CHAPTER ONE
INTRODUCTION

The framers of the Constitution developed our constitutional system of governance as a relationship between two distinct sovereigns - the federal government and state governments. Each sovereign had respective control over its sphere of influence. Our 200 years of tradition and the historical development of our institutions have produced a federal system that is uniquely American.

We have a bewildering, complex structure of layered governments, which includes fifty states, the District of Columbia, and U.S. administered territories such as American Samoa, Guam, the Northern Mariana Islands, Palau, Puerto Rico, and the Virgin Islands. In addition, the United States has a huge quantity of separate substate governments. For example, in 1990, there were 3,248 counties, 18,154 cities and townships, 17,144 other county subdivisions (e.g., boroughs, districts, parishes, etc.), and 15,274 school districts. However, the significance is that despite whatever structure of governance that the federal and state governments may take, it is still a balance between sovereigns despite the influence of numerous political institutions, bureaucracies, non-governmental organizations, stakeholders, and other actors.

Yet, we often forget that a third sovereign exists --- the five hundred fifty eight federally recognized Alaska Native and American Indian tribes in our country. Tribes have their own governance structures and are dealt with on a government-to-government relationship by the United States. While tribes make up slightly more than two million four hundred thousand inhabitants of the total population of the United States, in light of their landholdings they play a role in the competition for resources whose importance far outweighs the relatively small presence in the American polity. Historically, tribes exercised inherent powers of preconstitutional sovereign nations by forming compacts, treaties, and military alliances.

What makes tribes so special is that they have a unique political relationship with the United States government. Unlike the states, this inherent sovereignty is not derived from a constitutional provision. Approximately fifty percent of the total tribal
population resides on reservations, lands, and villages, which make up “Indian country.” This legal and statutory term defines boundary, jurisdictional, and land arrangements unique to this territory. The land base that constitutes Indian country encompasses an area of approximately 3.6 million square miles and an additional 100 million acres of land held in trust for tribes by the government.

**Purpose and Significance of the Study**

This study examines the issue of managing solid waste, i.e., materials ranging from nonhazardous municipal garbage to hazardous industrial chemical waste, in what is statutorily referred to as Indian country, as a focal point in understanding the complexities of public policy administration. Solid waste management is a major problem in Indian country because, oftentimes, solid wastes end up in substandard landfills or are illegally dumped on tribal lands. These solid wastes can leak and contaminate both Indian and non-Indian community drinking water supplies.

The federal statute that addresses solid waste management is the Resource Conservation and Recovery Act (RCRA) of 1976. It is the only federal environmental statute that treats tribes as municipalities and hence not as sovereigns. This is a fundamental statutory flaw. The reason for this inquiry is that it takes the analysis of a program such as solid waste management from the level of legal abstraction to the level of policy action.

Furthermore, this study examines a population that the majority of the field of public administration does not know – American Indians and Alaska Natives and their governments. Just as the national interests of China and Germany differ because of variations in geography, cultural heritage, economics, and political circumstances, so do the interests of American Indian and Alaska Native tribes. This study examines the very core of governance in terms of the relationships of American federalism to Indian tribes at the level of action.

Indian tribes constitute a completely different level of governance within the United States. They possess inherent powers of self-governance, which pre-date the
founding of our nation and the Constitution. Indian tribes are sovereigns in their own right and exist outside of our federal system of governance. Although the Constitution provides for a delineation of responsibilities between the federal and state governments, the status of Indian tribes today remains one of a government-to-government relationship with the United States. Citizens of Indian nations are also U. S. citizens and can even be considered citizens of their respective states. Indian tribes have inherent sovereignty through the nation-to-nation relationship with the United States government as established by treaties and the trust relationship. Furthermore, tribes exercise a number of powers that only sovereigns may exercise such as adopting their own form of government, determining tribal membership, taxing its members, and administering justice. Sources of tribal power are based on the federally recognized trust doctrine, a unique relationship between the federal government and Indian tribes that is comprised of 379 ratified treaties as well as executive agreements, direct consultation with Congress on Indian affairs, federal statutory obligations and court decisions. In addition, while recognizing tribes as special groups, federal jurisprudence places tribal rights at the disposal of Congress.

This unique relationship requires dealing with tribes on an administrative and policy level which must encompass the past, present, and future. It requires careful consideration of cultural, historic, and socio-economic aspects of Indian tribes, which are often inter-twined. This stands true as well for federal environmental policies and statutes, of which solid waste management is a component.

Issues of sovereignty are often complex because there are competing versions among tribes and the federal and state governments on what exactly sovereignty means. For example, sovereignty to non-Indians is usually equated with the state’s autonomous authority and the individual’s ownership of property. On the other hand, from a tribal perspective, sovereignty means the right and responsibility of its members to participate in decisions affecting the tribal community.

Tribes have great concerns that decision-making power is shifting from the federal government to the states that would mean that states would have more control
over federal dollars and more say in how and where those dollars should be spent at the expense of tribes. States often resent the fact that because of inherent tribal sovereignty, tribes within their borders have jurisdictional oversight regarding issues of taxation, hunting and fishing rights, some forms of criminal activity, and economic development. Therefore, a great challenge lies in determining how governmental structure and program policy initiatives involve the nation’s federal system with regard to tribal governance. For example, the boundaries of tribal and non-tribal land are becoming less clear—as demonstrated by off-reservation operations by tribes and are a concern to both tribes and governments (local, state, and federal).

Unfortunately, as pointed out by Professor Steven Aufrecht of the University of Alaska, “the public administration literature almost completely ignores the topic of Native American governance.” Even though tribes are separate sovereigns, they are indeed part of our American polity and it is important to examine their place as sovereigns along with the federal and state governments. This is an important underlying theme throughout this study.

The unique relationship between tribes and the federal and state governments is illustrated in Figure 1. At the nexus or intersection where federalism and tribal governance meet, relationships can and often do occur between multiple sovereigns. Many of these relationships offer interesting insights in terms of patterns of relationships. They may be entirely uncooperative or they may be held in cooperative formal or informal arrangements. These relationships are often complex and may take any number of forms. These patterns of relationships among these multiple sovereigns will be discussed in later chapters as the nexus is examined.

Finally, this study seeks to fill a gap in the literature and to assert that indigenous sovereignty is an embedded theme for solid waste management by Indian tribes under the Resource Conservation and Recovery Act because of its emphasis on the rights and responsibilities of their members to participate in decisions affecting the community as a whole.
TRIBAL GOVERNANCE

NEXUS

AMERICAN FEDERALISM

Figure 1. Multiple Sovereigns at the Nexus of Federalism and Tribal Governance
Theoretical Grounding

The theoretical grounding of this study is based on the assumption that our constitutional system of governance is one of shared powers in a political setting. It is a dynamic of various or multiple sovereigns engaging or disengaging in numerous or multiple relationships to get their “piece of the pie.” Federalism, the distribution of power between the central authority and the constituent units (as states), provides a setting for the above dynamic to occur among the federal and states governments and is exemplified by federal environmental laws and regulations. Tribal governance, however, is a different matter since it originates directly from tribal sovereignty.

Referring back to Figure 1, this study views each of these components as being a vector and intersecting one another at an intersection or nexus. The dynamics and tensions associated with multiple sovereigns and multiple relationships occurring at the nexus of these two vectors are viewed using the issue of solid waste management in Indian country. The study examines these relationships between sovereigns by going inside of the nexus.

This study is not meant to be a treatise on Indian tribal history or of environmental policy implementation. Rather, it focuses on aspects of dealing with multiple relationships among multiple sovereigns across the divide of American federalism and tribal governance. Its main task is to describe structures and processes, not evaluate them in terms of equity or other values. Processes involving conflict resolution and political cultures as they relate to solid waste management are part of the research task. The relevance of these subjects is in their collective impact on the characteristics of tribal governance and the levels of government that interact with each other. Particular emphasis is placed on the government-to-government relationship between tribes and the federal and state governments.

Although implications for other intergovernmental policies and programs may be drawn from the study, it does not have this as a primary intent, nor does it attempt to draw comparisons among other services or analytical processes. The study makes its contribution by providing both an administrative account and intellectual history of
governmental policy critical to this area of the public sector. It concludes with the recommendation that there is a need for enduring cooperative relationship between tribes, the federal and state governments, and other entities.

**Methodology**

The methodology applied in this qualitative study is descriptive and incorporates a number of levels of inquiry. Forty-five interviews were conducted during the late spring and summer of 1999. In addition to the interviews, information about tribal solid waste management programs was obtained from thirty-five tribes, tribal organizations, and other sources. Other contacts were made and information obtained during the Fall and Winter of 1999 and the Spring of 2000 in order to supplement the research data. Interviews and contacts spanned sixteen states and the District of Columbia.

Interviewees included representatives from tribes, tribal organizations, federal and state agencies, universities, and other non-governmental organizations. Supplementary data included documentary sources from congressional hearings, environmental impact statements, notices and rules printed in the Federal Register, federal and state agency administrative manuals, and other information obtained from outside sources.

The analysis of research data was assisted through the use of QSR NUD*IST 4.0 qualitative research software which will be described in more detail in the next chapter.

**Dissertation Organization**

The present chapter outlines the need for examining the dynamics and tensions affecting multiple relationships among multiple sovereigns across the divide of American federalism and tribal governance when applied to a policy issue such as solid waste management. The remainder of the dissertation is divided into eight chapters. Chapter Two discusses the methodology used in this study. Chapter Three discusses tribal sovereignty and the federal trust relationship. Chapter Four discusses federalism, tribal perspectives, and multi-sovereign relationships. Chapter Five discusses national environmental policies, multiple sovereigns, and solid waste management in Indian
country. The next three chapters constitute the empirical chapters. Chapter Six discusses multiple sovereigns and what I call uncooperative relationships. Chapter Seven discusses multiple sovereigns engaged in cooperative formal relationships and Chapter Eight describes them in cooperative informal relationships. Chapter Nine synthesizes the research data from the previous chapters and then proceeds to offer prescriptive recommendations and their implications for public administration and suggestions for possible areas for future research.
NOTES

1. *American Indian and Alaska Native Areas*. Bureau of the Census, U.S. Department of Commerce, (Washington, D.C., 1990), 10-11. [Note: In the legal context, an individual is an “Indian” if he or she establishes two criteria: (1) the individual’s ancestors lived in the land the United States now occupies before Europeans discovered the continent (the Indian blood requirement); and (2) a tribe or Indian community recognizes the individual to be an Indian.] See Cohen, *Handbook of Federal Indian Law*, 19-27 (cited in note 3).

2. The exact number of federally recognized Indian tribes and Alaska Natives is always a matter for dispute because the number often changes between annual printings of the List of Federally Recognized American Indian Tribes and Alaska Natives in the *Federal Register*. Federally recognized tribes are tribes that meet the criteria as specified in 25 C.F.R. Part 83 (1997). Such tribes are eligible for federal assistance in housing, education, social services, and medical benefits. Also, there are approximately 200 non-federally recognized tribes that do not meet qualifications for federal recognition. (See Pevar, 261-263).

3. The terms “American Indian,” “Native peoples,” “Native American,” and “Tribes” are used interchangeably in this study to refer to the indigenous peoples in the United States (other than Native Hawaiians). While these terms are used extensively by Native and non-Native scholars, none of them adequately describes the approximately 2.4 million Native peoples within the United States. Whenever possible, we use the name of the Indian nation itself (e.g., Dine Nation, Choctaw Nation, etc.) to highlight the unique and sovereign nature of these individual groups. Footnote 1 in Witmer, Richard and Jeff Corntassel. 1996. “Gambling with the Future: Political Behavior and the Role of Economic Development on American Indian Homelands.” Paper delivered at the annual meeting of the American Political Science Association in San Francisco, CA.


6. Under 18 U.S.C.§1151 (1988), Congress has defined “Indian country” as: (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. [Note: Although this statutory definition applies principally to federal criminal law, federal courts have applied this definition to civil law as well.]


10 Ibid.

11 Communication with Jeff Corntassel, October 30, 2000.
