

Montana Small Schools Alliance
HONORING MONTANA'S FIRST PEOPLES

UNIT: Who Is Sovereign?

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SCHOOL AND COUNTY: Ayers Elementary in Fergus County

GRADE LEVEL: 4-8

DURATION: 5-10 Days

GRADE LEVEL: 4-8

INDIAN RESERVATION REFERENCED: Fort Belknap

SUBJECT AREAS: Social Studies, Writing, Technology

OVERVIEW: This unit addresses Essential Understanding Four regarding Montana Indians which states: Reservations are land that have been reserved by the tribes for their own use through treaties and was not “given” to them; and Essential Understanding Seven which states: Under the American legal system, Indian tribes have sovereign powers separate and independent from the federal and state governments. However, the extent and breadth of tribal sovereignty is not the same for each tribe. The purpose of this unit is to provide a knowledge of sovereignty to non-Indian students, and how it relates to the Fort Belknap Reservation.

OBJECTIVES: The students will comprehend the concept of sovereignty. The students will compare and contrast three different constitutions. The students will differentiate between stereotyping and facts. The students will analyze a treaty and determine if the components are still upheld today.

CONTENT STANDARDS ADDRESSED:

Social Studies Standard 1: Student access, synthesizes, and evaluates information to communicate and apply social studies knowledge to real world situations. Benchmarks 1, 3.

Social Studies Standard 2: Students analyze how people create and change structures of power, authority, and government to understand the operation of government and to demonstrate civic responsibility. Benchmarks 1, 2, 3, 6.

Social Studies Standard 3: Students apply geographic knowledge and skills (e.g., location, place, human/environment interactions, movement, and regions). Benchmark 3.

Social Studies Standard 4: Students demonstrate an understanding of the effects of time, continuity, and change on historical and future perspectives, and relationships. Benchmarks 1, 2, 3, 4, 6, 7.

Social Studies Standard 6: Students demonstrate an understanding of the impact of human interaction and cultural diversity on societies. Benchmarks 1, 5.

Writing Standard 6: Students use the inquiry process, problem-solving strategies, and resources to synthesize and communicate information. Benchmarks 2, 3, 4.

Technology Standard 5: Students develop the skills, knowledge and abilities to apply a variety of technologies to conduct research, manage information and solve problems. They distinguish among, evaluate and appropriately use current emerging media and technologies in the inquiry process. Benchmarks 1, 3, 4.

ESSENTIAL UNDERSTANDINGS ABOUT MONTANA INDIANS:

Essential Understanding 4: Reservations are land that have been reserved by the tribes for their own use through treaties and was not “given” to them. The principle that land should be acquired from the Indians only through their consent with treaties involved three assumptions: I. That both parties to treaties were sovereign powers. II. That Indian tribes had some form of transferable title to the land. III. That acquisition of Indian lands was solely a government matter not to be left to individual colonists

Essential Understanding 7: Under the American legal system, Indian tribes have sovereign powers separate and independent from the federal and state governments. However, the extent and breadth of tribal sovereignty is not the same for each tribe.

RESOURCES:

- [http:// www.colorado.edu/AmStudies/lewis/2010/indi.htm](http://www.colorado.edu/AmStudies/lewis/2010/indi.htm)
- www.fortbelknapnations-nsn.gov
- Shared Symbols, Contested Meanings, Fowler, L., (1987).
- Five Indian Tribes on the Upper Missouri, Denig, E. T., (1961).
- Montana’s Indians, Yesterday and Today, Bryan, W. L., (1985).

MATERIALS:

- Map of the United States from the 1600s *
- See website – <http://www.colorado.edu/AmStudies/lewis/2010/indi.htm>
- Treaty Vocabulary sheet *
- American Indian sovereignty paper *
- Eroding Indian sovereignty paper *
- The Marshall Trilogy paper *
- U.S. Constitution
- Montana Constitution
- Fort Belknap Constitution
- Fort Laramie Treaty of 1851
- Map of Fort Laramie Treaty of 1851 *

- 1855 Treaty with the Blackfeet
- Map of Montana Indian Reservations today *
- Henry Winters, et. al. v. United States of America, 207 U.S. 564 (1908)

* included in this unit

LESSON ONE DEFINING SOVEREIGNTY

This lesson will take one class period.

ANTICIPATORY SET

Begin discussion by asking the following questions:

- Can Germany pass a law that the United States has to obey?
- Can North Dakota pass a law that Montana has to obey?
- Why or Why not? (Because countries are sovereign entities.)

GUIDED INSTRUCTION

- What does the word sovereignty mean?

Reign means to possess or exercise rule; to be predominant

Sovereign means one who exercises supreme authority within a limited sphere; unlimited and independent

- Can you think of an example of someone or a group of people being sovereign?
- Do you think American Indians are sovereign?
- Does each tribe have sovereignty or do all American Indians as a group have sovereignty?

To better comprehend these issues let's first go back in history before the United States was a country. (Map of the United States in the 1600s – see Website- <http://www.colorado.edu/AmStudies/lewis/2010/indi.htm>) Review the definition of sovereignty. If the Indians were the only people here, according to the definition, do you think they were sovereign? (Yes)

The most common questions regarding tribal sovereignty in America include the following:

- Where did tribes get their sovereignty?
- How did tribes keep their sovereignty?
- How long have tribes had their sovereignty?

The answers to these questions are simple: They inherited sovereignty from the creator who put them here. They have had sovereignty since the beginning of time. The sovereignty of American Indian tribes is inherent; meaning it existed since time immemorial and is recognized as such in the Constitution of the United States. Tribes have equal legal and constitutional status in their dealings with the federal government.

If the Indians were sovereign, then how could the “new Americans” pass laws that the Indians had to follow? We said earlier that Germany or North Dakota could not pass laws we had to obey.

The United States has always recognized that the Indians were sovereign and has dealt with them accordingly.

The most common government-to-government relationship between the United States and Indian Nations is the power of Congress to make treaties. This relationship extends to existing reservations, some of which were created by Congress and others by Executive order of the President. There is also a government-to-government relationship between Indian Nations and States. These are commonly referred to as tribal-state compacts. The Fort Belknap Reservation was created by an act of Congress in 1888.

Take another look at the map from the 1600s (see page 13) and ask the following questions:

- What happened to this land? (Came under the control of non-Indians)
- How could this happen?

VOCABULARY WORDS

- sovereignty
- inherent

HOMEWORK ASSIGNMENT (or in class if time)

Students are to write a paragraph telling what they think Indians were like in the United States 200 years ago. They should include what type of homes, clothes, fun, education, food, etc., the Indians had. Students should write another paragraph telling what they think Indians today are like.

(This will be discussed in Lesson Two and kept for reference at the end of the unit to see if the students' perspectives have changed.)

LESSON TWO STEREOTYPING

This lesson will take one to two class periods.

REVIEW LESSON ONE

Go over the vocabulary words from Lesson One and discuss the homework assignment.

ANTICIPATORY SET

Ask the following question:

- Does anyone know the definition of the word stereotyping?

stereotyping is characterizing an entire group of people based on mistaken ideas; this usually occurs when people from different cultures come in contact

GUIDED INSTRUCTION

Ask the following questions:

- Do you think the early Americans stereotyped the Indians?
- What do you think the Indians thought of the white men?
- Was there stereotyping from both sides?

If stereotyping occurs when one race thinks they are superior to another, do you think some early Americans thought they were better than the Indians? What about sovereignty? If the Indians were here first, and they are sovereign, how could the Americans end up with most of the land? The answer to this is that the government could make treaties with the Indians because both groups were sovereign.

(Hand out the Treaty Vocabulary Sheet)(see page 14)

Why was it possible for the United States to make treaties with the Indians and not other minority groups?

American Indian tribes are different from other minority groups because they are land-based and have indigenous status. This government-to-government relationship has several legal bases: 1) the "Commerce Clause" of the U.S. Constitution, 2) treaties between the U.S. and the Indian Nations, legislation, and federal policy, and 3) Supreme Court decisions and executive actions. American Indians do not have complete sovereignty, however, since they do not exercise international independence. The American Indians are referred to as "domestic dependent nations" meaning they are a nation within a nation having a nation-to-nation relationship with the federal government. This carries an added responsibility for the United States. The federal government is responsible for American Indian tribes and their interests and assets. These responsibilities were set forth in treaties.

Again, if the American Indians were sovereign, how could they end up losing so much of their land base?

The loss of so much land was a direct result of colonial assertions. The Indians were legally stripped of their independent status, and sometimes their status was not recognized at all. In either instance, the basic principle underlying the United States' position was supreme legal authority outside the Indian Nations.

(Go over the American Indian Sovereignty paper, Eroding Indian Sovereignty paper, and The Marshall Trilogy paper.)(see pages 15, 16, and 17)

What does sovereignty mean for tribes today?

- they can establish their own government
- they can determine their own membership
- they can determine police power
- they have the power to administer justice
- they have the power to exclude persons from the reservation
- they have the power to charter businesses and regulate activity
- they have the power to levy taxes
- they have sovereign immunity
(meaning the tribe cannot be sued without the expressed written consent of the tribal government)

VOCABULARY WORDS

- indigenous
- paternalistic

LESSON THREE COMPARING GOVERNMENTS

This lesson will take two to three class periods.

Divide the class into three groups.

One group will research the U.S. Constitution/Governmental structure

One group will research the Montana State Constitution/Governmental structure

One group will research the Fort Belknap Constitution/Governmental structure

Each group will find the constitution and research the following areas:

- How does your constitution address other sovereign entities?
- What is the governmental structure of your area?
- Who wrote your constitution?
- What, if any, document was it modeled after?
- Does any one person or group have supreme power? If so, who? If not, how is the power delegated?
- How does your constitution address criminal behavior?
- What rights of the people are expressed in your constitution?

Bring the groups back to compare and contrast the three groups.

LESSON FOUR TREATIES

This lesson will take one class period.

ANTICIPATORY SET

Review the definition of a treaty.

GUIDED INSTRUCTION

When an Indian tribe signed a treaty, it agreed to give the federal government some or all of its land as well as some or all of its sovereign powers. In return, when an Indian Nation gave up land through a treaty, it entered into a trust relationship with the federal government in which the government promised to provide benefits and rights to the Indians in exchange for their land. After this the Indians had limited sovereignty that was to be governed by a paternalistic trust. They would have to trust the United States to do what was best for them in some areas.

The Gros Ventre and Assiniboine signed the Fort Laramie Treaty of 1851 and the Treaty with the Blackfeet of 1855.

(Review the maps from the 1600s, 1851, and Montana Reservations today.)
(see pages 13, 18, and 19)

Remember that Fort Belknap was created by an Act of Congress on May 1, 1888. Let us now look at the treaty in which the Indians agreed to give up something in return for something else.

(Hand out Treaty of Fort Laramie 1851 and Blackfeet Treaty of 1855.)

Make a list of what each tribe gave up and what each tribe was promised.

LESSON FIVE WATER RIGHTS

This lesson will take two to three class periods.

REVIEW

Review the lesson on treaties, reminding the students what the tribes gained and lost.

GUIDED INSTRUCTION

Ask the following questions which pertain to water rights:

- Who decides how much water a person or group can use?
- Can anyone take any amount of water they need?
- What does the term “prior appropriations” mean?
- What does the term “reserved rights” mean?
- What does the term “first in time, first in right” mean?
- What does the term “use it, or lost it” mean?
- What does the term “beneficial use” mean?
- What does the term “hold harmless” mean?

Even though each state has its own legal principles which determine water rights, the doctrine of prior appropriations acts as a unifying principle. The doctrine of prior appropriations is a way to allocate water. This doctrine, however, is not beneficial for American Indians. What is beneficial for American Indians, however, is what is called reserved rights. Reserved rights came out of a legal battle between the Assiniboine and Gros Ventres from the Fort Belknap Reservation. The case in point was *Winters vs. United States* (1908), which is now known as The Winter’s Doctrine.

Have students research water rights and the Winter’s Doctrine focusing on the above questions discussed earlier. After sufficient time for research, divide the class into three or four groups to compete in a mock debate regarding water rights. One group will take the role of American Indians, one group will take the role of the rancher who has lived on his land for 75 years, one group will be a new developer who has just bought land and needs water to develop a new subdivision, and the last group will be members of the state who are to decide which group gets the water. Allow time for groups to prepare a case in their own defense. With the teacher as moderator, each group can present their case followed by questions from the state group, debate if necessary, and finally a vote.

LESSON SIX FORT BELKNAP TODAY

This lesson will take one to two class periods.

REVIEW

We have looked at the treaties and what the Indians were promised, and we have examined water rights and how they apply to American Indians more specifically the tribes represented on the Fort Belknap Reservation. Today I want you, in your groups, to research the Fort Belknap Reservation to find the following items.

GUIDED/INDEPENDENT INSTRUCTION

Group 1 – Is the treaty still upheld today?

Group 2 – What are the membership requirements of the two tribes on the Fort Belknap Reservation?

Group 3 – Do the Fort Belknap tribal members pay local, state and federal taxes?

Group 4 – Is the Winter's Doctrine still important for today's tribes?

Each group is responsible for a presentation explaining their findings.

HOMEWORK ASSIGNMENT

The students are to write a paragraph about their thoughts on Indian-American relationships. Were/are the Americans fair in their dealings with the Indians? Should things have been done differently?

ASSESSMENTS

INFORMAL ASSESSMENT:

- Each group and individual will be assessed on participation.

FORMAL ASSESSMENTS:

- Group presentation
- Vocabulary tests
- Homework assignments/writing



Vocabulary Key Treaty Negotiation Unit

Native Americans – people who lived in the Americas before the coming of Europeans or the ancestors of those original inhabitants. Also called American Indians, Natives, and Indigenous peoples.

Reservation – a land that has been set aside by the federal government for the use, possession, and the benefit of an Indian tribe or group of Indians. Reservations were established by acts of Congress, treaties, and executive order.

Treaty – a contract in writing between two or more political authorities (as states or sovereigns) formally signed by representatives duly authorized and usually ratified by lawmaking authority of the state.

Sovereignty - Tribes have sovereignty. This means that tribes have the power to define their own membership; structure and operate their own governments; regulate domestic relations; settle disputes; manage their own properties and resources; raise tax revenue; regulate business and conduct relations with other governments. It also means that the federal government is obligated to protect tribal lands and resources, protect the tribes' rights to self-government, and provide social, medical, education and economic development services necessary for survival and advancement of the tribes.

Culture - a way of life of a group of people - the behaviors, beliefs, values, and symbols that they accept, generally without thinking about them and that are passed along by communication and imitation from one generation to the next.

Myth - Stories about the deeds and doings of supernatural beings.

Tribe - a social group, bound by common culture, history, and culture. In federal American Indian law, a tribe is a distinct political entity with executive, legislative and judicial powers.

Territory - a geographical area belonging to or under the jurisdiction of a government authority.

Promise - a legally binding declaration that gives the person to whom it is made a right to expect or to claim the performance or forbearance of a specific act.

Nation - a community of people composed of one or more nationalities and possessing a more or less defined territory and government; a territorial division containing a body of people of one or more nationalities and usually characterized by relatively large size and independent status; a tribe or federation of tribes.

Band - a subdivision of a tribe. It is a local group of people who join together in search of subsistence; it can be made up of related families.

Clan - Kinship reckoning through a line of common descent, either through the mother's side (matrilineal) or the father's side (patrilineal).

American Indian Sovereignty

Sovereignty is the supreme power from which all political powers are derived. A nation is sovereign when its people have the power to govern themselves.

Were the Indian Nations sovereign at the time of European contact with the North American continent? Yes! All Indian nations originally exercised the powers of sovereigns. Indian nations recognized the sovereignty of other Indian nations by forming, compacts, treaties, trade agreements, and military alliances with one another. All the colonies recognized the sovereignty of Indian nations by entering into treaties with the Indian nations.

Sovereignty, then, was an inherent right of Indian peoples – a right that could not be taken away.

Eroding Indian Sovereignty

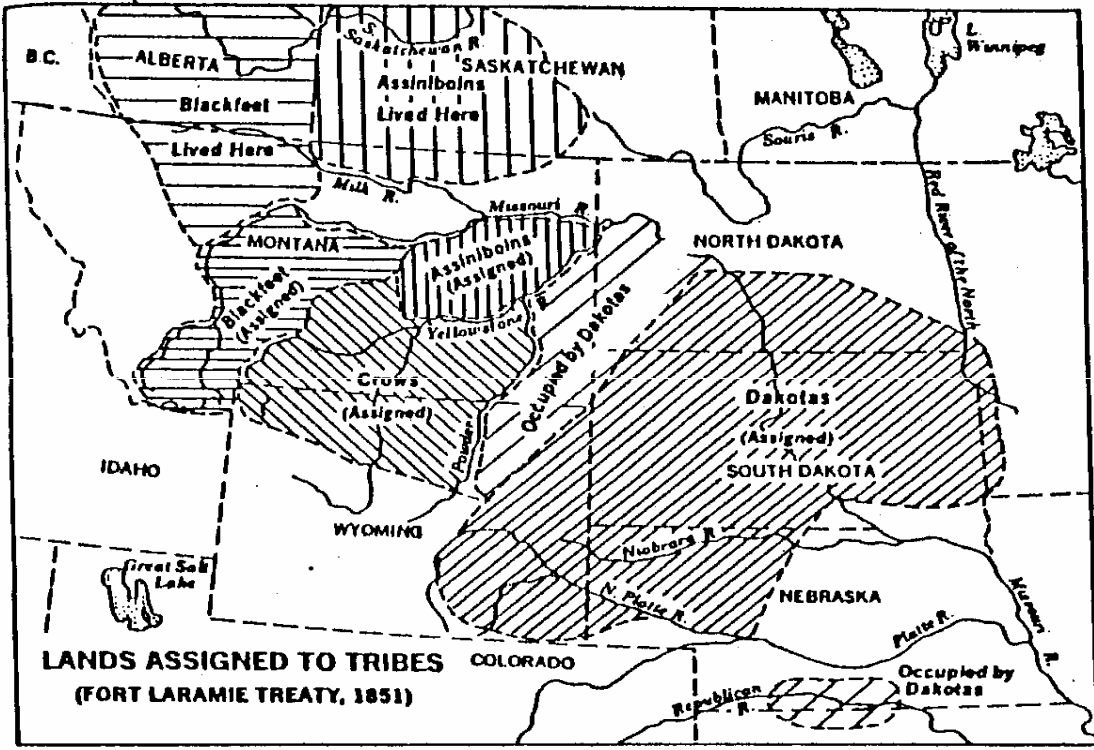
The new US government took three avenues that changed the nature of Indian sovereignty and eroded the powers of sovereign peoples.

1. The US Constitution under **Article 1, Section 8, Clause 2**, recognized the sovereignty of Indian tribes by stating that “The Congress shall have power...to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” In this article, the Constitution specifically created two distinct sovereigns – the federal and tribal governments.
2. The **Indian Trade and Intercourse Act (1790)** gave the federal government – not the states – exclusive power to deal with Indians. Consequently, all relations between the federal government and Indian nations were carried out on a **government-to-government basis**.
3. Three important U.S. Supreme Court decisions known as **The Marshall Trilogy** limited Indian sovereignty.

The Marshall Trilogy

- **Johnson v. McIntosh (1823).** The Court established the **discovery doctrine** finding that European Americans had exclusive title to Indian land because they “discovered” it. Therefore, Indians did not have the right to dispose of the land that they rightfully occupied. Consequently the rights of Indians to complete sovereignty were limited.
- **Cherokee Nation v. Georgia (1831).** The Court established the **trust relationship** by finding that Indian tribes were “domestic dependent nations” and that “their relation to the United States resembles that of a ward to his guardian.” Thereafter, when an Indian nation give up land in a treaty, it entered into a trust relationship with the federal government in which the government promised to provide benefits and rights to the American Indian peoples in exchange for their land. Thus, these were not treaties made between a government and a specific ethnic group, but rather were political, government-to-government treaties.
- **Worcester v. Georgia (1832).** The Court established that Congress had exclusive and overriding, or **plenary power**, over Indian tribes. The decision also found that tribes did not lose their sovereign powers by becoming subject to the power of the U.S. and that state laws did not apply in Indian Country. Consequently, Indian nations were semi-autonomous and were quasi-sovereign entities.

What had begun was what one professor of American Indian history calls “**Sovereignty – now you see it, now you don’t.**” Sometimes the federal government has recognized Indian nations as sovereign, and sometimes it has not. In short, Federal Indian Policy has shifted between sustaining and nurturing tribal sovereignty and eliminating that sovereignty.



**LANDS ASSIGNED TO TRIBES
(FORT LARAMIE TREATY, 1851)**

MONTANA INDIAN RESERVATIONS

