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Tribal Sovereignty and the U.S. Government

An Inquiry Pack to Accompany [LegalTimelines.org](https://legaltimelines.org)

Inquiry Question: How has the federal government's policy towards Native American sovereignty changed over time?

Introduction / page 2

Early Tribal Sovereignty / page 3

Early U.S. Government Relations / page 5

U.S. Government Assimilation Efforts / page 7

Reclaiming Tribal Self-Governance / page 9

Inquiry Question / page 12

Inquiry Extension Question / page 13

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Introduction

Sovereignty: supreme power over an area or people; the right to govern.

Who decides whether a group of people have the right to govern themselves?

Before European colonists came to North America in the late 1400s, Native American groups had their own systems of governance, cultures, languages, and other defining factors of nations.

Today, we might describe these as “sovereign” nations. However, the concept of “sovereignty” was European. As several historians have pointed out, “...Indigenous concepts and practices of self-governance long predated European colonization in the Americas.”¹

When European colonists came to North America, they were surprised to find Indigenous people. At the time, religion and government were intertwined in Europe and many European countries took direction from religious leaders. The Pope (the leader of the Catholic Church) issued an order that said that Christian explorers had the right to claim and take the resources from any lands not inhabited by Christians. This included lands where Native Americans lived. This order was the first in a series of orders that became known as the “Doctrine of Discovery.”

Europeans, who were mostly Christians, believed that this doctrine allowed them to take the land of native peoples – usually through threats of brutal violence. Long term, it led to colonists’ beliefs that Native American tribes should be dominated and brought into the Christian religion. In fact, in 1593, Spain officially declared that any native peoples who fought back against colonists would be harmed. They said, “[W]e shall powerfully enter into your country, and shall make war against you in all ways and manners that we can, and shall subject you to the...obedience of the Church and of [the King and Queen of Spain].”²

These official declarations were just the first in a long line of violent conflict, subjugation, and dishonesty that European colonists – and later the U.S. government – inflicted upon tribal nations.

Most of these tribal nations did not submit to European – and later American – aggression. They fought back. They waged war on the battlefield and through the judicial system. They used diplomacy to negotiate for their sovereignty and rights, too.

As the U.S. government took shape, it developed official guidelines for relations between the government, states, and tribal nations. The earliest official guidelines were written into the Constitution itself, in 1787.

The sources below tell a story about how the federal government’s policies towards Native American sovereignty changed over time. What is that story? Explore the sources that follow to find out more.

Early Tribal Sovereignty

Few primary sources exist from Native Americans prior to the 1700s. One reason for this was that many tribes shared history, stories, and other information orally. The Haudenosaunee (named “Iroquois” by the colonials) was a confederacy made up of six Native American nations. Their original homelands were in the eastern part of the United States. They passed down the “Peacemaker Story” (Source A) over many generations. The story shared important teachings that influenced the tribe’s people and how they governed.

Source A: “Peacemaker Story” from Haudenosunee oral tradition³

Long ago, the Haudenosaunee Nations were at war with each other. A man called the Peacemaker wanted to spread peace and unity throughout Haudenosaunee territory. While on his journey, the Peacemaker came to the house of an Onondaga leader named Hayo’wetha (hi-an -WEN-ta), more commonly known as Hiawatha. Hayo’wetha believed in the message of peace and wanted the Haudenosaunee people to live in a united way. An evil Onondaga leader called Tadadaho, who hated the message of peace, had killed Hayo’wetha’s wife and daughters during the violent times. Tadadaho was feared by all; he was perceived as being so evil that his hair was comprised of writhing snakes, symbolizing his twisted mind. The Peacemaker helped Hayo’wetha mourn his loss and ease his pain. Hayo’wetha then traveled with the Peacemaker to help unite the Haudenosaunee.

The Peacemaker used arrows to demonstrate the strength of unity. First, he took a single arrow and broke it in half. Then he took five arrows and tied them together. This group of five arrows could not be broken. The Peacemaker said, “A single arrow is weak and easily broken. A bundle of arrows tied together cannot be broken. This represents the strength of having a confederacy. It is strong and cannot be broken.” The Mohawk, Oneida, Cayuga, Seneca, and Onondaga accepted the message of peace. With the nations joined together, the Peacemaker and Hayo’wetha sought out Tadadaho. As they approached Tadadaho, he resisted their invitation to join them. The Peacemaker promised Tadadaho that if he accepted the message of peace, Onondaga would be the capital of the Grand Council. Tadadaho finally succumbed to the message of peace. It is said that the messengers of peace combed the snakes from his hair. The name Hayo’wetha means “he who combs,” indicating his role in convincing Tadadaho to accept the Great Law of Peace. Joined together, these five nations became known as the Haudenosaunee Confederacy.

When peace had successfully been spread among the five nations, the people gathered together to celebrate. They uprooted a white pine tree and threw their weapons into the hole. They replanted the tree on top of the weapons and named it the Tree of Peace, which symbolizes the Great Law of Peace that the Haudenosaunee came to live by. The four main roots of the Tree of Peace represent the four directions and the paths of peace that lead to the heart of Haudenosaunee territory, where all who want to follow the Great Law of Peace are welcome. At the top of the Tree of Peace is an eagle, guardian of the Haudenosaunee and messenger to the Creator.

The Peacemaker then asked each nation to select men to be their leaders, called hoyaneh (plural, Hodiyahehsonh). The Peacemaker gave the laws to the Haudenosaunee men, who formed the Grand Council. The Grand Council, made up of fifty hoyaneh, makes decisions following the principles set forth in the Great Law of Peace. When decisions are made or laws passed, all council members must agree on the issue; this is called consensus.

Today, Haudenosaunee communities continue to live by the principles of the Great Law.

The Great Law of Peace is one of the earliest examples of a formal democratic governance structure. The Great Law of Peace was known to some of the Founding Fathers of the United States and has been compared — in terms of designated authorities and balances of power — to the U.S. Constitution. The Haudenosaunee Grand Council is the oldest governmental institution still maintaining its original form in North America.

Source A Information: Because of the Haudenosaunee's oral tradition, there is no original source for this story. This version of the story was written into an educator's guide produced by the National Museum of the American Indian in 2009. The original story from the guide is a shortened version of the story. ([See source at National Museum of the American Indian.](#))

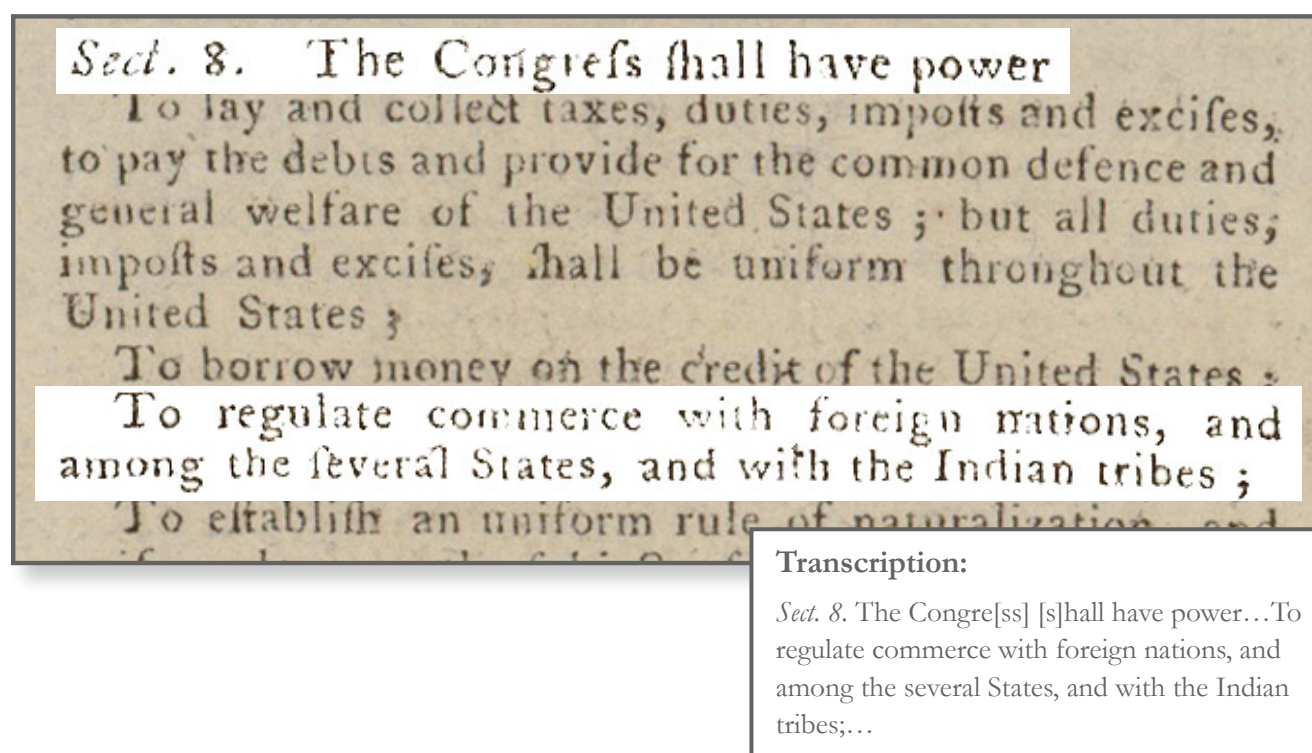
Questions to Consider for Source A:

1. **Observe:** What information stands out to you in this source?
2. **Reflect:** What can this source tell you about Native American tribal sovereignty prior to Europeans arriving in North America? What can the source tell you about how the American Founders viewed the Haudenosaunee Great Law of Peace?
3. **Question:** What is one question you have about this source?

Early U.S. Government Relations

The creation of the U.S. government brought about an official, national approach to relations between the United States and tribal nations. The U.S. Constitution's framers included language to guide the relationship. Later, that language was drawn upon in Supreme Court cases involving conflicts between state governments, Native American tribes, and the federal government. Three significant cases about tribal sovereignty were decided during Justice John Marshall's tenure on the Court (1801-1835). These cases, including the *Worcester v. Georgia* (1832) case below, are sometimes referred to as the "Marshall Trilogy." The *Worcester* case originated with the arrest of Samuel Worcester, a colonist who defended the Cherokees' rights. Worcester was arrested under a Georgia law forbidding "white persons" from living in the Cherokee Nation without the state's permission. In the *Worcester* case, the Georgia law was disputed. Worcester's lawyers argued that the Cherokee Nation was sovereign and that the state of Georgia could not make laws for the Cherokee Nation.

Source B: Excerpt from Article 1 of the U.S. Constitution (1787)⁴



Source B Information: This source shows Article 1, Section 8 of the U.S. Constitution as ratified by the Constitutional Convention on September 17, 1787. The images above are excerpted from a broadside print of the Constitution printed by John Carter in Providence, RI. ([See source at Library of Congress.](#))

Glossary of key terms from the source:

- *commerce*: the buying and selling of goods
- *regulate*: control or oversee through rules and other policies

Source C: Excerpt from majority decision in *Worcester v. Georgia* (1832)⁵

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.

Source C Information: This is an excerpt from the majority opinion, written by Justice John Marshall, in the case of *Worcester v. Georgia* (1832). To learn more details about the case, see the [case entry](#) on the Native American legal history timeline. ([See source at Library of Congress.](#))

Glossary of key terms from the source:

- *assent*: agreement
- *conformity*: agreement
- *distinct*: separate
- *intercourse*: communications and dealings
- *vested in*: assigned to

Questions to Consider for Sources B and C:

1. **Observe:** What do you notice about these sources?
2. **Reflect:** What can these sources tell you about how the U.S. government viewed the sovereignty of Native American tribes at the time?
3. **Question:** What is one question you have about one or both of these sources?

U.S. Government Assimilation Efforts

In the late 18th and early 19th centuries, the U.S. government's policies toward Native American sovereignty began to shift. Rather than recognize tribes as sovereign nations, the U.S. government aimed to take over native lands and force the native people to culturally assimilate. To assimilate means to take on the customs, values, and beliefs of a culture. During this period, there were dozens of laws, court cases, and events that took place affirming the U.S. government's shift in its relationship with tribes. One of those laws was the Dawes Act of 1887. It allowed the federal government to take away Indian reservations, which had Native American communities living together on tribally controlled land, and "allot" the land back to individual tribal citizens. Any land that remained after allotment was up for public sale and could be purchased by people who were not members of the tribe (typically white men). The Act was designed to break up tribal lands and weaken Native Americans' tribal connections. The government wanted Native Americans to give up their collective ownership and use of land, and encouraged individual ownership instead.

Source D: "What the People Say," *Indian Chieftain* (February 22, 1894)⁶

Excerpt 1:

WHAT THE PEOPLE SAY.

A. FOYIL said on the subject of the Dawes communication: I believe the time is near at hand when we will have to make a change. I am opposed to being attached to Oklahoma on any terms, but am afraid that is what will happen to us. Most of the Cherokees that come to my store to trade are in favor of allotment, or talk like they were. The only way we will ever get rid of the intruders permanently will be to take our allotments.

**

Excerpt 3:

**

CAPTAIN G. W. GRAYSON, of Eufaula, was in this city Saturday, and when asked his opinion in reference to the Dawes manifesto, said: I believe this address means a great deal to our people, but Mr. Dawes and his colleagues have only seen fit to consider one side of this matter I think. The five nations are well established communities owning by fee simple title their own land, and it seems that the commission has listened rather to the outsider than to the bona fide citizen in arriving at their conclusion. I believe the most intelligent portion of my people are in favor of allotment, but the masses are not, neither do I think they ever will be. I am confident that our only safety lies in allotment among ourselves of all our land. Then we could hope to get rid of the intruder. I don't believe that allotment need necessarily be followed by a dissolution of our tribal governments. I think we could continue as we are as separate Indian governments.

Excerpt 2:

**

IN regard to the address of the Dawes commission to the people of the five nations Dr. J. R. Trott, a prominent Cherokee of this city, said: "I regard it as a very strong document; indeed, I think it is the ultimatum. It is the fixed determination of the United States government that there must be an end to our Indian governments. The time has come when the five tribes will be compelled to change their form of government and their way of holding their lands. The best thing we can do is to allot our lands and do the very best we can for ourselves."

Transcription of Source D:**WHAT THE PEOPLE SAY.**

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Source D Information: The *Indian Chieftain* newspaper was a popular newspaper in the Cherokee Nation and was based out of Oklahoma. It was written and edited primarily by members of the Cherokee Nation. The three excerpts above were interviews with community members about their reactions to the Dawes Act. ([See source at Library of Congress.](#))

Glossary of key terms from the source:

- *allotment*: the taking of tribal lands from the federal government and redistributing it to individual Native Americans; upon accepting the land, Native Americans became U.S. citizens and lost their tribal status (legal and official affiliation with a tribe).
- *bona fide*: real (in this case refers to official members of a tribe)
- *fee simple title*: ownership of land without a time limit
- *dissolution*: closing down of an official group
- *intruders*: people from outside (in this case refers to people who were not official members of a tribe)
- *ultimatum*: final demand

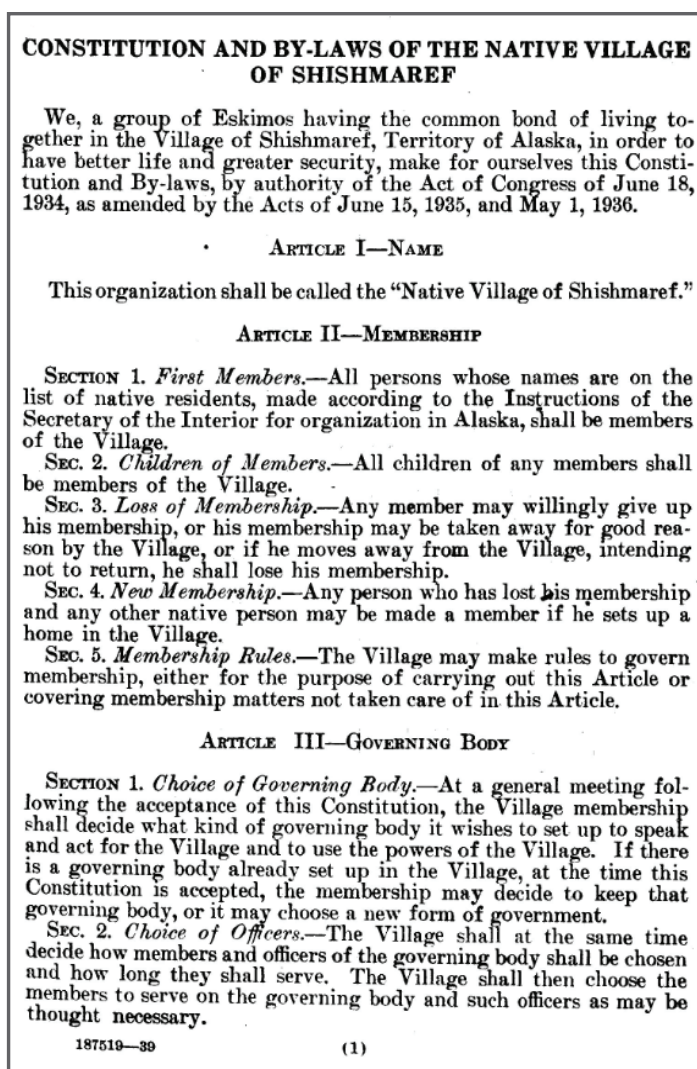
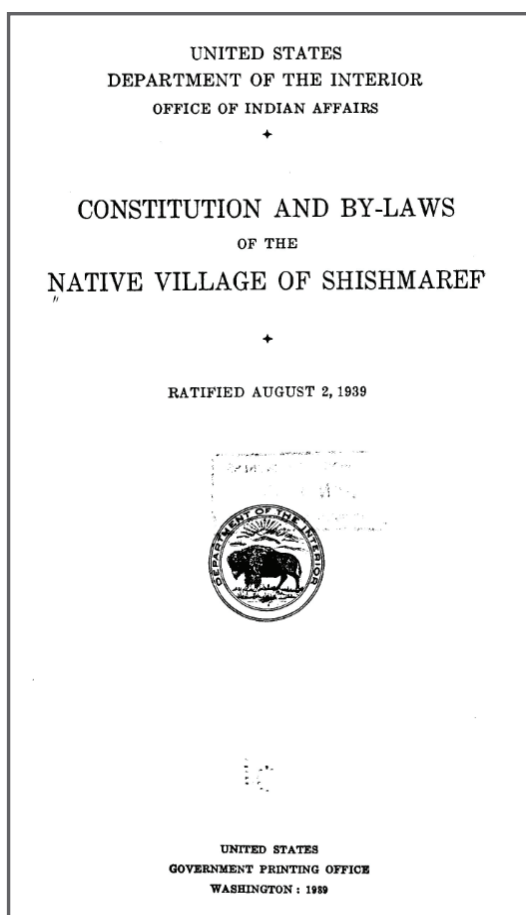
Questions to Consider for Source D:

1. **Observe:** What stands out to you in each of these three excerpts?
2. **Reflect:** In what ways are the reactions to the Dawes Act in each of these excerpts similar? In what ways are they different? What can these three excerpts tell us about how the U.S. government viewed the sovereignty of Native American tribes at the time? What can they tell us about Native Americans' reactions to this?
3. **Question:** What is one question you have about these excerpts?

Reclaiming Tribal Sovereignty

With the passage of the Indian Reorganization Act (IRA) in 1934, the U.S. government began to reverse its assimilation policies and restore sovereignty to Native American nations. The 1934 act returned land and mineral rights to Indians. The act also provided federal funding for any tribe that adopted a constitution, though there was much critique later on that these constitutions were not in line with tribal traditions of governance and tried to replicate U.S. systems too closely. Though the IRA was viewed with mixed success, other laws, Supreme Court cases, and policies followed that received more positive reactions for restoring sovereignty to tribal nations. In 1970, the U.S. government officially shifted to an era of self-determination, with President Richard Nixon announcing, “[T]he Indian future is determined by Indian acts and Indian decisions.” To this end, in 1996, President Bill Clinton signed Executive Order 13007, which required the federal government to “respect the rights of American Indians to access their sacred sites and to exercise their sovereign power.”⁷ Despite the signing of this executive order, many Indigenous people have had to take action to defend these sacred sites, including legal action and other forms of activism.

Source E: “Constitution and By-laws of the Native Village of Shishmaref” (August 2, 1939)⁸



SEC. 3. Meetings of Membership and Governing Body.—The Village shall decide when and how often there should be meetings of the whole Village membership as well as of the governing body; also it shall decide what notice shall be given for the calling of meetings and how many members must be present at such meetings in order to do business; and it may make any other rules necessary for the holding of meetings. A general meeting of the whole membership shall be held at least once a year.

SEC. 4. Record and Report of Village Decisions.—A record shall be made and kept of all the rules made under sections 1, 2, and 3 of this Article, which record shall be called the Record of Organization of the Native Village of Shishmaref. Copies of this record shall be given to the teacher or other representative of the Office of Indian Affairs serving the Village. There shall be put in the record the names of all persons chosen to be officers of the Village.

ARTICLE IV—POWERS OF THE VILLAGE

SECTION 1. Powers Held.—The Village shall have the following powers:

To do all things for the common good which it has done or has had the right to do in the past and which are not against Federal law and such Territorial law as may apply.

To deal with the Federal and Territorial Governments on matters which interest the Village, to stop any giving or taking away of Village lands or other property without its consent, and to get legal aid, as set forth in the Act of June 18, 1934.

To control the use by members or nonmembers of any reserve set aside by the Federal Government for the Village and to keep order in the reserve.

To guard and to foster native life, arts and possessions and native customs not against law.

SEC. 2. Grant of More Powers.—The Village may have and use such other powers as may be given to it by the Federal or Territorial Government.

SEC. 3. Use of Powers.—The governing body shall put into use such of the powers of the Village as the Village may give to it at general meetings of the membership and shall make reports of its actions to the membership at general meetings.

SEC. 4. Rule-Making Power.—The Village may make rules which are not against law to carry out the words of this Constitution.

ARTICLE V—RIGHTS OF MEMBERS

SECTION 1. Right to Vote.—All members of the Village 21 years of age or over shall have the right to vote in Village meetings and elections.

SEC. 2. Right to Speak and Meet Freely.—Members of the Village shall have the right to speak and meet together freely in a peaceable way.

SEC. 3. Right to Share in Benefits.—Members of the Village shall have equal chance to share in the benefits of the Village.

Source E Information: Shishmaref is an Iñupiaq village in Alaska. This excerpt from the constitution, ratified in 1939, was created not long after the passage of the Indian Reorganization Act, which encouraged tribes to create their own constitutions. ([See source at Library of Congress.](#))

Glossary of key terms from the source:

- *assimilation*: the process of becoming fully part of and adopting the customs of a society
- *common good*: for the benefit of everyone
- *territorial law*: laws developed by Indian nations
- *reserve*: 1) funding; 2) land set aside for a purpose

Source F: “Protestors at Sogorea Te (Glen Cove) Day 98” (July 20, 2021)⁹

Source F Information: Sogorea Te (also known as Glen Cove), in Vallejo, California, is a sacred site for several tribes in the region. The City of Vallejo planned to demolish the site to create a public park. In 2011, local organizers occupied the land in protest of this plan. After 98 days, the parties involved reached a resolution to stop the creation of the park and to give the tribes “legal oversight in all activities taking place on the sacred burial grounds of Sogoreate/Glen Cove.”¹⁰ This picture, taken in 2011, shows activists on the final day of the protest. ([See source at Wikimedia Commons.](#))

Questions to Consider for Sources E and F:

- 1. Observe:** What do you notice about these sources?
- 2. Reflect:** What can these sources tell you about how the U.S. government viewed the sovereignty of Native American tribes at the time? What might they suggest about how Native American communities have viewed their sovereignty at the time?
- 3. Question:** What is one question you have about one or both sources?

Inquiry Question

How has the federal government's policy towards Native American sovereignty changed over time?

Inquiry Extension Question

Research and summarize current issues in tribal sovereignty and government policy. Based on what you find, take an educated guess about what the future of tribal sovereignty might look like and why.

(Hint: Use news.google.com and search “tribal sovereignty” to find dozens of recent articles about this topic.)

Notes

¹ Christine DeLucia, Doug Kiel, Katrina Phillips, and Kiara Vigil, “Histories of Indigenous Sovereignty in Action: What is it and Why Does it Matter?” *The American Historian*, March 2021, <https://www.oah.org/tah/native-american-history-and-sovereignty/histories-of-indigenous-sovereignty-in-action-what-is-it-and-why-does-it-matter/>.

² Juan López de Palacios Rubios, “The Requerimiento,” 1510. From *Teaching American History*, <https://teachingamericanhistory.org/document/requerimiento/>.

³ “Peacemaker Story,” Haudenosaunee Guide for Educators, National Museum of the American Indian Education Office, 2009, <https://americanindian.si.edu/sites/1/files/pdf/education/HaudenosauneeGuide.pdf>.

⁴ “We, the people of the United States, in order to form a more perfect union ...,” *Broadside*, 1787. From Library of Congress Rare Book and Special Collections Division, <https://www.loc.gov/item/90898138/>.

⁵ *Worcester v. Georgia*, 31 US 515 (1832). From Library of Congress U.S. Reports, <https://tile.loc.gov/storage-services/service/lj/usrep/usrep031/usrep031515/usrep031515.pdf>.

⁶ “What the People Say,” Indian Chieftain (Oklahoma), February 22, 1894. From Library of Congress Chronicling America, <https://chroniclingamerica.loc.gov/lccn/sn83025010/1894-02-22/ed-1/seq-2/>.

⁷ *Hereditary Chief Wilbur Slockish, Et Al. v. United States Federal Highway Administration, Et Al.*, No. 21-35220, Brief of Amici Curiae American Indian Law Scholars Supporting Appellants and Reversal, United States Court of Appeals for the Ninth District, May 10, 2021. From Turtle Talk, <https://turtletalk.files.wordpress.com/2021/11/indian-law-scholars-amicus-brief.pdf>.

⁸ “Constitution and By-Laws of the Native Village of Shishmaref,” Washington, DC: U.S. Government Printing Office, 1939. From Library of Congress Native American Constitutions and Legal Materials, <https://www.loc.gov/resource/ljcd.40026121/?sp=1&st=image>.

⁹ dignidadrebelde’s photostream, “Protestors at Sogorea Te (Glen Cove) Day 98,” July 20, 2011. From Wikimedia Commons, https://commons.wikimedia.org/wiki/File:Sogorea_Te.jpg.

¹⁰ Protect Glen Cove, “Press Release: A Victory for Protection of Sogorea Te,” news release, July 20, 2011, <https://web.archive.org/web/20110918152737/http://protectglencove.org/2011/easement-press-release/>.