



# *The Reach and Limits of Tribal Sovereignty and Self-Determination*

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# \*Disclaimer

The views, thoughts, and opinions expressed in this presentation are solely those of the presenters and do not reflect the official policy or position of any organizations or institutions we may be affiliated with, including our employers and Tribal Nations to which we belong.

Our intent is to share individual insights and experiences, and these should not be interpreted as endorsements or statements made on behalf of any group or entity.

# Overview

- Terms/Definitions
- Historical Context
- Tribal Sovereignty
- Tribal Courts and Laws
- Cultural Competency
- Stories Weaved Within



# “Indian” and “Indian Country”

Title 25 of the U.S. Code: “Indians”

18 U.S. Code § 1151 - Indian Country Defined

Tribal Citizenship

Native American, American Indian, Indigenous



# Important Data



**574** Federally Recognized Tribes in U.S

**29** Federally Recognized Tribes in Washington

Other Recognitions:

- “Indian Communities”
- State-Recognized Tribes per State Statutes (12 States) – WA has no such Statute
- Out of State Tribes with Treaty Rights in WA

Native population, according to U.S. Census:

- **U.S.** 6.79 million = 2.09% of population
- **WA** 219,642 = 2.82% of population (10th highest state native population)

# 'Eras' of Tribal/Federal Relationship

Treaty Era

Separation & Removal

Extermination & Relocation

Assimilation

Self Determination/Governance

# WA State Relationship with Native Nations

- 1989 Centennial Accord
  - RCW 43.376: Government-to-Government
- Tribal Law and Order Act, RCW 10.32
- Consultation
  - State Environmental Policy Act
  - Growth Management Act
- Tribal-State Agreements
  - Compacts, MOUs, Inter-agency Cooperative Agreements and/or Commissions)



# Tribal Sovereignty is Inherent, but Limited

Tribal sovereignty recognizes tribes as having the political status of nations; however, it recognizes that Native nations are geographically located within the territorial boundaries of the United States

- Inherent right, not delegated, but retained
- Sovereign Immunity – express waiver
- Redefining Tribal Sovereignty





# Creation of Tribal Courts

- Exercise of Sovereign Powers
- Indian Reorganization Act
- CFR courts
- Wellness Courts

# Tribal Governments

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- Tribal governments pass laws, enforce laws, exercise jurisdiction and deliver programs and services.
- Elected officials are responsible for health care, education, housing, public safety, courts, transportation, natural resources, environment, culture and economic development.
- Collaboration with state and local jurisdictions on taxation, transportation improvements, natural resource management to emergency services.



# Jurisdictional Issues in Indian Country

- PL280
- Checkerboard Reservations
- Federal Involvement
- Retrocession
- WA CR 82.5 – Tribal Court Jurisdiction
- Overlapping locations and/or facts



# Access to Justice Hurdles for Tribal Communities



“Native communities often experience justiciable events stemming from interactions with other governments, including disputes over hunting and fishing rights, treaty rights, taxation and jurisdiction. An individual may have the justiciable problem, but the adjudication of their rights affects the entire community’s ability to protect and govern their lands.” Carlson, Kirsten Matoy, Access to Justice in the Shadow of Colonialism (June 01, 2024) Lack of resources (legal desert) and cultural competency.

- ❖ Complex nature of legal issues.
- ❖ Issues in tribal courts and attorneys shying away from their misconceptions.
- ❖ Imposition of unfamiliar laws and legal processes.
- ❖ Power imbalances on both a government-to-government and a government- to-individual level.

# Rules of Professional Conduct

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All Tribes are different (some share in values and resources)

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Respect/Reverence toward elders

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Matriarchal/Patriarchal

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7 generations

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Ceremony/religion

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Veterans

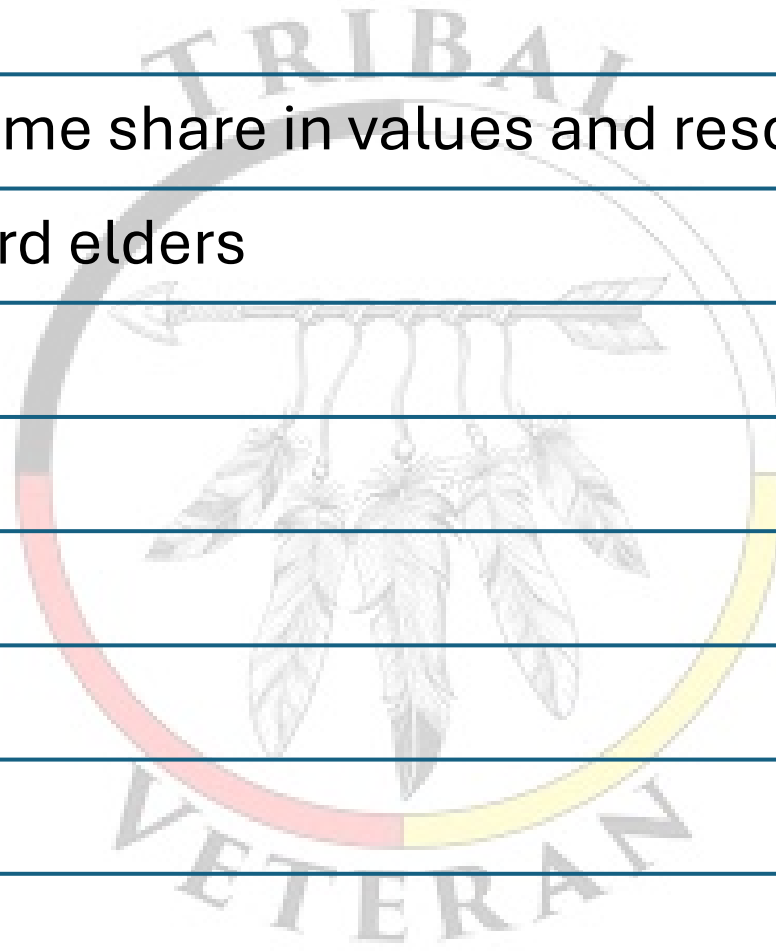
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Storytellers

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Lack of trust/suspicion

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# Educating Lawyers, Law Students, Judges

- K – 12, Since Time Immemorial Curriculum
- Mandatory for lawyers
- Giving your time and expertise to our Young Ones





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Humility is necessary when there have been so many bad outcomes--not just in the world and America generally--but specifically of Natives getting treated unfairly by Courts.