

POWERPOINT: “Sovereignty and Stakeholders”

Lecture Notes/Transcript

SLIDE 2

This slide presents a list of topics to be covered in the module.

SLIDE 3

Learning goals

SLIDE 4

“Stakeholders” is a term used to describe the interested parties who might wish to be involved in consultation. These parties can be formal entities such as States, federal agencies, or Tribes. They can be for profit business or non-profit organizations. They all have some sort of “stake” in the outcome of the project.

Ask your students “What makes the situation with Tribes different? What sets Tribes apart from these other stakeholders?”

Tribes have sovereignty and are separate nations within a nation. Before going to Slide 5, launch the following video in your browser: [George Bush on sovereignty](#)

SLIDE 5

After students have seen the video, offer these definitions. As an exercise, ask the students whether they believe sovereignty is given, earned, or something else. Let the discussion evolve, if it does, and try to let them establish their beliefs. Additionally, the second question can be used to get students to think about the situations they might not have thought about before.

SLIDE 6

This slide offers a brief history of use of treaties in North America – when the states were British colonies; when other European countries had land in what is now the United States, as well as the use of treaties after the United States gained freedom from Great Britain and developed as a new nation.

The Instructor should be aware of what a treaty is. Ask for examples of contemporary treaties, and include ideas that the Treaties are agreements between two separate and independent nations. Recent international treaties between the United States and other countries can be found at <https://www.state.gov/s/l/treaty/tias/2017/index.htm>. Much of this information can be derived from the readings, and the Instructor need not spend too much external time preparing for this discussion, but the Instructor should have an understanding of the underlying reasons why treaties were used to establish interactions with Tribes, as well as the contemporary implications that treaties have in relation to federal responsibilities toward American Indians.

SLIDE 7

This slide can be used to open the discussion concerning why treaties were used and the resultant impacts of their use. It is important for the Instructor to let students know that, initially, treaties were beneficial to the United States, but grew to be more of a hindrance as the military and economic power of the United States grew. Emphasize the importance of the last bullets concerning the recognition of title (for land), acknowledgement of protection of the Tribes by the US, and the recognition of particular rights held by Tribes.

SLIDE 8

Many people will not be aware that the relationship between the United States and Tribes are mentioned specifically in the United States Constitution. This information helps establish the special relationship between the federal government and Indian Tribes that set Tribes apart from other groups, and establishes the idea that Tribes are not just “ethnic groups.”

SLIDE 9

This slide presents three principles that underlie the federal government’s relationships with Tribes. It establishes that sovereignty is NOT given by the States (but recognized by the federal government): that Congress and NOT the President or federal agencies has the ultimate authority with regard to Tribes; and that the federal government has a “duty to protect” the Tribes through legislative and executive authorities resulting out of the Constitution and treaties.

SLIDE 10

This slide shows faces of two of the more prominent characters in regard to the federal relationship with Indian Tribes – Supreme Court Justice John Marshall and President Andrew Jackson. The historical information on each one is important, but not particularly necessary for the discussion other than the implications of Jackson’s quote on the following slide. Jackson was a “states’ rights” president who felt the federal government should not interfere with the State’s management of the “Indian problem.”

SLIDE 11

As with other historic issues, the Instructor should gather some background information on the three cases known as the Marshall Trilogy. The important point to come out of this is the idea that Marshall’s opinions on the three court cases established the concept of “domestic dependent nations” – and that the federal government had a responsibility to interact with Tribes “like a guardian to its ward.”

SLIDE 12

Slide 12 creates some context for contemporary Tribes and the federal government. One interest to many is the idea that Tribes operate within State borders even though they are separate Nations. “Compacts” are mechanism whereby Tribes and States reach agreement about issues that arise such as gambling, tobacco sales, and so forth. Since Tribes don’t pay taxes on their earned income, compacts determine the amount of funds that Tribes provide (proceeds of gaming and sales) to the State to help defray costs to State-provided infrastructure that allows people to go to the Tribal services, casinos, and so forth. Compacts are agreements between the State and the Tribe, but do not subjugate the Tribe to the State.

SLIDE 13

The unique relationship between Indian Tribes and the federal government derives from the position of Tribes as separate nations. However, it is important for students to learn that not all Indian Tribes are the same. State recognized and Non-recognized Tribes do not have status equivalent to federally recognized Tribes. Tribes can gain recognition from the federal government through an Act of Congressional, through a federal court ruling or opinion, and through the federal recognition process under 25 C.F.R. Part 83, called “Procedures for Establishing that an American Indian Group Exists as an Indian Tribe” managed by the Bureau of Recognition of the federal government whereby Tribes have to prove:

1. It has been identified as American Indian since at least 1900.
2. It has lived together in community since historical times.
3. It has governed itself since historical times.
4. It has provided governing documents which include who may be enrolled.
5. All of those enrolled in the Tribe descend from a historical Indian Tribe which functioned as a nation.
6. None of those enrolled are members of any other recognized Indian Tribe.

7. The Tribe has never been terminated by the United States government.

SLIDE 14

This slide details more of the “trust relationship” established under federal law and regulations. It is the responsibility of the federal government to support and encourage tribal self-government and economic prosperity, and protect tribes and their interests. The government has an obligation to ensure tribal resources are managed in a manner that promotes Indian interests. A fiduciary relationship exists between the federal government and Indian Tribe that requires the highest degree of responsibility, requires utmost loyalty to the Tribe, and requires the federal government and its agencies to advocate for Tribes, act in good faith toward Tribes and seek to make tribal resources productive and profitable.

Federal agencies generally try to act out this “trust responsibility” in their actions, but some do not recognize that their responsibility might supersede agency regulations.

SLIDE 15

This slide acts as a summary of the Module as a means of emphasizing the importance of the relationship between Tribes and the federal government.