

**Outline:**

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**I. What is Tribal Sovereignty?**

A. Tribal sovereignty is the inherent right of tribal nations to govern themselves and the recognition that Native American tribes existed as separate and distinct self-governing communities, predating the United States by thousands of years.

**II. Key pillars of tribal sovereignty:**

**A. Federal Recognition:**

1. Tribal sovereignty is a government-to-government recognition between tribes and the United States. Individual states do not have the authority to recognize tribal sovereignty, which the Supreme Court has affirmed since 1832.
2. Tribal sovereignty can be affirmed via:
  - a) Government-to-government treaty
  - b) Executive order or other administrative act.
  - c) Congressional act.
  - d) Judicial decision.
  - e) State governments lack the authority to recognize tribes as sovereign nations.

**B. Treaty rights:**

1. By definition, treaties are only made between two or more sovereigns.
2. Treaties recognize and reinforce a government-to-government relationship
3. Many tribes have treaties with countries that pre-date the establishment of the United States, like Great Britain, Spain, the Netherlands and France.
4. These treaties outline each party’s specific rights and obligations and sometimes accompany land cessions in exchange for monetary payment, military protection or provision of services.
5. Treaties may also outline territory/reservation boundaries and include rights for hunting, fishing and cultural practices reserved exclusively for tribal citizens.

**C. Self-governance:**

1. The establishment of a tribal government and framework of their choosing.
2. Managing tribal assets, lands, natural resources and other internal and external affairs.
3. Self-administering housing, health care, education and other programs to tribal citizens, including those funded by federal agencies.

**D. Legal and regulatory authority:**

1. The act of passing and executing laws within tribal reservations or jurisdictional areas.
2. The right to regulate, pass and execute civil and criminal laws and policies on tribal lands.
3. The right to enter into compacts where civil and criminal jurisdiction matters overlap state and federal law.
4. The right to regulate minerals, water quality, air quality, other natural resources, and environmental matters.
5. The right to license and tax tribal citizens or others doing business on a reservation or with a tribal nation to the fullest extent federal law allows.

**E. Economic development:**

1. Pursue economic development opportunities reserved exclusively for tribes for the betterment of their citizens, such as:
2. Class II gaming, as established under the Indian Gaming Regulatory Act of 1988.
3. The SBA's 8(a) program: Congress passed the "Minority Small Business and Capital Ownership Development Program" in 1958 for socially disadvantaged businesses. The Act was amended in 1986 to include Native American tribes and Alaska Native Corporations.

**F. Cultural preservation:**

1. Tribes have the inherent right to protect and preserve separate and distinct cultural practices, heritage, languages and traditions unimpeded.
2. Tribes possess the right to preserve and protect on-reservation sacred sites and federal lands through NAGPRA (Native American Graves Protection and Repatriation Act).
3. Retain the right to consult on cultural preservation and repatriation of artifacts and remains from ancestral lands, regardless of current ownership or control.
4. Sacred sites are of deep spiritual, cultural, and historical significance and may include burial grounds, ceremonial locations, and places of profound historical importance.

***G. Tribal sovereignty is inherent. While tribal sovereignty is not “given” by the federal government, the relationship constantly evolves due to changes in federal law or federal court cases, conflicts between states and tribes, disputes arising from private industry or individuals or changes to Indian federal policy.***

### **III. Essential court cases laying the foundation for sovereignty:**

*A. Cherokee Nation v. Georgia: Landmark Supreme Court ruling on the status of Indians under the United States Constitution. (1831)*

1. Summary: Despite the Cherokee Nation’s highly advanced government, constitution, elected leaders, sophisticated economy, written language, and even a newspaper printed in both English and Cherokee, the state of Georgia sought to expel the Cherokee Nation for years and forcibly seize the tribe’s land, homes, possessions, etc.

In 1831, the U.S. Supreme Court heard the Cherokee Nation’s arguments against the state of Georgia’s actions and their case for an injunction against forced removal.

<https://www.pbs.org/kenburns/the-west/ Cherokee-nation-v-georgia>

*“This bill is brought by the Cherokee nation, praying an injunction to restrain the state of Georgia from the execution of certain laws of that state, which, as is alleged, go directly to annihilate the Cherokee as a political society, and to seize for the use of Georgia, the lands of the nation which have been assured to them by the United States, in solemn treaties repeatedly made and still in force.*

*“Do the Cherokees constitute a foreign state in the sense of the Constitution? The counsel have shown conclusively that they are not a state of the Union and have insisted that, individually, they are aliens, not owing allegiance to the United States. An aggregate of aliens composing a state must, they say, be a foreign state; each individual being foreign, the whole must be foreign.*

*“This argument is imposing, but we must examine it more closely, before we yield to it. The condition of the Indians in relation to the United States is, perhaps, unlike that of any other two people in existence. In general, nations not owing a common allegiance, are foreign to each other.*

*“The term foreign nation is, with strict propriety, applicable by either to the other. But the relation of the Indians to the United States is marked by peculiar and cardinal distinctions which exist nowhere else. The Indian territory is admitted to compose a part of the United States. In all our maps, geographical treaties, histories and laws, it is so considered. In all our intercourse with foreign nations, in our commercial regulations, in any attempt at intercourse between Indians and*

*foreign nations, they are considered as within the jurisdictional limits of the United*

*States, subject to many of those restraints which are imposed upon our own citizens. They acknowledge themselves, in their treaties, to be under the protection of the United States; they admit, that the United States shall have the sole and exclusive right of regulating the trade with them, and managing all their affairs as they think proper; and the Cherokees in particular were allowed by the treaty of Hopewell, which preceded the constitution, "to send a deputy of their choice, whenever they think fit, to congress."*

*"Treaties were made with some tribes, by the state of New York, under a then unsettled construction of the confederation, by which they ceded all their lands to that state, taking back a limited grant to themselves, in which they admit their dependence. Though the Indians are acknowledged to have an unquestionable, and heretofore unquestioned, right to the lands they occupy, until that right shall be extinguished by a voluntary cession to our government; yet it may well be doubted, whether those tribes which reside within the acknowledged boundaries of the United States can, with accuracy, be denominated foreign nations. They may, more correctly, perhaps, be denominated domestic dependent nations.*

*"If it be true, that the Cherokee nation have rights, this is not the tribunal in which those rights are to be asserted. If it be true, that wrongs have been inflicted, and that still greater are to be apprehended, this is not the tribunal which can redress the past or prevent the future. The motion for an injunction is denied. STORY, J. and THOMPSON, J. dissenting."*

The Supreme Court ruled against restraining Georgia from expelling the Cherokee Nation from Georgia based on its lack of standing as a plaintiff due to its status as a separate and distinct entity from the United States. HOWEVER, this case established a very important precedent, which ***recognized the sovereign status of tribes for the first time, separate and distinct from the United States, as "domestic dependent nations."***

## **B. Worcester v. Georgia: Supreme Court ruling on state jurisdiction over Indian lands. (1832)**

1. Summary: Samuel Worcester was a Presbyterian missionary to the Cherokees, a collaborator and co-founder of the tribal newspaper the Cherokee Phoenix, and a staunch advocate for Cherokee sovereignty. In the early 1800s, the state of Georgia prohibited Whites from living in the Cherokee Nation without a license from the state of Georgia.

However, Worcester and eleven other missionaries felt that obtaining a permit from the state of Georgia to reside inside the Cherokee Nation was an affront to the Cherokee Nation's sovereignty. The missionaries repeatedly refused to obtain a license and were repeatedly jailed. In 1832, Worcester sued Georgia for lack of jurisdiction to issue licenses in the Cherokee Nation.

<https://www.pbs.org/kenburns/the-west/worcester-v-georgia>

*“The Cherokee Nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter but with the assent of the Cherokees themselves or in conformity with treaties and with the acts of Congress. The whole intercourse between the United States and this nation is, by our Constitution and laws, vested in the government of the United States. The act of the State of Georgia under which the plaintiff in error was prosecuted is consequently void, and the judgment a nullity. . . . The Acts of Georgia are repugnant to the Constitution, laws, and treaties of the United States.*

*“They interfere forcibly with the relations established between the United States and the Cherokee Nation, the regulation of which according to the settled principles of our Constitution, are committed exclusively to the government of the Union. They are in direct hostility with treaties, repeated in a succession of years, which mark out the boundary that separates the Cherokee country from Georgia; guarantee to them all the land within their boundary; solemnly pledge the faith of the United States to restrain their citizens from trespassing on it; and recognize the pre-existing power of the nation to govern itself.*

*“They are in equal hostility with the acts of Congress for regulating this intercourse, and giving effect to the treaties. The forcible seizure and abduction of the plaintiff, who was residing in the nation with its permission, and by authority of the President of the United States, is also a violation of the acts which authorize the chief magistrate to exercise this authority. . . . Judgment reversed.”*

The Supreme Court ruled in favor of Worcester, determining he was prosecuted in error by Georgia and that Georgia had no rights inside the Cherokee Nation as a **“domestic dependent nation.”** Furthermore, the United States **“recognized the pre-existing power of the (Cherokee) nation to govern itself,”** thereby establishing the earliest affirmation of tribal sovereignty by the U.S. Supreme Court.

**IV. How does tribal sovereignty impact your work? *Your knowledge, understanding, and respect for tribal sovereignty will inform every aspect of community relations and every touch point with tribes.***

**A. Key points of understanding:**

1. No two tribes share the same culture, govern the same, or are the same in how they practice spirituality or share the same languages, histories, social structures or origin stories.
2. Each tribe has unique treaties and agreements with the federal government and their respective states.

3. Some tribes assert their tribal sovereignty to the greatest extent allowable under federal law.
4. Other tribes may not have the resources, capability, or even desire to fully implement self-governance.
5. Neither decision is right or wrong, and that is the basis of self-governance.

## **B. Community relations:**

1. Proactive community relations is imperative, and a solid understanding and respect of tribal sovereignty is the foundation upon which you will build upon those community relations.
2. ACHP (Advisory Council on Historic Preservation) issues a handbook for the Sec. 106 Review Process as a guideline for federal agencies to follow in consultation with tribal nations regarding project notification, legal requirements and consultation directives.
3. The ACHP handbook can also be used as an informal guideline for community relations because it also outlines the duties and responsibilities of Tribal Historic Preservation Officers (THPOs), State Historic Preservation Officers (SHPOs), and tribal cultural resource managers.
4. Although this guideline is for federal agencies, it can be adapted to inform tribal community relations by instilling a deeper understanding of formal consultation paired with a softer personal approach.
5. <https://www.achp.gov/sites/default/files/2021-06/ConsultationwithIndianTribesHandbook6-11-21Final.pdf>

### **C. When to consult who and where?**

1. Use resources outlined in the ACHP, such as the National Congress of American Indians and the National Association of Tribal Historic Preservation Officers, as well as state advocacy groups.
2. Outreach and consultation should only be conducted formally or informally with federally recognized tribes on their current reservations or ancestral homelands.
3. Advocacy groups like the United Indian Nations of Oklahoma and United South and Eastern Tribes, Inc. require federal recognition of member nations.
4. Many tribes share ancestral homelands, where resources like the Native Land Digital map can be helpful.
5. This interactive map represents both current tribal reservations and ancestral homelands.
  - a) <https://www.ncai.org/>
  - b) <https://www.nathpo.org/>
  - c) <https://www.uinoklahoma.com/>
  - d) <https://www.usetinc.org/>
  - e) <https://native-land.ca/>

6. Remember that many tribes have experienced political schisms since their relocation, confederated with other tribes, share jurisdiction, or even changed/reclaimed names since leaving their ancestral homelands.

**D. Examples of different tribal political and social affiliations before Indian Removal and present day:**

1. Cherokee Nation is now the Eastern Band of Cherokee Indians (North Carolina), Cherokee Nation (Oklahoma), and the United Keetoowah Band of Cherokees (Oklahoma).
2. Choctaw Nation is now the Choctaw Nation (Oklahoma), the Mississippi Band of Choctaw Indians (Mississippi), and the Jena Band of Choctaw Indians (Louisiana).

**E. Examples of split and confederated tribes:**

1. Seneca Tribe is now Seneca Nation (New York), Tonawanda Band of Seneca (New York), Seneca Cayuga (Oklahoma)
2. Cayuga Tribe is Cayuga Nation (New York) and Seneca Cayuga (Oklahoma).

**F. Confederated Tribes large scale:**

1. "The Confederated Tribes of the Grand Ronde Community of Oregon includes over 30 tribes and bands from western Oregon, northern California, and southwest Washington. Since time immemorial, tribal people have relied on these traditional landscapes for their livelihood."

**G. Tribes that have reclaimed traditional names in whole or in part:**

1. Navajo = Diné
2. Sioux = Lakota
3. Creek = Muscogee
4. Quapaw = O-gah-pah
5. Osage = Wahzhazhe

**H. Perils of consultation with state tribes or the wrong tribe:**

1. Erroneous information.
2. Mal intent.
3. Exclusionary to appropriate parties.
4. Harmful to the progress of the project.

**I. Formal legal consultation:**

1. NAGPRA, as it applies to your work, establishes procedures for the discovery of Native American remains, artifacts, or sacred items during excavation or construction on federal or tribal lands.
2. When proposed projects are funded or licensed by a federal agency and

may cross federal or tribal lands, the federal land managing agency is responsible for NAGPRA compliance.

3. While federal NAGPRA provisions do not LEGALLY apply to discoveries or excavations on private or state lands, it goes without saying any discovery should be reported immediately.

4. However, most, if not all, potential disruption of sacred sites will be avoided by working with tribes and tribes who claim the areas as their ancestral homelands.

**V. Now that you understand the foundation and the mechanics of tribal sovereignty and what it takes to work with tribes, what about the approach and “deskside” or “roadside” manner?**

A. Study each individual tribe, their system of governance, their culture and their history from official tribal resources.

B. Potentially letters of request for consultation vs. letters of information

C. Following up to make sure you have the right person or people. Titles may not mean what you think they mean. (I.e., Chairman may not mean the same thing as Chief)

D. Provide proactive information rather than finding yourself in a situation where tribal citizens are seeking information. This may place you or tribal leadership in an awkward position.

E. Pay attention to things like gender roles, whether a tribe is patriarchal or matriarchal, patrilineal or matrilineal, the roles of particular families, or whether they still follow a clan system.

F. Ask, don't tell.

G. Listen, listen, listen. Don't talk, don't interrupt or cut off.

H. Budget more than enough time to build the appropriate relationships. Don't feel

offended if meetings run late or longer than budgeted. Indian time is a real thing!

I. Anticipate cultural knowledge gaps and be respectful.

J. Treat tribal officials like governors, mayors, and other elected officials or policymakers.

K. Don't make assumptions and expect the worldview you began with to change drastically.

L. Exercise patience, but diligence.

M. Feel free to ask respectful questions that further your knowledge about the tribe

or advance your shared interests around the project.

N. But for non-Natives, be mindful of any anecdotes you might offer that pertain to questions about your family history, ancestry claims or issues that are too far off-topic. You want to exercise caution and not drift into territory that could be offensive or insensitive.



Further Research/Documentaries on the History of Native Americans in the U.S.

1. Thomas Jefferson:

<https://www.pbs.org/kenburns/thomas-jefferson/#watch>

2. Lewis and Clark: <https://www.pbs.org/kenburns/lewis-clark/#watch>

3. The West: <https://www.pbs.org/kenburns/the-west/#watch>