

## **Module One: Tribal Sovereignty**

### Objective:

1. Outline principles of Tribal Sovereignty
  - a. Definition
  - b. Promises
  - c. Negotiated formal agreements
2. Theoretical/legal considerations:
  - a. Marshall Trilogy
  - b. Doctrine of Discovery
  - c. Plenary Power
  - d. Trust Responsibility
3. Local context
  - a. Treaty examples of the Pacific Northwest
  - b. Walla Walla Treaty Conference - 1855

### Assignments -

#### Readings:

1. Theoretical considerations:
  - a. Tsosie – Tribal Sovereignty
  - b. Kidwell – Chp. 4 of Native American Studies text
2. Local Context:
  - a. Harmon – Pacific Northwest Indian Treaties
  - b. CTUIR Treaty of 1855

### Participation Reflections – written students responses to readings:

1. What is the Marshall Trilogy and how does it affect Tribal Sovereignty?
2. Identify and describe three main components of the CTUIR Treaty of 1855.
3. Describe the two fundamental aspects of Tribal-Federal relationship.
4. According to Harmon, what steps should Indian Nations take, to strengthen their relationships with the U.S. Federal Government?

### Lecture:

Powerpoint presentation – Tribal Sovereignty



# American Indian Tribal Sovereignty

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# Foundations

- ◉ Unique relationship between the United States and American Indian tribes.
- ◉ Sovereignty is the foundation of this relationship.

# What is Sovereignty?

- *The power of a people to govern themselves.*
- What does this mean?

# Tribal Sovereignty

- Power of tribes to self-govern.
- Tribal powers originate with the history of tribes managing their own affairs.
- Case law established that tribes reserve the rights they had never given away.

# "Nation-within-a-Nation" Status

- Treaties
  - Supreme Law of the Land
  - Formalize a **nation-to-nation** relationship
  - Contract/Agreement
- Tribes relinquished certain rights in exchange for promises

# Federal Relationship

- ◉ Trust responsibility
- ◉ Plenary Power

# U.S. Constitution

- Recognition
  - Article 1, Section 8
- Authorization - "To regulate commerce with foreign nations, among the several states, and with the **Indian tribes.**"



# Court Precedence

- **Marshall Trilogy**

# Johnson v. Mc'Intosh

- Action regarding the validity of selling reservation land to private individuals.
- Provided that tribes' rights to sovereignty are impaired by colonialization but not disregarded.
- **Held that the federal government alone has the right to negotiate for American Indian land.**

# Cherokee Nation v. Georgia

- Action brought against Georgia by the Cherokee Nation which sought relief from state jurisdiction on tribal lands.
- **"domestic dependent nations."**
- Ruled that the Supreme Court had no legal authority to hear the dispute.

# Worcester v. Georgia

- Action regarding the application of a missionary license of Georgia state law within the Cherokee Nation.
- Maintained that **only Congress** has plenary power over Indian affairs.
- Established that **state laws do not apply in Indian Country.**

# Context of Tribal Sovereignty

- Nuance of negotiation
  - Big T and Little t
- Power relations
- Goals/Outcomes




# Confederated Tribes of Umatilla Reservation Treaty

- ◉ Walla Walla Treaty Council
- ◉ Ceded vs. un-ceded lands
- ◉ Reserved rights

# Tribal Sovereignty as a Paradox

- ◉ U.S. government recognizes American Indian Tribes as sovereign nations,
- ◉ Yet, U.S. Congress is recognized by the courts as having the right to limit the sovereign powers of tribes.
- ◉ However, Congress must do so in definite terms and not by implication...which means...

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- Tribes remain sovereign nations and possess self-government rights.
  - Tribes have a nation-to-nation relationship with the U.S. federal government.
  - Only Congress has plenary power over Indian affairs.
  - State governance is generally not permitted within reservations.



# Review

