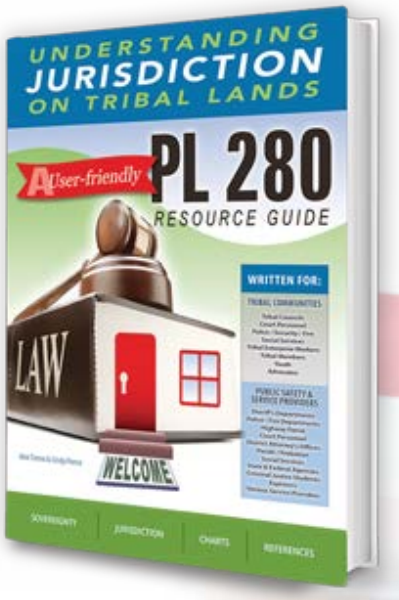
Limited Tribal Sovereignty

External Sovereignty versus Internal Sovereignty



An interactive article - excerpts from "A User-friendly PL 280 Resource Guide"

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In order to understand tribal sovereignty it is foundational to recognize that the powers of Indian tribes are not powers that have been delegated to them by any government. Rather, they are "inherent powers of a limited sovereignty which (have) never been extinguished." [1]

"Each Indian tribe begins its relationship with the Federal Government as a sovereign power, recognized as such in treaty and legislation. The powers of sovereignty have been limited from time to time by special treaties and laws…"
"Powers of Indian Tribes" U.S. Dept. of the Interior, Office of the Solicitor 1934

Tribal nations, which pre-exist the nation of the United States, were recognized as sovereign through treaties with several European nations. As the U.S. struggled to become an independent nation, they too made an official treaty with an Indian tribe. [2] After the U.S. became a sovereign nation, over 370 government-to-government treaties were negotiated with various Indian tribes. Treaties were the vehicle for governmental agreements where each side had a voice. [3] In these mutual agreements many Indian tribes placed themselves under the laws of the United States, therefore limiting their *external* sovereignty.

> *"Not well acquainted with the exact meaning of words, nor supposing it to be material whether they were called the subjects, or the children of their father in Europe … so long as their actual independence was untouched, and their right to self-government acknowledged, they were willing to profess dependence on the power which furnished supplies of which they were in absolute need, and restrained dangerous intruders from entering their country; and this was probably the sense in which the term was understood by them … The Indians perceived in this protection only what was beneficial to themselves – an engagement to punish aggressions on them. It involved, practically, no claim to their lands, no dominion over their persons. It merely bound the nation to the British crown, as a dependent ally, claiming the protection of a powerful friend and neighbour, and receiving the advantages of that protection, without involving a surrender of their national character."*
>
> *Worcester v. State of Georgia, 31 US 515, 546-547, 552 (1832)*

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Powers of Indian tribes not delegated powers

Over 370 treaties negotiated

Responsibility to not take advantage in negotiations

External powers to override interests of the national government

Self-government the highest and best

A tribe's relinquishment of external sovereignty simply meant they agreed not to do anything contrary to or in conflict with the laws of the United States. Their inherent sovereignty – *internal* sovereignty – was not destroyed by their alliances. "[T]he settled doctrine of the law of nations is that a weaker power does not surrender its independence – *its right to self-government* – by associating with a stronger, and taking its protection." [4]

The tribal nations, in making alliances with the various European countries – and eventually the United States, viewed it as a partnership of loyalty that they were bound to. By doing so, they continued to govern themselves and claimed the "protection of a powerful friend and neighbour." [5] There was no thought that being under the protection of a strong ally would strip them of their individual sovereignty. "Protection does not imply the destruction of the protected." [6]

It must be remembered that at the time of the early U.S. treaties, the language in which the treaties were drafted (English), certainly was not a universal language for the indigenous people of the North American continent.

"When Indians are involved ... the United States, as the party with the presumptively superior negotiating skills and superior knowledge of the language in which the treaty is recorded, has a responsibility to avoid taking advantage of the other side. '[T]he treaty must therefore be construed, not according to the technical meaning of its words to learned lawyers, but in the sense in which they would naturally be understood by the Indians.'"

Washington v. Fishing Vessel Assn., 443 US 658, 675, 676 (1979)

Therefore, the words used in the various treaties and other agreements are to be interpreted according to the way they were expressed to the Indian tribe(s) at the time of negotiation rather than technical interpretations or legalese. The United States negotiated using specific words of the English language to express its legal commitment to the tribes. In the treaties, the tribal leaders agreed to the clear meaning of the words expressed to them, often through interpreters.

A powerful example of the relinquishment of external sovereignty not intending to destroy a tribal nation's internal sovereignty is found in the infamous U.S. Supreme Court case of Ex Parte Crow Dog. [7] A point of contention during this case was the verbiage in a treaty which stated: "Congress shall, by appropriate legislation, secure to them (the Sioux Indians) an orderly government: they shall be subject to the laws of the United States, and each individual shall be protected in his rights of property, person, and life." [8]

The U.S. Supreme Court, in looking at the words of this treaty, clarified that such language was *not* intended to destroy a tribe's internal sovereignty, rather, quite the opposite *(see quote on next page)*.

The relinquishment of external sovereignty does not mean a tribal government is stripped of all its power. Only tribal power that would seek to impose external powers of government and override "interests of the national government" has been given up. [9]

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> *"The pledge to secure to these people (Indians), with whom the United States was contracting as a distinct political body, an orderly government, by appropriate legislation ... necessarily implies ... the highest and best of all, that of self-government, the regulation by themselves of their own domestic affairs, the maintenance of order and peace among their own members by the administration of their own laws and customs."*
>
> *Ex Parte Crow Dog, 109 US 568 (1883)*

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Endnotes

[1] "*Powers of Indian Tribes*" Opinion of Solicitor Margold, US Dept. of the Interior, Office of the Solicitor, Oct. 25, 1934, accessible on the Office of the Solicitor's website, archives of the decisions of the Dept. of the Interior dating from July 1881 to Dec. 1994 at http://www.doi.gov/solicitor/decisions.html

[2] The first official treaty the United States negotiated with an Indian tribe was with the Delawares in 1778.

[3] Tribes originally negotiated from a position of strength. This changed over the years. During the early 1800's the threat of European powers against the United States relaxed and strengthened the negotiating power of the Federal government with Indian tribes.

[4] *Worcester v. State of Georgia,* 31 US 515, 520 (1832)

[5] Id. at 552, 549 (1832)

[6] Id.

[7] *Ex Parte Crow Dog*, 109 US 556 (1883)

[8] Id. at 568

[9] *Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 US 134, 153-154 (1980) Examples of overriding government given in this case are: 1)Engage in foreign relations with other nations 2)Sell their lands to non-Indians without federal approval 3)Prosecute non-Indians in tribal court (that do not accord the full protections of the Bill of Rights)