Tribal Relations with the United States:

History and Overview
Overview

• Purpose
Encourage Montana’s high school teachers to integrate information about Indian tribes and their history throughout high school government and history courses

*Individual slides contained in this power point will visually enhance lesson plans; however, this presentation is not intended to be used as a single lesson.*
• Why do high school teachers need this information?

--Montana’s Constitution, Article X, Section 1(2): “The State recognizes the distinct and unique cultural heritage of American Indians and is committed in its educational goals to the preservation of their cultural integrity.”

--MCA 20-1-501: schools should encourage students “to learn about the distinct and unique heritage of American Indians” and “all school personnel should have an understanding and awareness of Indian tribes”

--To address three of the seven essential understandings developed by Indian educators
Essential Understandings

- Indian educators from each tribe gathered to discuss topics for educators and students to learn about Indian people.
- These topics became the Seven Essential Understandings
- This presentation addresses the second, fourth and fifth Essential Understandings
“There is great diversity among individual American Indians as identity is developed, defined and redefined by entities, organizations and people. A continuum of Indian identity, unique to each individual, ranges from assimilated to traditional. There is no generic American Indian.”
Essential Understanding 4

“Reservations are lands that have been reserved by the tribes for their own use [or set aside for tribal use] through treaties, statutes, and executive orders…”

“[Historically] land should be acquired from the Indians only through their consent with treaties [because] both parties to treaties were sovereign powers.”
Essential Understanding 5

“Federal Indian policies...have affected Indian people and still shape who they are today. Much of Indian history can be related through several major federal policy periods...”
Major Federal Indian Policy Eras:

1. Treaty (1532-1871)
2. Removal and Relocation (1828-1887)
3. Allotment and Assimilation (1887-1934)
4. Reorganization (1928-1945)
5. Termination (1945-1961)
6. Self-Determination (1961- present)
“The numerous treaties made with them by the United States recognize them as a people capable of maintaining the relations of peace and war, of being responsible in their political character for any violation of their engagements, or for any aggression committed on the citizens of the United States by any individual of their community. Laws have been enacted in the spirit of these treaties.”

--Chief Justice Marshall

Cherokee Nation v. Georgia (1831)
Treaty-Making (1532-1871)

**Chronology:**

1532—Francisco Vitoria established legal relationship with Indian tribes in what is now the Eastern United States

1763—British Proclamation in which the Crown asserted control over all Indian land cessions

1778—First treaty between an Indian Tribe and the United States (Delaware Tribe)

1787—The Constitution contains the power to regulate commerce with Indian tribes

—Northwest Ordinance includes Indian rights, establishment of reservations, and sanctity of tribal lands

1789—Congress establishes a Department of War and grants the Secretary of War authority over Indian Affairs
Treaty-Making (1532-1871)

Chronology (continued):
1790-1834—Trade and Intercourse Acts
1823—Johnson v. McIntosh
1851—Fort Laramie Treaty (Crow & other Plains Tribes)
1855—Hellgate Treaty (Salish & Kootenai)
1855—Stevens Treaties (Pend d’Oreille, Confederated Salish and Kootenai, & Blackfeet)
1871—Congress ended Treaty-making with the Indian tribes
Spain was the first European nation to define the legal relationship between the new colonies and the Indian tribes that they encountered in what is now the South-Eastern part of the United States.

Hired by the Queen to define this relationship, Francisco de Vitoria, a Spanish theologian decided that Indians were true owners of the lands. As long as the Indians respected the natural rights of Spaniards to travel and trade in their lands, Spain could not wage a just war and therefore could not claim any rights by conquest.
Treaty-Making (1532-1871)

- Francisco de Vitoria looked to the Law of Nations under international law, which vested sovereign rights in the colonizing nations but preserved some level of rights in the Indian tribes.

  Two principles of Law of Nations:
  1) doctrine of discovery
  2) law of conquest

- As a result of the Law of Nations, the British Crown asserted control over all Indian land cessions in the Proclamation of 1763.
Treaty-Making (1532-1871)

- All European Nations recognized Indian tribes as legitimate governmental entities capable of entering into treaties

- Treaty-making became the basis for defining both legal and political relationships between Indian tribes and European colonies

- The United States Constitution gives the treaty-making power to the Executive Branch, the President of the United States
In 1778, the first Indian treaty was signed between the Delaware Tribe and the United States.

The Treaty Provided for:
- reciprocal protection
- peace and friendship
- extradition of criminals
- an opportunity to form an Indian State, comprised of the Delaware and other confederated tribes, allowing them to send a representative to Continental Congress.
Treaty-Making (1532-1871)

Between 1778-1871 over 600 treaties were made between Indian tribes and the United States

Purpose of treaties:
1. Ensure peaceful relationships
2. Transfer land ownership from Indian tribes to the United States
Treaty-Making (1532-1871)

Treaties Affecting Tribes Located in Montana:

• Stevens Treaty Tribes:
  – Blackfeet
  – Confederated Salish and Kootenai and Pend d’Oreille

• Fort Laramie Treaty Tribes:
  – Assiniboine and Gros Ventre (Fort Belknap Reservation tribes)
  – Assiniboine and Sioux (Fort Peck Reservation tribes)
  – Crow
Treaty-Making (1532-1871)

The power of the Executive Branch to enter into treaties and Congress’s power over Indian Affairs is based on several provisions of the United States Constitution.

Federal Power over Indian Affairs:

U.S. Constitution

1) Treaty Clause
2) Commerce Clause
3) Supremacy Clause
4) Property Clause
Treaty-Making (1532-1871)

Treaty Clause
Article I, Section 10
No State shall enter into any treaty…

Article II, Section 2, Clause 2
He [The President] shall have power, by and with the advice and consent of the Senate to make treaties, provided two-thirds of the Senators concur…
Treaty-Making (1532-1871)

Commerce Clause

Article I, Section 8, Clause 3
The Congress shall have power...to regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

Article I, Section 8, Clause 18
...to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.
Supremacy Clause

Article VI, Section 2

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.
Property Clause

Article IV, Section 3, Clause 2

The Congress shall have power to dispose of and regulate the Territory or other Property belonging to the United States.
Treaty-Making (1532-1871)

(1790-1834)—Trade and Intercourse Acts (also known as Non-Intercourse Acts)
- Set forth the boundaries of Indian Country
- Federally regulated individuals that traded with Indians
- Established a criminal and compensatory scheme for offenses committed between Indians and non-Indians
- Prohibited the sale or lease of tribal rights in property without federal consent
- Provided penalties for non-Indians who attempted to purchase Indian lands

In general, this act centralized Indian affairs power in the federal government and regulated relations between the U.S., its citizens, and Indian Tribes.
Treaty-Making (1532-1871)

- In 1871, Congress ended treaty-making with Indian tribes due to a power struggle between the House and Senate, which were controlled by different parties, regarding the ratification process.
- This political decision to end treaty-making with Indian tribes, did not diminish tribal sovereignty in any way.
- Existing treaties were not affected and those tribes retained all treaty rights.
- Although treaty-making ended, the United States still continues to negotiate agreements on a government to government basis with Indian tribes through Federal Statutes.
“There, your white brothers will not trouble you, they will have no claims to the land, and you can live upon it, you and all your children, as long as the grass grows or the water runs, in peace and plenty.”

--President Andrew Jackson
Comment on Indian Removal (1830)
Removal and Relocation (1828-1887)

Chronology:
1830—Indian Removal Act
1831—*Cherokee Nation v. Georgia*
1831-1839—Five Civilized Tribes of the Southeast relocated to Indian Territory (now Oklahoma)
1832—*Worcester v. Georgia*
1849—Bureau of Indian Affairs is transferred to the Department of Interior
1883—Federal Code of Indian Offenses and Courts of Indian Offenses
1885—Major Crimes Act—created federal criminal jurisdiction for all major crimes between Indians occurring in Indian Country
Removal and Relocation (1828-1887)

The United States Supreme Court formulated the foundational principles of Federal Indian Law in three cases (also known as the Marshall trilogy):

1) **Johnson v. McIntosh** (1828)—Indians had aboriginal title (use and occupancy) to their land but could not dispose of it because U.S. held ultimate title.

2) **Cherokee Nation v. Georgia** (1830)—Indian tribes were not foreign states but “domestic dependent nations” whose relationship to the U.S. “resembles that of a ward to his guardian.”

3) **Worcester v. Georgia** (1831)—Indian tribes are “distinct political communities, having territorial boundaries, within which their authority is exclusive.” The laws of the state have no force within tribal territories.
Removal and Relocation (1828-1887)

- As the non-Indian population grew and valuable natural resources were discovered, the United States began to remove Indian tribes to territory west of the Mississippi River in order to make room for non-Indian settlers.

- After the War of 1812, many treaties contained removal provisions.

- Thomas Jefferson had the idea to remove the Cherokees from the East Coast to the land obtained under the Louisiana Purchase.

- 1828—Andrew Jackson took action and pledged to support westward expansion by promoting “voluntary removal”
Removal & Relocation (1828-1887)

- Indian Removal Act (1830)—forced removal across the Mississippi

- “Trail of Tears”—The United States Army forced approximately 16,000 Cherokees to march from Georgia to eastern Oklahoma
  --Approximately 4,000, one quarter of the Cherokee Nation’s population died as a result of starvation, malnutrition, disease, exposure, or heartbreak.
Removal & Relocation (1828-1887)

- Choctaws were given an opportunity to assimilate instead of being removed from their homelands.
- Those that stayed were promised 640 acres but lost their Choctaw citizenship and were forced to assimilate into southern society.
- Treaty of Dancing Rabbit Creek—Choctaws were forced to surrender more than ten million acres in Mississippi and move west to Indian territory. When the government’s promise of assistance never arrived, many tribal members died from malnutrition, exposure, and a cholera epidemic.
- In 1836, the Creek tribe was forced to abandon their homelands and move west. About 3,500 of the tribe’s 15,000 members died during removal, and those who resisted were bound in chains and marched in double file.
Removal and Relocation (1828-1887)

In 1849, the Indian Office (now known as the Bureau of Indian Affairs) was moved from the War Department to the Department of the Interior.

Contributing Factors
1. Removal lessened the eastern states’ combative posture toward Indian tribes and decreased warfare.
2. Indian affairs was centralized at the federal level.
3. Tribes were defined as “domestic dependent nations.”
Removal and Relocation  
(1828-1887)

- As part of the removal policy, the federal government began confining Indian tribes to reservations.

- In 1851 Congress passed the Indian Appropriations Act, which sought to concentrate the western Native American population on reservations.

- This was typically accomplished by treaty, in which a tribe ceded much of the land it occupied to the United States and reserved a smaller portion to itself in exchange for various annuities, thus the term “reservation.”

- Reservations are tribal territories usually carved out of ancestral lands that are held in trust for the tribes.

- Reservations were originally created through treaties, executive orders, and statutes but now are only created by statute.
In 1881 President Arthur proposed a new solution to the “Indian Problem”:

“To introduce among the Indians the customs and pursuits of civilized life and gradually to absorb them into the mass of our citizens.”
Allotment and Assimilation (1887-1934)

Chronology:
1887—General Allotment Act
1890—The Ghost Dance Movement and the Wounded Knee Massacre take place in South Dakota
1902—The Reclamation Act encourages settlement of the West
1906—The Burke Act: gave legal ownership to the Individual Indian allottee if competent and capable of managing his/her own affairs
1910—the federal government forbids the Sun Dance among Plains Indians
1924—Indian Citizenship Act: got rid of the various qualifications for citizenship and gave all Indians United States Citizenship
1928—Meriam Report
1934—Indian Reorganization Act effectively ended allotment
Allotment and Assimilation (1887-1934)

1887—The General Allotment Act (Dawes Act)

- Divided reservation land base into individual allotments
- Up to this time most tribal land was held communally and many Indian tribes did not value individual land ownership
Allotment and Assimilation (1887-1934)

General Allotment Act

**INTENT:**

- Facilitated Assimilation policy by promoting individual ownership and an agricultural lifestyle, values held by mainstream society and not traditionally by tribes
- Opened up land for non-Indian settlers during westward expansion
General Allotment Act

IMPLEMENTATION:

Authorized the President to allot any reservation according to the following formula:

1. Head of family — 1/4 section
2. Single person > 18 yrs — 1/8 section
3. Orphan child < 18 yrs — 1/8 section
4. Single person < 18 yrs — 1/16 section

One section was equal to 160 acres
General Allotment Act

IMPLEMENTATION:

• 25 yr trust period—afterwards the land was free from restrictions against sale and was directly delivered to the allottee (taken out of trust)

• With the free and clear title the Indian became a citizen of the United States and his/her land fell under state jurisdiction
Allotment and Assimilation (1887-1934)

General Allotment Act

IMPLICATIONS:

• Efforts to turn allottees into farmers failed because the quality of the land was not appropriate for agriculture and many Indian tribes did not traditionally farm and were not trained for this transition to an agricultural lifestyle.

• Many Indians did not sign up on the allotment roles because they did not believe in individual land ownership.

• Many Indians signed up on the rolls with a lower blood quantum.

• “Surplus” reservation land that was not allotted was sold to white settlers.

• 138 million acres of Indian land in 1887 was reduced to 48 million by 1934.
Examples of Allotted Reservations in Montana
Allotment and Assimilation (1887-1934)

EDUCATION:

- Indian education became a national assimilation effort with thousands of off-reservation boarding schools and many reservation day schools run by religious groups.

- 1882—Congress authorized the Secretary of War to set aside vacant army posts and barracks for educating and training “youth from the nomadic tribes having educational treaty claims upon the United States”

- These schools forced Indian children to move away from their homes, shed their traditional cultural identity including clothing, long hair, language, and values and traditions.
Indian Citizenship Act of 1924

- Conferred national citizenship to all Indians born in the United States
- Before this time, individual Indians could become citizens under the General Allotment Act.
“When the government adopted the policy of individual ownership of the land on reservations, the expectation was that the Indians would become farmers. Part of this plan was to instruct and aid them in agriculture, but this vital part was not pressed with vigor and intelligence. It almost seems as if the government assumed that some magic in individual ownership of property would in itself prove an educational civilizing factor, but unfortunately this policy has for the most part operated in the opposite direction.”

--Meriam Report (1928)
Reorganization and Self-Government (1928-1945)

Chronology:
1928—Meriam Report
1934—Indian Reorganization Act
1944—National Congress of American Indians (NCAI) was formed
   The Native American Church was incorporated
1946—The Indian Claims Commission was created by Congress to settle tribal land claims against the United States
Reorganization and Self-Government (1928-1945)

1928—Meriam Report: The Problem of Indian Administration

- Study to examine the health, economic and social conditions of Indians.
- Called for revisions in every phase of Indian Affairs.
- Reported that The General Allotment Act was a failure
Reorganization and Self-Government (1928-1945)

1934—The Indian Reorganization Act (IRA) (Wheeler-Howard Act)

- Burton K. Wheeler, a Montana Democrat, was a United States senator from 1923 until 1947.
- Officially ended allotment by reconvening communal ownership
- Prevented alienation of Indian land
- Tribes could adopt federally approved Constitutions and By-Laws
- Established Tribal Governing Bodies most often known as Tribal Councils which are still in existence today
Reorganization and Self-Government (1928-1945)

1934—The Indian Reorganization Act (IRA)

- Before the IRA could be applied to a tribe the enrolled members had to vote to accept it.
- In Montana, every federally recognized tribe except the Crow and Fort Peck Assiniboine and Sioux are IRA Tribes.
“[It is the] sense of Congress that, at the earliest possible time, all of the Indian tribes and the individual members thereof located within the States of California, Florida, New York and Texas, should be freed from Federal supervision and control and all disabilities and limitations specifically applicable to Indians.”

--Representative William Harrison of Wyoming
Introducing Concurrent Resolution 108 on Termination (1953)
Termination (1945-1961)

Chronology:

1949—The Hoover Commission on the Reorganization of Government recommended termination of the federal-Indian trust relationship
1945-1958—Termination Acts passed for various tribes
1952—The BIA established a Voluntary Relocation Program to relocate Indian people to urban areas for work
1953—Congress passed the Termination Resolution that provided for an end of the special federal relationship with certain tribes
1953—Public Law 280
1954-1956—Congress removed federal services and protection from 61 tribes, bands, and communities
1958—Secretary of Interior announced the official end of “Termination”
Termination (1945-1961)

• The Second World War—domestic budgets were severely reduced in order to fund the war.

• 1947—Acting Commissioner of Indian Affairs was asked to produce a list of those tribes that could immediately succeed without further federal help.
Termination (1945-1961)

• 1952—Congress passed a number of bills terminating the federal governments relationship with tribes that they deemed to be assimilated and self-reliant.

• Some of the Tribes terminated during this era include the Klamath of Oregon, the Menominee of Wisconsin, Siletz and Grand Ronde in Oregon, small Paiute bands in Utah, and many rancherias in California.

• Total of 109 Tribes were terminated during this time.
Termination (1945-1961)

Consequences of Termination:

• Fundamental changes in land ownership
• Trust relationship was ended
• State legislative jurisdiction was imposed
• State judicial authority was imposed
• Exemption from state taxing power was ended
• Special federal programs for tribes were discontinued
• Special federal programs for individual Indians were discontinued
• Tribal sovereignty was effectively ended for terminated tribes.
• In 1958, Secretary of Interior Fred Seaton announced the end of termination without consent.
• In 1961, the Keeler Commission recommended a new policy of self-determination.
Termination (1945-1961)

Relocation Policy

• The BIA encouraged Indians to leave the reservation and seek work in various cities by providing grants for relocation.

• This policy was coordinated in conjunction with the federal government’s efforts of assimilation and termination.
Termination (1945-1961)

Public Law 280

- In 1953, Congress passed P.L. 280, which mandated six states to exercise both civil and criminal jurisdiction over Indian reservations located in California, Minnesota, Nebraska, Oregon, Wisconsin, and Alaska.
- An amendment to P.L. 280 required tribal consent
- Undermined tribal sovereignty
- Tribes retained jurisdiction over hunting and fishing regulation
- States were not given the right to tax Indian lands
- Flathead Reservation in Montana is under limited P.L. 280 jurisdiction
In 1968, President Johnson proposed “a new goal for our Indian programs, a goal that ends the old debate about termination and stresses self-determination.”
“I believe that both of these policy extremes are wrong. Federal termination errs in one direction, federal paternalism errs in the other. Only by rejecting both of these extremes can we achieve a policy which truly serves the best interests of Indian people. Self-Determination among the Indian people can and must be encouraged without the threat of eventual termination... This, then, must be the goal of any new national policy toward Indian people: to strengthen the Indian's sense of autonomy without threatening his sense of community. We must assure the Indian that he can assume control of his own life without being separated involuntarily from the tribal group.”

--President Nixon (1970)
Indian Self Determination
Self-Determination (1961-Present)

**Chronology:**
- 1961—Keeler Commission recommended a policy of self-determination
- 1968—Indian Civil Rights Act
- 1970—A policy of self-determination was formulated
- 1972—Indian Education Act
  - Montana Constitution Article X recognizes the distinct and unique cultural heritage of Indians and is committed to preserving this cultural heritage through education.
- 1974—Federal Acts for housing and business loans to Indians
- 1975—Indian Education and Self-Determination Act
- 1978—Indian Child Welfare Act
  - American Indian Religious Freedom Act
- 1982—Indian Land Consolidation Act
- 1988—Indian Gaming Regulatory Act
- 1990—Native American Graves Protection and Repatriation Act
- 1999—MCA 20-1-501 mandates instruction for all regarding the distinct and unique cultural heritage of Indians
Self Determination (1961-present)

The current Federal Indian Policy recognizes:

1) Government to government relationship
2) Tribal Sovereignty
3) Trust Responsibility
Self-Determination (1961-Present)

Important Legislation:

• **Indian Civil Rights Act (1968)**—since Indian Tribes do not fall under the Constitution, this Act makes most of the Bill of Rights available to individual Indians in Indian Country

• **Indian Self-Determination and Education Assistance Act (1975)**—authorized the Secretaries of Interior and Health, Education, and Welfare to enter into contracts with tribes to plan conduct and administer tribal programs
Self-Determination (1961-Present)

- **Indian Child Welfare Act (1978)**—redefined the jurisdiction of custody proceedings involving Native American children by allocating tribes sole jurisdiction over states when the child is domiciled on the reservation and concurrent, but presumptive, jurisdiction over non-reservation Native Americans’ custody proceedings.

- **Native American Graves Protection and Repatriation Act (1990)**—this legislation requires federal agencies to protect, preserve, and return Native American cultural items, including human remains, funerary objects, sacred objects, and objects of cultural patrimony, to their respective tribes.
Self Determination (1961-present)

Tribes are exercising their self-determination powers in the areas of:

- Education
- Health care
- Cultural preservation
- Child and elder care
- Economic development
- Gaming
- Infrastructure Development
Self-Determination (1961-Present)

“Each and every day, Tribes across this country are creating new jobs and fueling the economies of their states while building new schools, health clinics, housing, police and fire protection, as well as the many infrastructural needs of their communities”

Ernest L. Stevens, Jr.
National Indian Gaming Association
Self-Determination (1961-Present)

Montana Tribes:
1. **Political:** Every Indian tribe in Montana has its own Tribal Government and Tribal Court System.
2. **Education:**
   - Tribal Colleges: Blackfeet Community College, Fort Belknap College, Fort Peck Community College, Salish Kootenai College, Little Big Horn College, Dull Knife Community College, Stone Child College
3. **Economic Development:** A & S Industries, S & K Electronics
Self-Determination (1961-Present)

Contemporary issues confronting Montana Indian tribes include:

- Water rights
- Land ownership
- Language restoration and cultural preservation
- Natural resource conservation and sacred site protection
- Repatriation and cultural resource protection
- Tribal sovereignty
- Federal acknowledgement of Little Shell Tribe
- Relationship with state and county governments
- Trust land protection
- Mining and other resource development
- Improving education of Indian children
Self-Determination (1961-Present)

In the current era of Federal Indian policy, Indian tribes have been exercising their sovereignty and self-determination to create strong political, social, and economic programs to benefit their tribal communities.