CHAPTER NINE
MULTIPLE SOVEREIGNS AND MULTIPLE RELATIONSHIPS:
CONCLUSIONS AT THE NEXUS

Introduction

This chapter draws together the findings of this study from the nexus of federalism and tribal governance. Part I will discuss the findings for solid waste management in Indian country in terms of multiple sovereigns and multiple relationships at the nexus. Part II will describe prescriptive recommendations for both federal and state governments and for the field of public administration as a whole.

Part I – Conclusions At the Nexus

The issue of solid waste management in Indian country is important in that it provides a focal point in understanding the complexities of public policy and administration. The rationale for this inquiry is that it has examined a population that the majority of the field of public administration does not know – American Indians and Alaska Natives and their governments in terms of policy, i.e., solid waste management.

At the nexus or intersection where federalism and tribal governance meet, relationships can and often do occur among multiple sovereigns. Many of these relationships have offered interesting insights in terms of patterns of relationships. They are often complex and may take any number of forms. They may be entirely uncooperative or they may be held in cooperative formal or cooperative informal arrangements.

Dealing with tribal governance requires a unique kind of relationship that must encompass the past, present, and future. It demands careful consideration of cultural, historic, and socio-economic aspects of Indian tribes, which are often intertwined. This stands true for federal environmental policies and statutes as well, of which solid waste management is a component thereof.
The quality of these multiple relationships among these multiple sovereigns differs as well. Different relationships occur, some undesirable and some less so. These conclusions are based on key data obtained from documents and interviews as described earlier in Chapter Two. These multiple relationships are highly dependent upon mutual respect and honor. They firmly established the importance of relationships between sovereigns.

Federalism and Tribal Governance

Federalism and tribal governance are very much intertwined. Tribes have influenced many of the characteristics of American life as it is experienced today. Their confederations, their culture, and their shared contributions have helped to shape us as a nation. Likewise, government policies towards tribes have also affected tribal communities and their governance structures. Tribal powers originate from the history of tribes managing their own affairs and entering into treaties with the nations surrounding their lands. Each tribe considers itself separate, distinct, and sovereign. Indian Tribes have always had the inherent right to govern themselves. Tribes have had formal, government-to-government relations with a variety of European powers, their colonies, the original states, and finally with the United States.

Tribal sovereignty denotes the possession of certain rights, including the right to structure government as desired, to define membership, to make and enforce its own laws, and to regulate resources and property. Unlike states, tribes derive their powers through their sovereign existence, past and present. Indian tribes were never brought into the political sovereign structure of the United States by the Constitution. A unique arrangement between the United States and Indian tribes exists. Indian tribes, therefore, exist outside of American federalism. They exist as sovereigns within this nation. Although, they cannot deal as totally independent nations, they are distinct pre-existing sovereigns in their own right. This implies that there is a separation between sovereigns, i.e., between governments, which is further defined by executive orders, court rulings, and legislation.
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. As pre-existing
sovereigns, Indian tribes are unique in that they exist outside of the American federalism
framework but they are part of our American polity as citizens of both individual states
and the United States. This is an important underlying theme carried throughout this
study.

Three Overarching Themes

The research data revealed that through these complex multiple relationships
between multiple sovereigns; three overarching themes emerged: (1) not all sovereigns
have the same power and available resources, (2) issues of sovereignty are sensitive and
can greatly affect the nature of field relationships, and (3) the nature of the land itself
must be considered in making public policy effective in the environmental area.

We begin with the first theme, that not all sovereigns have the same power and
available resources. There is enormous power and monetary resources available in the
Executive, Legislative, and Judicial Branches that make up the federal government. The
federal government provides the largest share of funding for both national and regional
programs and projects in the form of block grants and targeted funding. Funding for
transportation projects such as highways wields enormous power over the states. Yet,
funding for solid waste management program implementation by the states is reached
through a compromise between the federal and state governments even though the federal
government principally funds it.

Likewise, states and especially the larger states, wield enormous power in terms
of representation in Congress. This enables intense lobbying by senators and
representatives for desired programs and projects to benefit their respective states. Also,
within their borders, states have a considerable amount of discretion as to where the
priorities of those federal funds should flow. Unfortunately, tribes do not wield much
political power nor do they have large monetary resources available to them. Before the
issue is raised that tribes are too heavily dependent on the federal government, it must be recalled that non-Indians receive hefty subsidies from the federal government by way of farm subsidies and below market value use of public lands for water, timber harvesting, mineral extraction, and animal grazing.

The second theme that emerged is that tribal sovereignty matters and is of concern to all sovereigns. It is an issue of great sensitivity and will bear on all emerging relationships. However, many times there is no bright line to distinguish clearly where sovereignty begins and ends. For example, there may be tribes who desire to establish a landfill on Indian trust lands located off-reservation. However, federal agencies such as BIA, EPA, and IHS may agree or disagree with the tribes. This could raise the ire of both state and local communities for any number of reasons. Tribes, however, may perceive such objections by federal, state and local entities as potential infringement upon their sovereignty. Therefore, issues related to sovereignty are important to all sovereigns in dealing with government-to-government relationships.

The third theme is that the nature of the land itself must be considered in making public resource policy effective. For example, in the southwest, sources of water are extremely important and will involve all sovereigns in such issues as the allocation of water rights. Farmers, ranchers, cities, utility companies, recreational industries, and environmental interests will all compete for this finite resource. A tribal claim to treaty water rights almost always is a hotly debated issue.

In the case of Alaska, any discussion of public policy such as solid waste management must account for distance and unique climatic conditions. For example, accessibility to remote Native Villages presents a significant challenge. Since winters are harsh and extreme, much of rural Alaska remains inaccessible during the winter. The huge distances and differing time zones across the state represent major challenges. Also, in the northern part of the state there are rotating seasonal effects (six months of daytime and six months of nighttime) which must be factored in as well.

These three overarching themes of inequitable power and resources between sovereigns, the sensitive nature of sovereign status, and the nature of the land are very
important elements in relationships among sovereigns. As discussed in Chapter Five, uncooperative relationships often result from not recognizing or understanding the cultural, social, and political arrangements of respective sovereigns. Yet, cooperative formal and informal relationships can occur when sovereigns understand such issues, as demonstrated in Chapters Seven and Eight.

Solid Waste Management in Indian Country

The issue of solid waste management in Indian country is multi-dimensional in scope because it affects more than just regulatory concerns. The one-size-fits-all regulatory approach to environmental problems and solid waste management in particular does not work and often leads to uncooperative relationships between sovereigns. An EPA employee dealing with tribal solid waste issues and who requested anonymity offered the following insight that provides a summary of these issues:

You have to remember that it’s not only solid waste concerns or even environmental problems that tribes are faced with. They have economic, health, childcare and other concerns as well. Unfortunately, we in EPA often get trapped in a tunnel vision of environmental protection and regulatory compliance. That is not how it works in Indian country. Even with EPA grants, it’s not enough and it’s very difficult for tribes to prioritize where and how those funds should be used.

The above statement illustrates the complexity and scope of solid waste management for tribes. Resources for solid waste management are needed. However, they are not always provided in proportion to what is needed in Indian country. Furthermore, the high capital costs for solid waste projects, such as constructing landfills and purchasing equipment, along with operating and maintenance costs, present serious obstacles for many tribal communities. In addition, the small size and remoteness of many tribal communities have resulted in insufficient access to training and technical support programs that hinder the efforts of many tribes to tackle solid waste management issues.

One key to forward movement in solid waste management in Indian country appears to be the creation of partnerships among sovereigns. Partnerships are suitable for
sovereigns as a means of interrelationship since they are entered into voluntarily. Many tribes are now partnering with states, local governments, and other tribes to open lines of communication and share resources. These partnerships help tribes supplement and establish municipal solid waste management projects that might otherwise be too costly for a single tribe. These partnerships can take the form of either a cooperative formal (e.g., contract, MOU, mutual aid agreement, etc.) or informal relationship. For example, a tribe can share municipal solid waste equipment, such as collection trucks, with other tribes or local communities in order to reduce costs.

Partnerships also can provide tribal environmental personnel with wider access to technical assistance, training programs, and financial support mechanisms. By working together, tribes and other small communities with limited resources can expand their waste management options to establish effective waste prevention and recycling programs, state-of-the art landfills, and waste-to-energy facilities. Tribes can gain significant economic and environmental benefits from partnering. The following are examples that illustrate the reason for establishing such partnerships:

1. Greater economies of scale. Through such relationships, tribes can implement projects that may otherwise be too expensive for the tribe alone. By pooling financial and administrative resources, personnel, and equipment, project costs can be spread among several jurisdictions or tribes, making them more affordable.

2. Protection of human health and the environment. Such relationships can make more waste management options available to the tribe, thereby ensuring selection of the most appropriate solid waste management strategy. This in turn can help prevent contamination of drinking water and soil and enhance environmental protection. In addition, a sound waste management strategy minimizes waste related risks, injuries from fire, and the spread of disease.

3. Reduction in capital costs. By partnering with other communities, tribes can combine resources and gain better access to financial assistance from federal, state agencies, and private sector sources. Grants and loans are often more readily available to solid waste management partnerships that are regional, rather than local, in scope.
Consequently, as a multi-tribal partnership, tribes may be more likely to obtain financial assistance for solid waste management than a single tribe.

4. Operational cost savings and job creation. By developing such relationships, tribes can cut solid waste hauling and disposal costs. Instead of paying to landfill recyclable materials, tribes can avoid disposal costs by establishing intertribal waste prevention and recycling programs. Such programs can generate revenue from the sale of recyclable items. Also, waste management partnerships in tribal communities can help to create local jobs through recycling centers, transfer stations, and other partnership activities.

Recent Trends in Solid Waste Management by Tribes

Overall, as compared to the last ten years, tribes are making considerable improvement in the area of solid waste management. Tribes have become more sophisticated as to issues related to solid waste management and environmental problems in general. Furthermore, a new generation of American Indian lawyers, environmental engineers, and scientists is emerging. No longer will they be dependent upon others to do the sampling and analysis for them. They have both the technical expertise and political savvy to determine what is best for their respective tribes.

The tribal environmental staffs are also changing as well. The majority of tribal environmental staffs in the late 1980s used to be non-Indian who were supported principally by grants for things such as salary and operations. This has changed. Tribal environmental staffs are becoming predominantly more and more American Indian. This has also occurred in the public sector as well. In both EPA Regional and Headquarters Offices the presence of American Indians in technical positions has increased dramatically. For example, EPA’s American Indian Environmental Office has shifted from a largely non-Indian technical staff to where there is a marked increase in Indian technical staff that is not due to any Indian preference in hiring.
What we are witnessing is an example of a more active representative bureaucracy in terms of carrying out policy on behalf of tribes due to more American Indians occupying positions of legal, managerial, and environmental technical expertise.

Uncooperative, Cooperative Formal and Cooperative Informal Relationship Interactions

As previously stated at the beginning of this chapter, at the nexus or intersection where federalism and tribal governance meet, relationships can and often do occur among multiple sovereigns. Many of these relationships are often complex and may take any number of forms. They may be entirely uncooperative or they may be held in cooperative formal or cooperative informal arrangements.

The patterns of uncooperative, cooperative formal, and cooperative informal relationships are very complex, with some occurring simultaneously, while others followed different paths in time. Uncooperative, cooperative formal, and cooperative informal relationships are also interconnected as well. In each relationship, we see how groups interact and participate both favorably or unfavorably. This is important particularly in the area of solid waste management because we are dealing with the effects of solid waste on biological systems (e.g., people, plants, wildlife). Applied in this way, these complex relationships enrich our overall understanding of governance by linking various systems (e.g., economic, biological, political) together. They confer interdependence between sovereigns.

Furthermore, there are questions of power. This is particularly important in the case of tribes, which have been subjected to the whims of various government policies as discussed in Chapter Four. Collectively, Indian tribes do not have a large voting base due to their relatively small size in terms of population and their wide geographic dispersion. However, over many years, they have developed an acute sense of bureaucratic awareness and have considerable expertise in handling different government actors (e.g., federal, state, and local) simultaneously. Furthermore, they have developed extremely effective lobbying expertise at the congressional and agency levels in order to obtain needed resources within their respective geographic areas for their solid waste
management programs. These factors have contributed to tribes’ successful handling of power dyad relationships with all levels of government as discussed in Chapter Three.

Ultimately, tribes, the federal and state governments, and other entities (e.g., non-governmental entities) should engage in a shared notion of governance in order to enable tribes to be self-sustaining and vibrant sovereign governments. Uncooperative relationships fail to see these interconnections. However, if these relationships are dealt with in a cooperative manner, they can assist in the recognition of each sovereign and in reaching out across the structural divide as described previously in Chapter One. Finally, these kinds of relationships promote honor and recognition of all sovereigns so that the perception of tribes as just being “out there” can finally be dispelled. Such considerations can then help all sovereigns, and especially tribes, focus on issues like solid waste management.

Part II – Prescriptive Recommendations

Actions by Federal and State Governments

In order to foster improved relationships between tribes and the federal and state governments there needs to be at least three actions taken. First, there needs to be better intra-sovereign collaboration and less bickering especially by the federal government. As the research data demonstrated, there is often intense competition among federal agencies like BIA, EPA, and IHS in solid waste management. Unfortunately, Congress shares the blame because it does not always appropriate funding to the federal agency having the best expertise, which often leads to in-fighting and turf wars among these agencies.

Second, the federal government should take the lead in fostering better relationships among sovereigns in solid waste management, including partnerships. They have made successful progress in building cooperative relationships involving other environmental areas such as watershed management. However, solid waste management still remains an area ripe for improvement. Part of this has to do with the need for Congress to amend the Resource Conservation and Recovery Act (RCRA), to allow tribes to be treated in the same manner as states. Currently, EPA is following such a
course internally but it is subject to legal challenge because the amendment to the RCRA statute has not been enacted. Bureaucratic leadership should be in the form of asking Congress to amend the RCRA statute in order to ensure that tribes are given equal voice and that they are included in decision making processes in solid waste management.

Third, states need to have more formal relationships that recognize tribal sovereignty. Despite a history of conflict, both states and tribes have the capabilities to form such cooperative relationships, whose character can be deemed in the nature of a partnership between sovereigns. For example, a Proclamation was issued on January 3, 1989, by then Governor Booth Garner of the State of Washington. It proclaimed that “the State of Washington accepts the fundamental principle and integrity of the government-to-government relationship between the State and the Indian Tribes, and that this principle shall be the basis of the State’s Indian Tribal Governmental Policy.” This was reaffirmed on August 4, 1989, when Governor Gardner and Tribal Chairs officially signed a Centennial Accord between the State of Washington and the 26 federally recognized tribes in the state.

The Centennial Accord recognizes and respects the sovereignty of the tribes and formalizes a cooperative relationship between state government and the tribes. It affirmed state and tribal commitment to the principles of government-to-government relationships, and it institutionalized this relationship throughout state executive agencies and tribal organizations. Such recognition promotes respect between sovereigns. Also, at the level of action or policy, such recognition promotes good will between peoples where agreements can be accomplished.

As described earlier, MOU 2000 signed in January 2000 is another example of a cooperative formal relationship. Such efforts point to the fact that tribal governments see the need for improved communication with other parties. Specifically, key personnel in both federal and state agencies are identified who are involved in tribal interests. Another area of concern by tribes involves the extensive overlap and duplication of purpose and function (and often-conflicting oversight) at the federal level by agencies that enforce or manage environmentally related services. Tribal governments believe that
improved multi-jurisdictional cooperation is needed on solid waste management projects involving more than one with federal agency.

Sovereigns can also cooperate informally as partners, if an atmosphere of trust is obtained. An example of a cooperative informal relationship was illustrated at a ceremony honoring National American Indian Heritage Month held at the U.S. Department of the Interior. Lt. Governor Irwin Pecos of the Jemez Pueblo of New Mexico described how the remains of 2,067 of his people were recently repatriated from Harvard University to a burial ground site on the Pueblo. Governor Pecos described how archeologists indiscriminately removed these remains from Pueblo graves during the period from 1915 to 1927. Further, he explained that these remains are very sacred to the Pueblo community because they contained the souls of their people.

Governor Pecos noted that it was through cooperative and informal mechanisms by the National Park Service, which assisted the Pueblo in locating the burial ground where minimal environmental impacts would occur. Many people and institutions were involved that made repatriation possible. For example, Harvard University released the remains. Seven states allowed the trucks that carried the remains to pass through their highways unhindered by state truck stop inspections. Governor Pecos stated, “Good government-to-government relationships are possible if people are willing to reach out and listen to what an Indian is and what a non-Indian is.” There is a need for better cooperation among tribal, federal, state, county, and local governments, which will increase the awareness and understanding of each other’s laws, regulations, policies, and cultural values.

The Field of Public Administration and Indian Tribes

The various forms of American federalism have been amply described by the field as one of progression from dual federalism to marble cake federalism to new federalism, etc. The field’s treatment of federalism when it comes to Indian tribes, however, has been largely ignored. Indian tribes must therefore, be incorporated into the field’s treatment of American federalism. They are not part of American federalism since they
are sovereigns with their own governance structures and relationships with Indian tribes by the federal and state governments are on a government-to-government basis.

Again, in terms of the field, this leads into two sharp criticisms that this author has with the 1999 report published by the National Academy of Public Administration concerning overall BIA management and administration as described earlier in Chapter Three. The first criticism is that the report does not mention the unique government-to-government relationship between tribes and the United States. The second criticism is that the report does not mention interagency conflicts or cooperation.

These issues are critical to overall BIA management and administration as an agency under the Executive Branch since funds are often shared for various crosscutting programs (e.g., education) by several agencies. Furthermore, both intra- and interagency relationships among federal agencies have a direct bearing on how the trust responsibilities to American Indians and Alaska Natives are administered and managed. We need go no further than the recent debacle over billions of dollars of Indian trust funds poorly administered and mismanaged by the U. S. Department of the Interior and the U.S. Department of the Treasury. The real issue is more than that of BIA administration and management. It is looking into the nexus of federalism and tribal governance and discovering that tribes are indeed sovereign.

Intergovernmental relations where proactive multi-jurisdictional dialogue occurs will lead to the building of relationships, sharing of successful experiences, realization of each community’s uniqueness, and increase the interaction necessary for solid waste management improvements. The creation and utilization of cooperative formal relationships using instruments like MOUs will assist in developing partnerships between jurisdictional entities where respective sovereignties must be recognized. However, depending upon location and structure of communities and their respective governments, cooperative informal relationships may be better suited to improve solid waste management. One thing is for sure - communities cannot exist alone and all governments must work together to ensure effective solid waste management. This is why sovereigns need to deal with each other openly and with honor and respect for each other.
Policy implementation for the field depends on knowing about tribes. Public officials must learn about the issues and the diversity in Indian country and be open to the possibility of working in a different cultural environment if they want to build partnerships with tribal governments. This is so critical for the implementation of public policy because history bears witness that earlier government policy towards Indian tribes was often wrong. As stated in Chapter One, the public administration literature has for the most part ignored tribal governance. Unfortunately, the loss we inflict upon ourselves by failing to reach out to the tribal world so different from our own is a missed opportunity. In Federalist # 10, James Madison spoke about these things in terms of diversity: the greater the number of religious and political sects comprehended by the constitutional reality, the stronger the body politic.

Tribal ways are fundamentally different—different, not less developed. They have different languages, a different spirituality, different aesthetics, and different ways of living on and with the earth, and different ways than capitalism for putting people to work. To acknowledge and to accept the different tribal reality rather than to continue denying it would enrich experience and widen the horizons of non-Indians. That is why it is important for the field to learn more about tribes, as sovereigns, who occupy a place with their own governance structures along with the federal and state governments.

The relationship of Indian tribes to federalism, intergovernmental relations, and policy implementation all add to the field’s agenda for research. However, more research is needed to understand tribes, since they are an often-neglected yet integral part of the American polity. This is an area that is ripe for inquiry. Some possible areas for future research include comparative studies of tribal governance in the United States and tribes in other countries, or the various state commissions of Indian affairs and their assistance or lack of assistance to tribes. Another interesting study would be the unique aspects of non-federally recognized tribes, such as those tribes that have state-recognition.
Conclusion

The United States is based, in part, upon a constitutional system that allows the broadest scope for cultural, ethnic, traditional, and religious diversity. Our nation has been enriched immeasurably by its openness and ability to accommodate different cultures. This openness has allowed each group to make its own contribution to our national life. Tribes, as sovereigns, have rich cultures that are intertwined with the founding of our nation. The “story” in this study began with two sovereigns, state and federal, each with a discrete identity and joined as “co-venturers,” with the federal government having supreme powers only to the extent granted by the Constitution. The inclusion of tribes as another sovereign may challenge some of the established narrative but it will finally change the underlying notion that tribes are just “out there.”

What the future holds is uncertain. Much will depend upon the willingness of all sovereigns to uphold their historic promises. However, it is important for the field to recognize that these multiple relationships can occur only in an atmosphere of honor and respect by all sovereigns for each other. In the end, this will enrich our nation as a whole.
NOTES

1 Personal interview, 7 June 1999.

2 Lt. Governor Irwin Pecos, (speech given at the U.S. Department of the Interior for American Indian Heritage Month), 10 November 1999.

3 Ibid.