

# TRIBAL HISTORY/SHARED HISTORY

## THE KLAMATH TRIBES CURRICULUM PROJECT

### The Marshall Trilogy, Klamath Basin Conflicts & Treaty Making (1823-1864) Grade 8 Lesson #2 – Session 1 (50 minutes)

NOTE: This session could easily cover 2 50-minute sessions if discussion & and group work on the worksheet are encouraged.

*Italicized words are dialogue that can be used by the teacher.*

Session 1	Teacher is doing...	Students are doing...	Timing
Transition	Have PowerPoint ready to begin with the <b>Tribal History/Shared History</b> words and logo on the opening slide.	Students are settling in to transition from the previous class.  Students will arrange their seats in a manner that is conducive to writing, viewing the PowerPoint and listening to the teacher.	2 min.
Opening	<i>We are moving to a new section of our <b>Tribal History/Shared History</b> curriculum today. This lesson will focus on basic principles of <b>Federal Indian Law</b> and Treaty-making both before and after the establishment of the United States.</i>  <i>We will start by passing out a worksheet for you to review and fill out later. The worksheet will not be graded, but it might help you remember what is discussed today, and prepare you for the assessment you will complete later.</i>	Students will listen.	2 min. (4 min.)
Activity 1	Teacher asks a student to hand out the worksheet.  The teacher asks students to write their names on the worksheets, and reminds them that the worksheets are for review, but will not be graded.	Students accept the worksheets as they are handed out, and begin reviewing them.	5 min. (9 min.)
Transition	<i>Thanks for taking time to review the worksheets. We'll go back to</i>	Students listen and settle in for the PowerPoint.	1 min. (10 min.)

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	<i>them in a little while.</i>		
Activity 2	<p>Teacher goes to <u>Slide 2</u>.</p> <p><i>As you can see, our first lesson slide is a copy of the cover page of the <b>Treaty of 1677</b> – also known as the <b>Articles of Peace</b> - between England and several American Indian Tribes in what is now the state of Virginia.</i></p> <p><i>Even before the United States was founded, England and other European nations, including Spain, France and Holland, had determined that Treaties were often the best tool for keeping peace with Tribal nations as they sought to <b>colonize</b> North America.</i></p>	Students watch the PowerPoint and listen to the teacher.	3 min. (13 min.)
Transition	<p><i>Now let's talk about the legal relationship between the United States and Indian nations.</i></p> <p><i>We'll start by talking about the inclusion of American Indians in the Constitution of the United States, which was adopted in 1788.</i></p> <p>Teacher moves to <u>Slide 3</u></p>	Students listen to the teacher.	2 min. (15 min.)
Activity 3	<p>Teacher reads quote about Indian Tribes from the U.S. Constitution</p> <p><b>Article 1, Section 8</b>  <i>The Congress shall have Power...</i></p> <p><b><i>To regulate Commerce with foreign Nations, and among the several States, and with <b>the Indian Tribes</b>;</i></b></p> <p><i>- So, in this slide, it seems like Indian Tribes are included in the same category as foreign Nations and States. We'll see how this</i></p>	Students watch the PowerPoint and listen to the teacher.	3 min. (18 min.)

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	<i>holds up.</i>		
Transition	<p>Teacher moves to <u>Slide 4</u> – <b><u>Johnson v. McIntosh (1823)</u></b></p> <p><i>After the United States had entered into treaties with many Indian Tribes in the eastern United States, legal question about Tribes were brought to the Supreme Court.</i></p> <p><i>Three cases decided by Supreme Court Justice John Marshall in the 1800s laid the foundation for future dealings with American Indian Tribes.</i></p> <p><i>The cases are commonly known as the <b>Marshall Trilogy</b>.</i></p>	Students listen to the teacher.	2 mins. (20 min.)
Activity 4	<p><b><i>Johnson v. McIntosh</i></b> was about the right of Indians Tribes to sell their land.</p> <p>Teacher then reads <u>Slide 4</u>.</p> <p><i>“They were admitted to be the rightful occupants of the soil, with a legal as well as just claim to retain possession of it . . . but their rights to complete sovereignty . . . were necessarily diminished, and . . . denied by the original fundamental principle, that <b>discovery gave exclusive title to those who made it.</b>”</i></p> <p>The outcome of this case was that Indian Tribes cannot sell their land to anyone but the United States (usually by Treaty, also known as “ceding the land” to the United States).</p> <p><i>This decision is based on a something known as the <b>Doctrine of Discovery</b>. The Doctrine of</i></p>	Students listen and may silently read the PowerPoint with the teacher.	8 min. (28 min.)

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	<p><i>Discovery is based on European principles of law that said that Christian explorers had the right to claim lands they “discovered” on behalf of Christian Monarchs – even if they were already occupied by others.</i></p> <p>Teacher asks:</p> <p><i>How many of you had heard about the Doctrine of Discovery before today?</i></p> <p>Teacher acknowledges those who raise their hands by saying something like, “<i>I am glad that some of you have heard of the Doctrine of Discovery.</i>”</p> <p>If no students raise their hands, the teacher may say something like, “<i>I am not too surprised that none of you have heard about the Doctrine of Discovery. It isn’t something most people think about.</i>”</p>	Students may raise their hands.	
Transition	<p>Teacher moves to <u>Slide 5</u>.</p> <p><i>In 1828, the Cherokee Nation filed a case in the Supreme Court to prevent the state of Georgia from enforcing harmful state laws within their territory. The Cherokee nation believed that the laws violated their treaties with the United States.</i></p> <p><i>The Cherokees believed the case was proper because they knew they were a nation, and felt their case met the criteria that foreign nations could bring suits against states before the Supreme Court.</i></p>		2 min. (30 min.)
Activity 5	<p>Teacher reads Slide 5:</p> <p><i>“[I]t may well be doubted</i></p>	Students listen and may silently read the PowerPoint with the	8 min. (38 min.)

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	<p><i>whether those tribes which reside within the . . . boundaries of the United States can . . . be denominated foreign nations. They may, more correctly, perhaps, be denominated <b>domestic dependent nations</b> . . . in a state of pupilage. Their relation to the United States resembles that of a ward to his guardian."</i></p> <p><i>As you can see, the Court ruled that the Cherokees were a nation, but not a foreign nation.</i></p> <p><i>The Cherokee nation, as a "<b>domestic dependent nation</b>," was said to be like a pupil or student to the U.S.</i></p> <p><i>The language about Tribes as "<b>wards</b>" to the United States as "<b>guardian</b>" was the foundation for something which has come to be characterized as the <b>Federal Trust Responsibility</b> to Indian Tribes.</i></p>	teacher.	
Transition	<p>Teacher pauses, and says something like</p> <p><i>I know this is a lot of information to process, but we are almost done.</i></p> <p>Teacher then moves to the <u>Slide 6</u>, the first of two slides for <b>Worcester v. Georgia (1832)</b>.</p>	Students listen to the teacher.	1 min. (39 min.)
Activity 6	<p><i>Even though they were there first, the Cherokee nation was located within the boundaries of the area that had become the State of Georgia.</i></p> <p><i>This case occurred when a group of missionaries entered Cherokee lands with the permission of the</i></p>	Students listen and may silently read the PowerPoint with the teacher.	10 min. (49 min.)

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	<p><i>Cherokee Nation, but in violation of Georgia state law. The Georgia State court found the missionaries guilty of violating state law.</i></p> <p><i>Worcester, one of the convicted missionaries, appealed to the United States Supreme Court, basing his case upon treaties and arguing that Cherokee land was tribal land, protected by sovereignty, and not subject to Georgia state law.</i></p> <p><i>Let's look at what the Supreme Court said:</i></p> <p><i>"America, separated from Europe by a wide ocean, was inhabited by a <b>distinct people, divided into separate nations</b>, independent of each other and of the rest of the world, having institutions of their own, and <b>governing themselves by their own laws</b>. . . .</i></p> <p><i>The Cherokees acknowledge themselves to be under the protection of the United States, and of no other power. <b>Protection does not imply the destruction of the protected...</b></i></p> <p>Teacher moves to <u>Slide 7</u>, the second of two slides for <b>Worcester v. Georgia (1832):</b></p> <p><i><b>The Indian nations</b> had always been considered as distinct, independent political communities, <b>retaining their original rights, as the undisputed possessor of the soil, from time immemorial</b> . . . . The very term 'nation,' so generally applied to them, means 'a people distinct from others' . . . . The Cherokee</i></p>		
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	<i>nation, then, is a distinct community, occupying its own territory . . . in which <b>the laws of Georgia can have no force . . . .</b>"</i>		
Wrap-up	Teacher wraps up the class by reminding students to keep their worksheets for review before the Tribal History/Shared History assessment.		1min. (50 min.)

**Resource List for 8<sup>th</sup> Grade History/Social Studies Lesson 2, Session 1**

**Treaty of 1677**

Treaty of 1677 – Wikipedia

[https://en.wikipedia.org/wiki/Treaty\\_of\\_1677](https://en.wikipedia.org/wiki/Treaty_of_1677)

Encyclopedia Virginia – Virginia Humanities: Articles of Peace (1677) - Transcription

[https://www.encyclopediavirginia.org/articles\\_of\\_peace\\_1677](https://www.encyclopediavirginia.org/articles_of_peace_1677)

**U.S. Constitution**

Article 1, Section 8

<https://constitutioncenter.org/interactive-constitution/articles/article-i>

**Doctrine of Discovery**

***Johnson v. McIntosh (1823)***

<https://supreme.justia.com/cases/federal/us/21/543/>

Native Voices website; U.S. National Library of Medicine

<https://www.nlm.nih.gov/nativevoices/timeline/271.html>

Indigenous Values Initiative website

<https://doctrineofdiscovery.org/what-is-the-doctrine-of-discovery/>

**Domestic Dependent Nations & Trust Responsibility**

***Cherokee Nation v. Georgia, 30 U.S. 1 (1831)***

<https://supreme.justia.com/cases/federal/us/30/1/>

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Federal Judicial Center Summary of *Cherokee Nation v. Georgia*

<https://www.fjc.gov/history/timeline/cherokee-nation-v.-georgia>

The Federal Trust Doctrine—Realizing Chief Justice Marshall’s Vision

<https://www.doi.gov/pmb/cadr/programs/native/gtgworkshop/The-Federal-Trust-Doctrine>

**Tribal Sovereignty & State Law**

*Worcester v. Georgia*, 31 U.S. 515 (1832)

<https://supreme.justia.com/cases/federal/us/31/515/>

Worcester v. Georgia Significance

<https://law.jrank.org/pages/25518/Worcester-v-Georgia-Significance.html>

**ADDITIONAL RESOURCES**

**The Marshall Trilogy**

Fletcher, Matthew L. M., *The Iron Cold of the Marshall Trilogy* (2006). 82 North Dakota Law Review 628 (2006); Michigan State University Legal Studies Research Paper No. 04-07. Available at SSRN: <https://ssrn.com/abstract=924547>

Robert J. Miller, *American Indians, the Doctrine of Discovery, and Manifest Destiny*, 11 Wyo. L. Rev. 329 (2011). Available at: <http://repository.uwyo.edu/wlr/vol11/iss2/2>

Wiseman, Joseph J. Judicial Toolkit on Indian Law: An Overview of Key Federal Indian Law Cases. DOI: [www.courts.ca.gov/documents/Key-Federal-Indian-Law-Cases.pdf](http://www.courts.ca.gov/documents/Key-Federal-Indian-Law-Cases.pdf)