



Mississippi Valley Archaeology Center
1725 State Street
La Crosse, Wisconsin 54601
Phone: 608-785-6473
Web site: <http://www.uwlax.edu/mvac/>

The following lessons were created by Kim Schiller, a teacher participating in a National Endowment for the Humanities Summer Institute for Teachers entitled Touch the Past: Archaeology of the Upper Mississippi River Region.

Class: Advanced Placement United States Government and Politics

Unit: The Institutions of Government: The Judiciary

Objectives:

- Students will be able to define sovereignty.
- Students will be able to describe the differences between tribal, state, and federal sovereignty.
- Students will be able to describe the history of tribal sovereignty.
- Students will be able to analyze the trio of Supreme Court decisions that are the foundations of Native American law.
- Students will be able to analyze the Great Sioux Uprising of 1862 from the perspective of the Dakota Peoples and the Caucasian settlers.

Anticipatory Set:

Discussion Question: What is sovereignty? Why does sovereignty matter? Can there be different sovereignties within a country? Do several sovereignties create harmony or discord?

Lectures:

- The history of tribal sovereignty. (See attached overheads)
- The history of the Great Sioux Uprising of 1862. (See attached overheads)
- The aftermath of the Great Sioux Uprising as it applies to the Shakopee Mdewakanton Sioux Community (SMSC).
- Ramifications for today (*Wolfchild vs. US* 2004)

Duration: Two to three class periods

Evaluation:

Homework—Essay: Is the painting entitled *Attack on New Ulm during the Sioux Outbreak August 19th-23rd 1862* by Anton Gag accurate? Why or why not? Since this painting hangs in the Minnesota State Capitol, what does this say about the view of tribal sovereignty by the state of Minnesota? Is it appropriate for this painting to continue to hang in the capitol? Why or why not? NOTE: This painting may be accessed at “Fascinating People of Early Faribault.”

Reading: Court case: *Wolfchild v. United States* (2004) excerpts

-Five Hundred Sixty Nations Among Us: *Understanding the Basics of Native American Sovereignty* by Stephen Brimley

-*The Changing view of Indian law by the U.S. Supreme Court* by Joel Patenaude

-*The Discovery Doctrine, the tribes, and the truth* by Jack Utter

Periodic exam questions:

-Discuss the trio of court cases which established the basic tenets of federal Indian law and policy.

-Give a brief description of the Great Sioux Uprising of 1862 and its aftermath.

-How have recent US Supreme Court cases continued to define (or redefine) tribal sovereignty?

Sources:

Brimley, Stephen. *Five Hundred Sixty Nations Among Us: Understanding the Basics of Native American Sovereignty*.

<http://www.umaine.edu/mcsc/MPR/Vol13No1/Brimley/Brimley.htm> Accessed 15 July 2007.

Dakota (Sioux) Uprising. <http://www.mnsu.edu/emuseum/history/oldmankato/1852-1900/siouxuprising.html>

Accessed 23 July 2007.

d'Errico, Peter. *SOVEREIGNTY: A Brief History in the Context of U.S. "Indian Law."*
<http://www.umass.edu/legal/derrico/sovereignty.html> Accessed 18 July 2007.

Fascinating People of Early Faribault. <http://www.faribault.org/history2/Events/war.html>
Accessed 23 July 2007.

Great Sioux Uprising of 1862.

http://www.digitalhistory.uh.edu/native_VOICES/voices_display.cfm?id=68
Accessed 23 July 2007.

Mdewakanton Dakota. http://www.shakopeedakota.org/sm_sc Accessed 15 July 2007.

Patenaude, Joel. *The changing view of Indian law by the U.S. Supreme Court.*
<http://www.aaanativearts.com/article511.html> Accessed 15 July 2007.

Utter, Jack. *The Discovery Doctrine, the tribes and the truth.*

<http://www.indiancountry.com/content.cfm?id=2541>
Accessed 22 July 2007.

Winter, Catherine. *Tribal Sovereignty: Legal History and Modern Practice.*

http://news.minnesota.publicradio.org/features/199804/17_winterc_sovereignty-m/ Accessed 18 July 2007.

Wolfchild vs. United States 2004.

http://www.narf.org/nill/bulletins/dct/unreported/fc_wolfchild.html Accessed 15 July 2007.

History of Tribal Sovereignty

Sovereignty: classically defined as supreme legal authority.

Basic controversy: To trace supreme authority to the people or to a “divine right” of rulers.

Another controversy: The relation between legal authority and political-economic power which may influence or dominate law.

From their earliest contacts with the “new world,” colonizing powers asserted sovereignty over indigenous peoples, based on theological-legal theory built on “divine right.”

Spain, Portugal, France, England, and other colonial regimes explicitly based their sovereignty claims on religious doctrines decreed by the Pope, who was regarded as having power to grant titles to portions of the earth for purposes of Christian civilization.

Remember the Treaty of Tordesillas (1494) and the Line of Demarcation?

The result?: Indigenous peoples were legally stripped of their independent status.

Sometimes they were not recognized at all and their lands treated as legally “vacant.”

Other times they were declared to have a “right of occupancy” but not ownership of their lands.

Trio of U.S. Supreme Court cases (called the Marshall trilogy) defined this concept.

- ***Johnson v. McIntosh* (1823)**
“right of occupancy adopted which remains the basic legal position of federal Indian law, despite the “divine right” is not accepted elsewhere in U.S. law
- ***The Cherokee Nation v. Georgia* (1831)**
Recognized the inherent but limited sovereignty of tribes and their right to govern themselves as “domestic independent nations.”
- ***Worcester v. Georgia* (1832)**
The Cherokee Nation possessed “its right of self-government” even though it was “dependent” on the United States
The Cherokee Nation governed a distinct territory “in which the laws of Georgia can have no force.”

Marshall noted two limitations on full tribal sovereignty:

- Indian tribes, as domestic dependent nations, could not alienate their lands other than to, or with the consent of, the federal government, and
- They could not enter treaties or other agreements with foreign nations.

What does the underlined portion mean?

U.S. federal Indian policy has been ground in this contradictory premise of sovereign but dependent ever since.

Federal authority over tribes derives from the Commerce Clause of the U.S. Constitution (Article I, section 8, clause 3): Congress shall have the Power...to regulate Commerce with foreign Nations, and among the several States, and with Indian Tribes.

In 1998, the U.S. Supreme Court ruled: Congress possesses plenary power over Indian Affairs, including the power to modify or eliminate tribal rights, and that Congress can assist or destroy an Indian tribe as it sees fit.

What kind of power is plenary?

“Our sovereignty is as sacred as our land. It is our right and ability to control our own destiny.

--Art Gahbo, former tribal chair of the Mille Lacs band of Ojibway

The Great Dakota Sioux Uprising of 1862

Prior to 1862, the Minnesota Sioux consisted of four bands :

- **Mdewakanton and the Wahpakoota (together comprising the “lower bands”)**
- **Sisseton and the Wahpeton (known as the “upper bands”)**

All lived along the Minnesota River

In August of 1862, young traditionalists in these four bands waged war against the United States, killing more than 500 white settlers and damaging substantial property.

As part of the 1851 treaty with the Mdewakanton and the Wahpakoota, the bands agreed to cede and relinquish all their lands and their right, title, and claim to any lands whatever, in the Territory of Minnesota, or in the State of Iowa. (Article 2)

Article 4: In further and full consideration of said cession and relinquishment, the United States agree to pay to said Indians the sum of one million four hundred and ten thousand dollars (\$1,410,000) at the several times...

The Dakota had been forced onto reservations by an insurgency of white settlers. Only a portion of the purchase price was ever paid. The government paid a stipulation regularly, but the agents, to whom it was sent for distribution, often pocketed the larger portion of the money.

The traders extended the Indians credit to purchase food and other items (on which the Indians depended) & “...when the payments came the traders were on hand with their books, which showed that the Indians owed so much and so much, and as the Indians kept no books they could not deny their accounts, but had to pay them, and sometimes the traders got all their money.” (Big Eagle, Minnesota Historical Society Collections, 1894)

Big Eagle: Some of the Indians took a sensible course and began to live like white men. The government built them houses, furnished them tools, seed, etc., and taught them to farm...Others stayed in their tepees. There was a white man’s party and Indian party.

It began to be whispered about that now [August, 1862] would be a good time to go to war with the

whites and get back the lands. It was believed that the men who had enlisted last had all left the state, and that before help could be sent the Indians could clean out the country, and the Winnebagoes, and even the Chippewas, would assist the Sioux.

Somebody told the Indians that their payment would never be made. “The government was in a great war, and gold was scarce, and paper money had taken its place, and it was said the gold could not be had to pay us.”

Soon the cry was “Kill the whites and kill all these cut-hairs [Sioux who had become “farmers—as if it was disgraceful to be a farmer.”] who will not join us.”

After defeating the bands, the U.S. punished the Sioux by nullifying its treaties with them, among other things voiding annuities that had been granted as part of the terms of the 1851 treaty.

Some of the Sioux had been loyal [the word used in *Wolfchild v. US*] to the U.S. during the Sioux Outbreak, and these loyalists were permitted to stay on the Minnesota lands provided for the Sioux under the treaties. After Congress stripped the Sioux of

their Minnesota lands, it authorized the Department of the Interior to allocate up to eighty acres of that land to each loyalist.