act: A congressional law passed in 1968, the ICRA was the first legislation to impose many of the provisions of the U.S. Bill of Rights on the actions of tribal governments vis-à-vis reservation residents; set out a model code for courts of Indian offenses; and required states to secure tribal consent before assuming legal jurisdiction in Indian Country.

Indian Claims Commission: Congress established this commission in 1946 in an effort to resolve the hundreds of accumulated claims tribes had against the federal government, frequently stemming from the federal government’s failure to fulfill prior treaty or agreement terms. Designed as a commission but working more as an adversarial judicial body, the commission awarded over $800 million on nearly 300 claims before it was terminated by Congress in 1978. A number of unresolved tribal claims were passed on to the U.S. Court of Claims.

Indian Country: Broadly, it is country within which Indian laws and customs and federal laws relating to Indians are generally applicable. But it is also defined as all the land under the supervision and protection of the United States government that has been set aside primarily for the use of Indians. This includes all Indian reservations and any other areas (e.g., all other Indian communities, including the various pueblos and Indian lands in Oklahoma, and individual Indian allotments which are still held in trust by the federal government) under federal jurisdiction and designated for Indian use. And according to some courts, it also includes privately held non-Indian lands within the boundaries of Indian reservations, rights-of-way (including federal and state highways), and any additional lands tribes may have acquired.

Indian removal: Federal policy enacted in 1830 and lasting into the 1850s which authorized the president to negotiate with a majority of eastern (and other) tribes for their relocation to lands west of the Mississippi River.

Indian Reorganization Act: Commonly known as the Wheeler-Howard Act, this 1934 congressional measure is considered by most knowledgeable sources to be the most important piece of Indian legislation enacted in the twentieth century. Largely the brainchild of Commissioner of Indian Affairs John Collier, the IRA provided, for those tribes that adopted it, an end to the devastating allotment policy, for the purchase of new lands to offset some of those lost through allotment, a measure of economic restoration, cultural regeneration, and the opportunity for tribes to adopt constitutionally based governments.

Indian self-determination policy: While the federal government had turned toward Indian self-determination in the 1960s, the policy was officially inaugurated by President Richard Nixon in 1970 and by Congress in 1975 through the Indian Self-Determination and Education Assistance Act. As Nixon proclaimed: “Both as a matter of justice and as a matter of enlightened social policy, we must begin to act on the basis of what the Indians themselves have long been telling us. The time has come to break decisively with the past and to create the conditions for a new era in which the Indian future is determined by Indian acts and Indian decisions.” To ensure tribal input into decision making, Congress directed the secretaries of the appropriate agencies, upon the request of any Indian tribe, to enter into contracts with tribes to design, carry out, and evaluate programs and services previously provided by the federal government.

Indian Territory: Lands west of the Mississippi River, principally present-day
Indigenous: The United Nations Working Group on Indigenous Populations defines indigenous populations as those "composed of the existing descendants of peoples who inhabited the present territory of a country wholly or partially at the time when persons of a different culture or ethnic origin arrived there from other parts of the world, overcame them, and by conquest, settlement or other means, reduced them to a non-dominant or colonial situation; who today live more in conformity with their particular social, economic and cultural customs and traditions than with the institutions of the country of which they now form a part, under a State structure which incorporates mainly the national, social and cultural characteristics of other segments of the population which are predominant." 

In extenso: Legal term meaning at length, in full, verbatim.

Infringement: Legal doctrine which holds that in litigation between Indians and non-Indians arising out of conduct on an Indian reservation, resolution of conflicts between the jurisdiction of state and tribal courts has depended, absent a governing act of Congress, on whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them. In other words, the courts have placed restrictions on the exercise of state jurisdiction if the state's actions interfere or infringe on the tribal right of self-government.

In personam: Legal term meaning against the person; involving the person. An action seeking judgment against a person involving his personal rights and property.

Judicial activism: A philosophy that courts should not be reluctant to review and strike down legislative and executive actions.

Judicial deference: Judicial philosophy which motivates justices to acquiesce to decisions made by the political department of government. See also Political question.

Judicial restraint: A philosophy that courts should defer to the political branches whenever possible.

Judicial review: The power of a court to determine the constitutionality of legislative and executive actions and to declare them null and void if found to be in violation of the Constitution. Courts also review the judgments of lower courts at times in order to determine the legality and appropriateness of decisions.

Jurisdiction: The authority of a court to hear a case or controversy and to enforce its rulings.

Last-in-time: Legal rule which holds that if there is a conflict between a treaty provision and an act of Congress (or between two acts of Congress), the one latest in time prevails.

Majority opinion: An opinion in a case that is subscribed to by a majority of the justices who participated in the decision.

Manifest destiny: Nineteenth-century belief in the inevitability of the continued territorial expansion of U.S. boundaries westward to the Pacific Ocean and beyond. The notion of "manifest destiny" was frequently used by American expansionists to justify physical relocations of tribal nations as well as the annexations of Texas, Oregon, California, and other territories.

Merits of case: Legal phrase meaning the essential issues; the substantive rights presented by an action.

Moot: Unsettled or undecided. Describes a question presented in a lawsuit that cannot be answered by a court either because the issue has resolved itself or because conditions have so changed that the court is unable to grant the requested relief.

Motion: An application, normally incidental to an action, made to a court or judge for the purpose of obtaining an order or rule directing something to be done in favor of the applicant.

Nation: A social group which shares a common ideology, common institutions and customs, a sense of homogeneity, and a belief in a common ancestry. A prerequisite of nationhood is an awareness or belief that one's own group is unique in a most vital sense; therefore, the essence of a nation is not tangible but psychological, a matter of attitude rather than of fact. A nation may comprise part of a state, be conterminous with a state, or extend beyond the borders of a single state.

Native American Church: A religious organization, formally organized in 1918, by Indians whose beliefs include the sacramental use of the peyote cactus.

Original jurisdiction: The authority of a court to try a case and to decide it, as opposed to appellate jurisdiction. The Supreme Court has original jurisdiction under Article III of the Constitution.

Per curiam: Legal term describing an action taken by the court as a whole. A per curiam opinion is an opinion of the court in which the judges or justices are all of one mind and the question involved is so clear that the opinion is not elaborated by an extended discussion of the supporting reasons.

Per se rule: From the Latin expression meaning "by itself" or "in itself," refers to Congress's ability to exercise exclusive plenary authority. In federal Indian law a rule promulgated in some courts to the effect that while Congress may authorize a state to tax a tribe or its members, "[i]t has not been so often, and the Court consistently has held that it will find the Indians' exemption from state taxes lifted only when Congress has made its intention to do so unmistakably clear."

Petitioner: A party seeking relief in court. When a writ of certiorari is granted by the Supreme Court, the party seeking review is called the petitioner, and the party responding is called the respondent.

Plenary power: Complete in all aspects or essentials. However, in federal Indian policy and law, this term has three distinct meanings: a) exclusive—Congress, under the Commerce Clause is vested with sole authority to regulate the federal government's affairs with Indian tribes; b) preempptive—Congress may enact legislation which effectively precludes state government's acting in Indian related matters; c) unlimited or absolute—this judicially created
definition maintains that the federal government has virtually boundless governmental authority and jurisdiction over Indian tribes, their lands, and their resources.

**Plurality opinion:** An opinion announcing the decision of the Supreme Court, but having the support of less than a majority of the justices.

**Political question:** A question that courts refuse to decide because it is deemed to be essentially political in nature or because its determination would involve an intrusion on the powers of the legislative or executive branch.

**Preemption:** A doctrine under which an area of authority previously left to the states is, by act of Congress, brought into the exclusive jurisdiction of the federal government.

**Prima facie:** Legal term meaning 'at first sight.' In reference to evidence, adequate as it appears, not requiring more. Describes a fact presumed to be true unless disproved by evidence to the contrary.

**Property clause:** The provision of the federal Constitution, Article IV, section 3, clause 2, which declares that “[t]he Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States..." While the Constitution is silent as to the methods of disposing of federal property, congressional authority is considered comprehensive over all public lands. Thus, no state can tax public lands of the U.S., nor can state legislation interfere with the power of Congress under this clause.

**Public forum doctrine:** Legal doctrine involving the range of places and contexts in which the constitutional right of free speech has been contested. The Supreme Court’s analysis in recent cases has started with a determination of whether certain spaces are “public forums.” A public forum, according to the Supreme Court, is government property that has either (1) traditionally been available for public expression and has as a principal purpose the free exchange of ideas (traditional public forum); or (2) been specifically designated by the government as a public forum (designated public forum). If the spaces in question are not adjudged to be public forums, the infringement on speech, even if it is the most protected speech, is not strictly scrutinized; any “reasonable” restriction is constitutionally permissible.

**Purpose doctrine:** Term coined by the Critical Legal theorist David Kairys, which he suggests, has allowed the Rehnquist Court to legitimate a number of constitutional violations unless a victim can prove that the government has acted maliciously and the government cannot suggest an alternative, plausibly benevolent purpose. Kairys says the purpose doctrine is synonymous with the incidental effects test and other judicial techniques which have worked to constrict individual constitutional rights in the areas of free speech, free exercise of religion, and due process.

**Res judicata:** Legal term meaning ‘the thing has been decided.’ The principle that an existing final judgment rendered upon the merits, without fraud or collusion, by a court of competent jurisdiction, is conclusive of rights, questions, and facts in issue, as to the parties and their privies.

**Respondent:** The party against whom a legal action is filed.

**Reserved rights doctrine:** Judicially crafted concept which holds that tribal nations retain all rights (that is, to self-government, cultural expression, lands, water, hunting, fishing, etc.) which have not been expressly granted away in treaties or agreements.

**Separation of church and state:** Legal doctrine outlined in the First Amendment to the U.S. Constitution, which reflects the philosophy that church and state should be separated. As concerns interference with the free exercise of religion and establishment of religion, the Supreme Court has confirmed that the separation must be complete and unequivocal. Nevertheless, while the First Amendment was intended to erect a wall of separation between church and state, the amendment does not say that in every and all respects there shall be a separation of church and state. Total separation is not regarded as possible in an absolute sense, according to a Senate publication on the subject, and some relationship between government and religious organizations is believed to be inevitable.

**Separation of powers:** Constitutional doctrine mandating the equal division of powers between the executive, legislative, and judicial branches. The separation is a fundamental characteristic not only of the federal government, but also of state governments and some tribal governments. Under this doctrine, one branch is not permitted to encroach on the domain or exercise of another.

**Solicitor general:** Justice Department official whose office represents the federal government in all litigation before the U.S. Supreme Court.

**Sovereignty:** A western concept, both complex and contested, central to modern political thought. Its importance is bound up with specifying the essential character of the territorial state. Implicit in the discussions about the term since Hobbes, Machiavelli, and Hobbes is the conviction that the state is the ultimate arbiter of its own fate in relation to the outside world. Each state is “sovereign” in international society, a law unto itself. However, absolute sovereignty no longer exists for any modern state because of international interdependence and the interpenetration of domestic and international politics, the mobility and globalization of capital and information, and the rising influence of transnational social movements and organizations. Sovereignty in modern times more accurately connotes legal competence; the power of a culturally and territorially distinctive group of people to develop institutional arrangements that both protect and limit personal freedoms by social control.

**Standing:** Standing to sue: The right of parties to bring legal actions because they are directly affected by the legal issues raised.

**Strict scrutiny test:** A measure which is found to affect adversely a fundamental right (e.g., free exercise of religion or speech) will be subject to this test, which requires the state to establish that it has compelling interest which justifies the law and that distinctions created by law are necessary to further some governmental purpose.

**Sui juris:** Legal term meaning ‘the only one of its kind.’

**Supremacy clause:** Article VI, clause 2, which declares the federal Constitution
and laws "to be the Supreme Law of the Land," provides to the federal government powers that cannot be exercised by the states and that the states must heed.

**Termination policy:** Federal Indian policy from approximately 1953 to the mid-1960s which legislatively severed federal benefits and support services to certain tribes, bands, and California rancherias and forced the dissolution of their reservations. This policy was exemplified by House Concurrent Resolution No. 185 in 1953, the infamous "termination resolution"; Public Law 83-280, which conferred upon several designated states full criminal and some civil jurisdiction over Indian reservations within those states and consented to the assumption of such jurisdiction by any other state that chose to accept it; and relocation—a federal policy focused on the relocation of Indians from rural and reservation areas to urban areas.

**Text:** A criterion or set of criteria used by courts to determine whether certain legal thresholds have been met or constitutional provisions violated.

**Treaty:** A formal agreement, compact, or contract between two or more sovereign nations that creates legal rights and duties for the contracting parties. A treaty is not only a law but also a contract between two nations and must, if possible, be so construed as to give full force and effect to all its parts. Treaties can be bilateral (involving only two nations) or multilateral and deal with single or multiple issues. Indian treaties are of the same dignity as international treaties, but because of the unique political (trust) relationship which unfolded between tribes and the United States, the federal courts have created several so-called canons of construction which are designed to protect Indian rights. These serve to distinguish Indian treaties from those the United States negotiates with foreign nations: (1) A cardinal rule in the interpretation of Indian treaties is that ambiguities in treaty language are to be resolved in favor of the Indians; (2) Since the wording in treaties was designed to be understood by the Indians, who often could not read and were not skilled in the technical language often used in treaties, doubtful clauses are to be resolved in a nontechnical way as the Indians would have understood the language; and (3) Treaties are to be liberally construed to favor Indians. These three legal doctrines have been enforced inconsistently by the courts, the Congress, and the executive branch; for example, the courts have also ruled repeatedly that Congress in exercising its plenary power may unilaterally abrogate Indian treaty provisions without tribal consent.

**Treaty clause:** The provision of the U.S. Constitution, Article II, section 2, which gives to the president the power "by and with the consent of the Senate, to make treaties, provided two thirds of the Senators present concur."

**Tribal sovereignty:** The spiritual, moral, and dynamic cultural force within a given tribal community empowering the group toward political, economic, and, most importantly, cultural integrity; as well as maturity in the group's relationships with its own members, with other peoples and their governments, and with the environment.

**Tribe:** A community or combination of communities all of which occupy a common territory, share a political ideology, and are related by kinship, traditions, and language.

**Trust doctrine:** One of the unique foundational concepts underlying the political-moral relationship between the United States government and American Indian nations. The trust doctrine, also known as the trust relationship, has historical roots in several sources: in treaties and agreements with individual tribes; in the international law doctrine of trusteeship first broached in papal bulls and related documents during the time of European nations' first encounters with indigenous societies when the European states assumed a protective role vis-à-vis these societies and their territories; and in constitutional clauses, executive orders and policies, and statutory and case law. Broadly defined, the trust doctrine is the unique legal and moral duty of the federal government to assist Indian tribes in the protection of their lands, resources, and cultural heritage. The federal government, many courts have maintained, is to be held to the highest standards of good faith and honesty in dealing with Indian peoples and their rights, resources, and funds. Nevertheless, since the trust doctrine is not explicitly constitutionally based, it is not enforceable against Congress, although it has occasionally proven a potent source of rights against the executive branch. Importantly, the trust doctrine, which is also referred to as a trustee-beneficiary relationship (with the federal government serving as the trustee and the tribes as the beneficiary) is not synonymous with the so-called guardian-ward relationship which was said to exist between the U.S. and tribes from the 1860s to the 1930s.

**Unmistakable intent:** Evidence gleaned by the court (e.g., express statutory language, legislative documents, etc.) that unequivocally shows what Congress intended to do by enacting a particular statute. If the court finds what it considers "unmistakable intent," the disputed legislation (or provision thereof) is upheld as constitutional.

**Wardship:** See Guardianship.

**Writ:** A written order or an oral command issuing from a court that commands the recipient to perform or not perform acts specified in the order.

**Notes**
