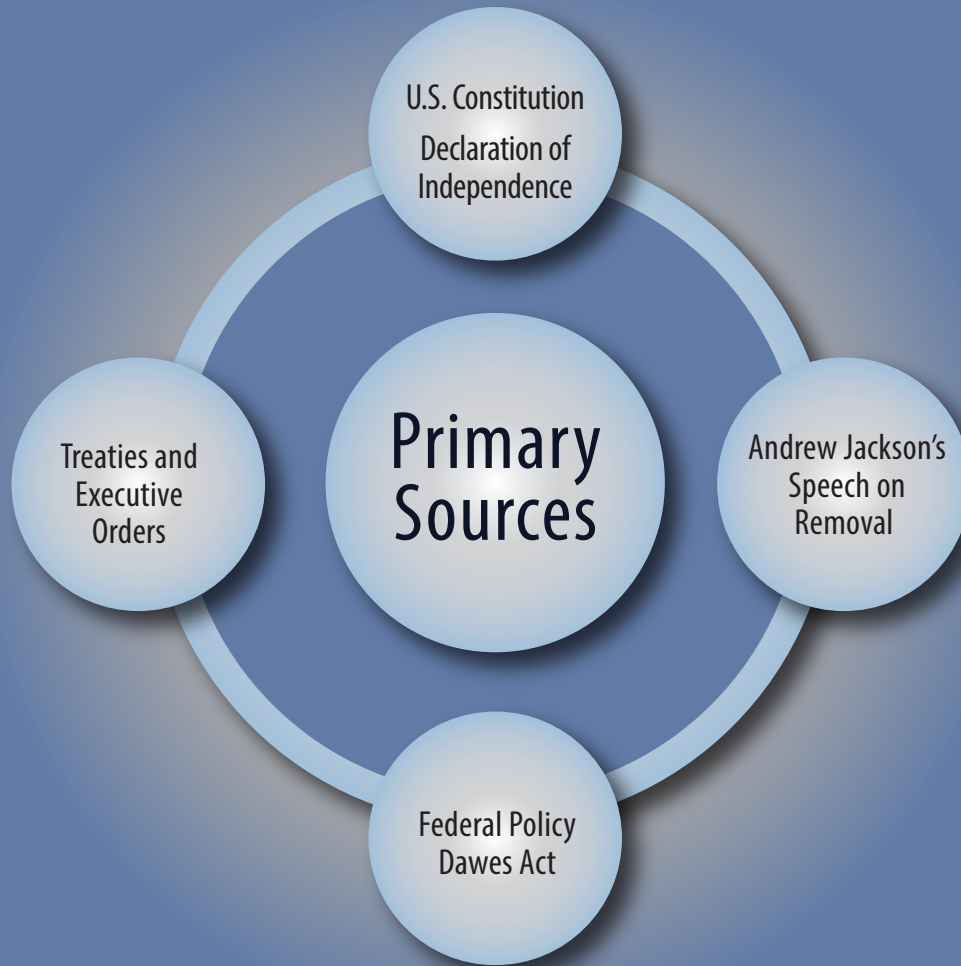


# Using Primary Source Documents to Understand Tribal Sovereignty



**An Indian Education for All Model Lesson Plan**  
**American History, Government, and English Language Arts**  
Middle and Secondary Level with Montana Common Core Anchor Standards  
Created by Jolena Hinchman and Katie Hurin  
2015

The 2015 Advocacy Institute Units were created by and have been implemented successfully by teachers in Montana public schools.

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## Introduction

Sovereignty is a force that binds together a nation. At its core, sovereignty is the right of self-governance without outside interference. Since time immemorial (the beginning of the beginning), tribes have been sovereign—they possessed and exercised complete, absolute sovereignty. No one gave tribes sovereignty; they always had it. They did not give it up. Therefore, tribes still retain their sovereignty and their ability to exercise it today.

As we work toward understanding tribal sovereignty, it is important to structure our conversation within a culturally proficient framework. Be prepared to experience tough content which might evoke an emotional response. It is important to remember there is no blame and no shame. However, it is important we educate ourselves so we can understand how historical events continue to have contemporary implications for tribal sovereignty.

In this unit, we will examine the historical foundation of the relationship between the US government and Indian tribes. Participants will deepen their understanding of the unique political status of American Indian people through engaging activities and text-based dialogue.

Students will examine the Doctrine of Discovery in order to understand how European powers used this principle to justify their exploration and colonization of the Americas. Next, students will investigate how the Doctrine of Discovery paved the way for federal Indian policies that limited tribal sovereignty and how these policies and the discovery doctrine continue to impact tribal sovereignty today. Finally, through the framework of critical literacy, students will utilize primary source documents (including the *Requerimiento* and the Declaration of Independence) to determine how tribal sovereignty has persisted or has diminished over time.

## Primary Source Documents

### Texts:

Requerimiento, 1510

<http://nationalhumanitiescenter.org/pds/amerbegin/contact/text7/requirement.pdf>

Declaration of Independence, 1776

<http://www.ourdocuments.gov/doc.php?doc=2&page=transcript>

United States Constitution, 1787

<http://www.ourdocuments.gov/doc.php?doc=9&page=transcript>

### Supreme Court Cases (Appendix D):

**(The three cases dated 1823-1832 are also referred to as the Marshall Trilogy):**

*Johnson v. McIntosh*, 1823\*

*\*As the subscript font was not available in 1823 you may see M'Intosh on some versions of the primary document. The case was between Thomas Johnson and William McIntosh.*

*Cherokee Nation v. Georgia*, 1831

*Worcester v. Georgia*, 1832

*Lone Wolf v. Hitchcock*, 1903

**Speeches (Appendix E):**

President Andrew Jackson on Removal, 1830

**Treaties & Executive Acts (Appendix F):**

Treaty of Hopewell with the Cherokee, 1785

**Federal Policies (Appendix G):**

Dawes Act, 1887

**Letters (Appendices H and I):**

Sam Resurrection to William Taft, 1909

Commissioner of Indian Affairs to Sam Resurrection, 1909

**Fast Facts**

<b>Genre</b>	Informational Texts
<b>Suggested Grade Level</b>	9 -12
<b>Place</b>	United States
<b>Time</b>	Time Immemorial - Present
<b>Timeframe</b>	1 - 2 weeks

**Learning Objectives**

By reading, analyzing, and discussing several primary source documents, students will understand and be able to explain that . . .

- ✓ three forms of sovereignty exist in the United States – federal, state, and tribal;
- ✓ tribal nations were not granted sovereignty by any other power, but possess their own (inherent) sovereignty since time immemorial;
- ✓ European and American powers have used the Doctrine of Discovery to limit tribal sovereignty;
- ✓ Supreme Court cases, federal Indian policies, and other federal actions have had complex and lasting impacts on tribal sovereignty;
- ✓ tribal sovereignty still exists today.

**Materials Needed**

- Sticky notes
- Day One: Appendix A copies – one per student
- Day Two: Appendix B copies – one per group; poster paper per group
- Day Three: Appendix C – one per group
- Day Four: Appendix D – one per student
- Day Five: Films: *The Rez We Live On* and *Montana Mosaic: Federal Indian Policy and Montana's First Peoples*. (Links provided)
- Days Six through Ten: Links to resources provided.

## Instructional Plan

### Day One: What is Sovereignty?

**Teaching Goal:** The goal of the first day is to introduce students to the historical and cultural context of sovereignty.

**Learning Objectives:**

- ✓ I understand the historical and cultural origins of sovereignty.
- ✓ I understand that tribal sovereignty has existed since time immemorial.

**Teacher Preparation:** Copy Appendix A worksheet for students. Familiarize yourself with the definitions of *time immemorial* and *sovereignty*.

**Activity:** On sticky notes, students will write down what they think tribal sovereignty is. Students will attach their sticky notes on the “What We Think We Know...” portion of the Schema Folder template (Appendix A). This may be replicated on butcher paper or projected. The teacher will read the students’ definitions aloud. Together, they can combine similar comments and move questions to the “Questions” section. Throughout the unit, teacher and students will refer back to this anchor chart, add more information, and adjust their understanding as needed.

**Building the Background:** During this 30-40 minute section, teacher will build students’ background knowledge about sovereignty. First, the teacher will explain the concept of time immemorial; then, the teacher will define what sovereignty is.

*Suggested talking points may include:*

1) Setting the stage:

As we work toward understanding tribal sovereignty, it is important to structure our conversation within a culturally proficient framework. Be prepared to experience tough content which might evoke an emotional response. Remember there is no blame or shame for events that occurred in the past. We are seeking to educate ourselves so we can be more successful in understanding the historical background of tribal sovereignty and its contemporary implications.

2) Defining *time immemorial*:

Time immemorial is the beginning of the beginning. It is before human memory can recall. Since time immemorial, tribes have had total, complete, absolute sovereignty.

3) Defining *sovereignty*:

a) Sovereignty...

- is an inherent right of self-governance,
- exists without outside interference, *and*
- is exercised within established borders.

b) Sovereignty also...

- is a force that binds a nation together,
- is an intangible relationship between the nation and their environment,  
*and*
- has continued to evolve since the beginning of time.

**Closing:** Teacher and students will refer back to the anchor chart, will add new information as the unit progresses, and will adjust their understanding as needed. Students can create a working glossary of new terms as they encounter them throughout this unit (such as, jurisdiction, abrogate, plenary powers, nullify...).

## Day Two: Engaging in Sovereignty

**Teaching Goal:** The goal of this activity is to have the students actively participating in the act of being sovereign. First, students will identify ways in which sovereignty is manifested through human-created systems (education, justice, health care, international relations, trade, etc.). Then, students will divide into small groups and each group will design one of those systems for its society. Next, students will share with the class the systems they created. Finally, the entire class will debrief the process of creating their systems and will discuss the challenges and opportunities of being sovereign.

### Learning Objectives:

- ✓ I understand the many, varied, complex components of sovereignty.
- ✓ I understand that, simply stated, sovereignty is about being in charge of one's own affairs without outside influence or interference.
- ✓ I understand how sovereignty manifests and evolves over time.

**Teacher Preparation:** Students will be divided into five groups, each with its own questions from Appendix B. Copy and divide the Appendix B questions by group (government, citizenship, education, justice, and domestic relations).

**Brainstorm:** Students will brainstorm ways in which sovereignty manifests through human-created systems (health care, international relations, trade, etc.).

**Activity:** Students will split into five groups. Each group will receive a slip of paper with a specific task (from Appendix B). Groups may use poster paper to record their thinking. This activity is intentionally open-ended so groups can experience the full extent of their sovereignty. However, whatever system the group develops must ensure the minority has rights (whatever that minority might be).

*Suggested talking points might include:*

Minority: a group perceived as having little power and/or representation relative to other groups within a society.

- Remind students that within groups identifying with a particular race, religion, political affiliation, socio-economic status or culture any individual has the potential to be perceived as a minority.
- Note: American Indian tribes are unique compared to other minority groups because of their legal and political relationship with the federal government. They are sovereign entities.

**Small Group Sharing:** Each group will share the system they designed. Other groups are offered the option to ask questions.

**Debrief the process:**

*Suggested questions might include:*

- Was this task easy?
- What were the challenges?
- What surprised you?
- What is your takeaway?
- How does this apply to the concept of sovereignty?

**Day Three: Doctrine of Discovery**

**Teaching Goal:** The goal of this day's lesson is to discover the historical concepts that impacted European colonists' perceptions of Indigenous peoples and how those perceptions influenced their interactions. This international legal principal, called the Doctrine of Discovery, was used to justify colonization and land acquisition. As such, the Doctrine of Discovery laid the foundation for federal Indian policy and is still embedded in contemporary Indian policy issues.

**Learning Objectives:**

- ✓ I understand the ten different elements within the Doctrine of Discovery.
- ✓ I understand that the Doctrine of Discovery is the foundational principle European powers used to justify their exploration and colonization of the Americas and is embedded in systems (laws, institutions, and policies) put in place by these powers.
- ✓ I understand the Doctrine of Discovery is a foundation of federal Indian policy.

**Teacher Preparation:** Review the ten principles of the Doctrine of Discovery at <http://doctrineofdiscoveryforum.blogspot.com/2012/03/doctrine-of-discovery-international-law.html>. Copy Appendix C (Doctrine of Discovery Work Pages) for students.

**Building the Background:** During this 10-20 minute section, teacher will build students' background on the Doctrine of Discovery. The teacher will explain the ten principles of the Doctrine of Discovery. *Suggested talking points can include:*

1. As an international legal principle, the Doctrine of Discovery ...
  - a) was used to justify government and European property claims by providing immediate
    - (1) property rights,
    - (2) government rights,
    - (3) political rights,
    - (4) commercial rights;
  - b) is still embedded in American law today;
  - c) applied without the knowledge or consent of sovereign Indigenous people;
  - d) was based on religious charter;
  - e) was fueled by ethnocentric ideology and monetary gain; (Define ethnocentrism.)
  - f) is a way of doing business.



2. Furthermore, the Doctrine of Discovery principle guided European laws for establishing rules and procedures for expanding empires while avoiding costly wars. European countries complied with these rules and principles.

**Activity:** Students will be divided up into ten groups. Each group will be given an element of the Doctrine of Discovery. Students will use Appendix C, law professor Robert J. Miller’s description of each of the ten elements of discovery, as their guiding document as they read and synthesize the information. Then, each group will share with the other groups its understanding of each element.

**Closing:** Based on the new information regarding the Doctrine of Discovery, add to your anchor charts your understanding of how the Doctrine of Discovery influenced European perceptions of tribal sovereignty.

### Day Four: Federal Indian Policy

**Teaching Goal:** The goal of this day is to understand the complexity of the federal relationship between tribal nations and the United States. By utilizing the Doctrine of Discovery and four Supreme Court cases, students will uncover how that legal principal was used to determine Supreme Court decisions in the Marshall Trilogy and in *Lone Wolf v. Hitchcock*.

#### Learning Objectives:

- ✓ I understand the federal government and Indian tribes are in a legal relationship with each other.
- ✓ I understand the Doctrine of Discovery provided the foundation on which the Marshall Trilogy decisions were made.
- ✓ I understand the Marshall Trilogy limited tribal sovereignty by defining tribes as domestic dependent nations.

*Teacher Note: The Marshall Trilogy didn't establish sovereignty, but truncated it (limited it). Tribal sovereignty did not arise from these decisions; rather, the decisions limited pre-existing sovereignty.*

- ✓ I understand the Marshall Trilogy established that the federal government has supreme title to land.
- ✓ I understand the Marshall Trilogy established that the federal government has jurisdiction over Indian affairs.
- ✓ I understand the federal government can abrogate (retract) treaties with American Indian tribes.

**Teacher Preparation:** Read the four Supreme Court case summaries in Appendix D. Copy the Court Cases Work Pages (Appendix D) for students.

**Building the Background:** During this 45-60 minute section, teacher will build students’ background knowledge about federal Indian law/policy. The teacher will explain some Supreme Court decisions that have impacted tribal sovereignty.

*Suggested talking points may include:*

- 1) How does the discovery doctrine impact tribal sovereignty today?
  - a) Following the American Revolution, the discovery rights were transferred from the king to the colonists.
  - b) Interactions between the colonists and tribes were guided by discovery doctrine.
  - c) Sovereignty manifested in treaty making between the early American government and tribal nations.
  - d) Doctrine of Discovery forms the basis of federal Indian law and is evident in the Supreme Court cases referred to as the Marshall Trilogy:
    - *Johnson v. McIntosh, 1823*
    - *Cherokee Nation v. Georgia, 1831*
    - *Worcester v. Georgia, 1832*
  
- 2) Explain Federal Indian law:
  - a) Federal Indian law defines the legal relationship between the federal government and Indian tribes.
  - b) It is dynamic and ever-evolving.
  - c) The U.S. Constitution, treaties, statutes and regulations, Executive Orders, judicial opinions, and European International law shape federal Indian policy.
  - d) Several Supreme Court cases have further impacted tribal sovereignty, as is evident in the Marshall Trilogy and in a subsequent case, *Lone Wolf v. Hitchcock*.

**Activity:** Students will read the four court case summaries (Appendix D), which include the story, the court findings, and what each decision established. Students will write down their understandings of and reactions to each court case. Allow time for student discussion.

**Class Discussion:** As a class, discuss the four Supreme Court cases that determined the extent of tribal sovereignty according to the US government. Encourage students to generate their own questions regarding the background story, court findings, and decisions established by each court case. What reasons were used by the Supreme Court to justify their findings? What biases are present in the findings? How was tribal sovereignty impacted by each case? How did the United States, through these Supreme Court cases, view the sovereignty of the U.S. compared to the sovereignty of Indigenous nations?

*Summaries of each court case:*

### ***Johnson v. M'Intosh, 1823***

#### **Potential discussion question**

A. The story:

- Thomas Johnson was a land speculator. He purchased Piankeshaw land in 1773 and 1775. When he passed away, his descendants inherited that land.
- William McIntosh was also a land speculator. He purchased a land patent to the "same" land from the federal government. These two parcels did not overlap at all. There is evidence the parties were even aware these two tracts did not overlap.

B. The court findings:

- “Discovery” of land in the New World gave the “discovering” European sovereigns a title good against all others.
- Indians retained only the right to occupy and use that land.
- “Discovering” Europeans could extinguish Indian title through purchase or conquest.
- The United States received the transfer of “discovery rights” following the American Revolution.

C. The decision established:

- Federal government had supreme title to the land.
- It eliminated tribal authority and ability to sell their land.
- It further diminished tribal sovereignty.

***Cherokee Nation v. Georgia, 1831***

A. The story:

- Georgia gave up its land claims in the 1802 Compact in exchange for the federal promise to extinguish Indian Title in Georgia.
- The state enacted laws which divided up Cherokee territory and nullified Cherokee sovereignty.
- The Cherokee brought their grievance before the Supreme Court.

B. The court findings:

- Only a foreign state can bring lawsuits directly to the Supreme Court.
- Tribes are nations—distinct political states separate from others and capable of managing their own affairs and governing themselves. However, tribes are not *foreign* nations; rather, they occupy territories to which the United States asserts a title, independent of tribal will.

C. The decision established:

- Tribes are domestic dependent nations.
- United States has guardianship over tribes.
- Tribes cannot form relations with foreign countries without the permission of the US government.
- Tribes cannot bypass lower courts.

***Worcester v. Georgia, 1832***

<http://www.georgiaencyclopedia.org/articles/government-politics/worcester-v-georgia-1832>

A. The story:

- Georgia state law stated that all white citizens living in Cherokee Territory must have a state license. Seven missionaries refused. They were arrested, convicted, and sentenced to four years of hard labor.

- The missionaries appealed their case to the Supreme Court.

B. The court findings:

- Cherokee is a distinct community, occupying its own territory where their authority is exclusive.

C. The decision established:

- Jurisdictional law where states have no power over Indian affairs.
- **States cannot enforce state law on tribal land.**

***Lone Wolf v. Hitchcock, 1903***

A. The story:

- During the Treaty of Medicine Lodge, the Kiowa land cessions required signatures of at least three-fourths of all the adult males.
- Lone Wolf led the resistance to the allotment of the reservation.
- The commissioners fraudulently induced some tribal members to sign various allotment documents. They had members of other tribes sign the document in order to reach the super majority requirement.
- The Kiowa drafted a petition to Congress which was signed by a supermajority of eligible Kiowa members arguing that the commissioners' documents were fraudulent.
- Congress proceeded with the allotment anyway, so Lone Wolf filed suit with the Supreme Court.

B. The Court Findings:

- Congress was entitled to allot Kiowa land without tribal consent.
- A supermajority of the tribe signing the allotment documents was inconsequential.

C. The decision established:

- Plenary power as a result of domestic dependent status of tribes.
- Congress has the power to abrogate treaties at its own discretion and to dispose of treaty-protected Indian land at will.

**Processing the Marshall Trilogy and *Lone Wolf v Hitchcock* court cases:**

*What information stands out? Why?*

*How does this information further the understanding of tribal sovereignty?*

**Closing:** Add new information to the anchor chart and discuss your new understanding of tribal sovereignty. For example, how have federal acts (as evident in Congressional acts or Supreme Court decisions) affected tribal sovereignty?

## Day Five: American Outrage

**Teaching Goals:** The goal of today's class is to see how tribal sovereignty exists today and to examine the relationship between the American Indian tribes and the federal government, using the short documentary films, *The Rez We Live On* and *Montana Mosaic: Federal Indian Policy and Montana's First People*.

### Learning Objectives:

- ✓ I understand that tribes still have sovereignty.
- ✓ I understand the Doctrine of Discovery still impacts tribal sovereignty. I understand the relationship between American Indian tribes and the federal government is guided by federal Indian policy and by tribes' status as nations within a nation.

**Teacher Preparation:** Preview the following short films:

*The Rez We Live On* (2:08)

*Montana Mosaic: Federal Indian Policy and Montana's First People* (16:33)

**Movie:** Watch the films as a class.

**Debrief the process:** *Discussion questions might include:*

- What did you notice?
- What was revealed about tribal sovereignty? Cite specific examples.
- What was revealed about the relationship between American Indian tribes and the federal government?
- Encourage students to generate additional discussion questions.

**Closing:** Based on the new information presented in *The Rez We Live on* and *Montana Mosaic*, teacher and students will add to their anchor charts and will discuss the concepts of evolving tribal sovereignty. Students may want to write personal responses to the films in order to articulate their reactions and thoughts.

## Days Six to Ten: Critical Literacy

**Teaching Goals:** The goal of the final days of this unit is to utilize primary source documents to examine how tribal sovereignty is upheld or diminished. Students will examine these documents through the lens of critical literacy to uncover a more inclusive truth presented in these documents. Included in the appendices (E through I) are some examples that illustrate the federal government's relationship with tribal nations and its impacts on tribal sovereignty. Other primary source documents are listed below.

### Learning Objectives:

- ✓ I understand critical literacy involves social action and seeks to uncover biases in order to challenge the status quo.
- ✓ I can identify how and why tribal sovereignty has been upheld or diminished in the primary source documents.

**Teacher Preparation:** Review the definition of *critical literacy*. Review the primary source documents provided and make copies for students.

**Building the Background:** During this 15-20 minute section, teacher will build students' background on critical literacy. The teacher will explain the primary source documents that students may read and analyze.

*Suggested talking points may include:*

- 1) Define *critical literacy*:
  - a. Critical literacy is active reflective reading to better understand power, inequality, and injustice in human relationships. The focus of critical literacy is to examine the relationship between and among language, power, and social practice.
  - b. *Critical literacy is not the same thing as close analytical or critical reading*. The focus of critical literacy is to challenge the status quo and to uncover hidden biases.
  - c. The goal of critical literacy is social change.
- 2) Read selected primary source documents and discuss them:
  - a. Who is the author?
  - b. Who is the intended audience?
  - c. What is the purpose? (Look at the time and place where the document was created.)
  - d. Whose interests are served? Whose interests are not?
  - e. What happens to those who do not benefit?
  - f. How does the author use language to influence the message? Find specific examples.
  - g. How is tribal sovereignty affected?
- 3) Suggest primary source documents for further exploration and research:

**Documents:**

Requerimiento, 1510 (Pronunciation: ray-care-ee-mee-EN-toe)

<http://nationalhumanitiescenter.org/pds/amerbegin/contact/text7/requirement.pdf>

Declaration of Independence, 1776

<http://www.ourdocuments.gov/doc.php?doc=2&page=transcript>

United States Constitution, 1787

<http://www.ourdocuments.gov/doc.php?doc=9&page=transcript>

**Speeches:**

Jackson on Removal, 1830 (Appendix E)

**Treaties & Executive Acts:**

Treaty of Hopewell with the Cherokee, 1785 (Appendix F)

**Federal Policies:**

Dawes Act, 1887. (Appendix G)

**Letters:**

Sam Resurrection to William Taft, 1909 (Appendix H)

Commissioner Valentine to Sam Resurrection, 1909. (Appendix I)

**Closing:** Based on the new information presented in these primary documents, teacher and students will revise their anchor charts to incorporate their new understandings of tribal sovereignty. Each student is given another sticky note to add a new fact to the “What We Learned...” section. At this point, most sticky notes should be moved to the “What We Learned” or “Misconception” section. If any questions still remain in the “Questions” section, this may be an opportunity for further research, discussion, and extension activities.

## Extension

Students could apply critical literacy and social justice to a project:

- Identify a contemporary issue related to tribal sovereignty and write an article.
- Present the concepts of American Indian tribal sovereignty to another group of students or to the public.
- Have a discussion on the request by nuns for the Pope to rescind the Doctrine of Discovery (in 2014) or write letters in favor or against this idea. This could be a very powerful statement coming from an American Indian student who explains how the Doctrine of Discovery has affected his/her own life, family, and tribe. Background information <http://indiancountrytodaymedianetwork.com/2014/09/09/nuns-urge-pope-rescind-doctrine-discovery-156819>
- Find other current event articles that relate to tribal sovereignty in the US or Canada.

## Assessment

For ideas for formative assessments, see Lambert, K. *Tools for Formative Assessment*. Orange County [Florida] Public Schools, Curriculum Services, 2012.

[http://www.levy.k12.fl.us/instruction/Instructional\\_Tools/60FormativeAssessment.pdf](http://www.levy.k12.fl.us/instruction/Instructional_Tools/60FormativeAssessment.pdf)

As a summative assessment to check students’ understanding of sovereignty, teachers may use the following questions:

- Are students able to read and analyze primary source documents utilizing critical literacy?
- Can students identify and define historical and contemporary elements of tribal sovereignty?
- Can students articulate the complexity of the relationship between tribal nations and the federal government?
- Can students explain the impacts of historical events and principles (like the Doctrine of Discovery) and federal decisions and policies (like Supreme Court cases) on tribal sovereignty?

**Note to Teachers:** The concept and practice of sovereignty is incredibly complex and ever-evolving. The bibliography contains additional resources for developing teachers’ and students’ understanding of sovereignty.

## Appendices

- Appendix A: Schema Folder Template
- Appendix B: Sovereignty Activity Work Page
- Appendix C: Doctrine of Discovery Work Pages
- Appendix D: Supreme Court Case Summaries
- Appendix E: President Andrew Jackson's Speech on Removal, 1830
- Appendix F: Treaty of Hopewell with the Cherokee, 1785
- Appendix G: Dawes Act, 1887
- Appendix H: Letter from Sam Resurrection to William Taft, 1909



# Appendix A: Schema Folder Template

<b>What We Think We Know...</b>	
<b>What We Learned...</b>	
<b>Misconceptions...</b>	<b>Questions...</b>

## Appendix B: Sovereignty Activity Work Page

### Develop your system of government.

- What are the responsibilities of the governing structure?
- Who can be a leader?
- How will leaders be chosen?
- Who can choose leaders?
- What rights do the people have?
- How will minority rights be ensured?

### Define conditions for citizenship.

- Who can be a citizen of your nation? Who cannot be a citizen?
- Who decides this?
- What is the process to become a citizen?
- How will minority rights be ensured?

### Develop your system of education.

- How will it be structured?
- What will be taught?
- How does one become qualified to teach?
- Who gets to receive education?
- How will achievement be measured?
- How will minority rights be ensured?

### Develop your system of justice.

- What laws need to be made?
- Who gets to make them?
- Who gets to decide if laws are fair?
- Who will enforce them?
- How will minority rights be ensured?

### Develop your system for domestic relations.

- How will basic needs be met?
- What role does gender play?
- What is the role of children?
- How will minority rights be ensured?

## Appendix C: Doctrine of Discovery Work Pages

Term	Miller's Description	What I think it means
<b>First Discovery</b>	The first European country to “discover” new lands unknown to other Europeans gained property and sovereign rights over the lands. First discovery alone, without taking physical possession, was often considered to create a claim of title to the newly found lands, but it was usually considered to be only an incomplete title.	
<b>Actual Occupancy &amp; Current Possession</b>	To fully establish a “first discovery” claim and turn it into a complete title, a European country had to actually occupy and possess newly found lands. This was usually done by actual physical possession with the building of a fort or settlement, for example, and leaving soldiers or settlers on the land. This physical possession had to be accomplished within a reasonable amount of time after the first discovery to create a complete title to the land in the discovering country.	
<b>Preemption European Title</b>	The discovering European country gained the power of preemption, the sole right to buy the land from the Native peoples. This is a valuable property right. The government that held discovery power of preemption prevented or preempted any other European or American government or individual from buying land from the discovered Native peoples.	
<b>Indian Title</b>	After first discovery, Indian Nations and the Indigenous peoples were considered by European and American legal systems to have lost the full property rights and ownership of their lands. They only retained rights to occupy and use their land. Nevertheless, this right could last forever if the Indigenous people never consented to sell their land. But if they ever did choose to sell, they could only sell to the government that held power of preemption over their lands. Thus, Indian title was a limited ownership right.	

<p><b>Limited Tribal Sovereignty &amp; Commercial Rights</b></p>	<p>After first discovery, Indian Nations and Native peoples were also considered to have lost some of their inherent sovereign powers and the rights to free trade and diplomatic international relations. Thereafter, they could only deal with the Euro-American government that had first discovered them.</p>	
<p><b>Contiguity</b></p>	<p>The dictionary definition of this word means the state of being contiguous to, to have proximity to, or to be near to. This element provided that Europeans had a discovery claim to a reasonable and significant amount of land contiguous to and surrounding their settlements and the lands they actually possessed in the New World. This element became very important when different European countries had settlements somewhat close together. In that situation, each country held rights over the unoccupied lands between their settlements to a point half way between their actual settlements. Most importantly, contiguity held that the discovery of the mouth of a river gave the discovering country a claim over all the lands drained by that river, even if that was thousands of miles of territory.</p>	
<p><b>Terra Nullius</b></p>	<p>This phrase literally means a land or earth that is null or void. The term <i>vacuum domicilium</i> was also sometimes used to describe this element, and this term literally means an empty or vacant, or unoccupied home or domicile. According to this idea, if lands were not possessed or occupied by any person or nation, or were occupied by non-Europeans but not being used in a fashion that European legal systems approved, the lands were considered to be empty and waste and available for discovery claims. Europeans and Americans were very liberal in applying this definition to the lands of Native peoples. Euro-Americans often considered lands that were actually owned, occupied, and being actively utilized by Indigenous people to be “vacant” and available for discovery claims if they were not being “properly used” according to European and American law and culture.</p>	

<b>Christianity</b>	Religion was a significant aspect of the Doctrine of Discovery and of Manifest Destiny. Under discovery, non-Christian people were not deemed to have the same rights to land, sovereignty, and self-determination as Christians because their rights could be trumped upon their discovery by Christians.	
<b>Civilization</b>	The European (and later, American) definition of civilization was an important part of discovery. Euro-Americans believed that God had directed them to bring civilized ways, education, and religion to Indigenous people. They used this belief to justify imposing paternalism and guardianship upon indigenous peoples.	
<b>Conquest</b>	We will encounter two different definitions for this element; it can mean a military victory. We will see this definition reflected in Spanish, English, and American concept of “just wars” that allegedly justified the invasion and conquest of Indian lands in certain circumstances. But that is not the only definition we will encounter. Conquest was also used as a term of art (statement of assumed fact) to describe the property rights Europeans “claimed” to have acquired automatically over Indigenous Nations just by showing up and making a “first discovery.”	

## Appendix D: Supreme Court Case Summaries

### *Johnson v. M'Intosh, 1823*

#### **Background:**

Thomas Johnson, a land speculator, bought land from the Piankeshaw tribes in 1773 & 1775. When he passed away his descendants inherited the land. William McIntosh, also a land speculator, subsequently obtained a land patent to this “same” land from the United States federal government. In fact, the two parcels of land did not overlap at all. Further, there is evidence that the parties were aware they did not overlap and purposely misrepresented the facts to the court in order to obtain a ruling. No one contested a single fact alleged in the complaint and Judge Marshall accepted the “facts” as they were presented. Everyone involved, it seems, wanted a decision on the legal question of the validity of private land purchases from American Indians.

#### **Court Findings:**

- Discovery of lands in the new world gave the discovering European sovereign a title good against all others.
- Indians retained the right to only occupy and use land, but not own it.
- Discovering Europeans could extinguish Indian title through purchase or conquest.
- The US government stepped into the shoes of the British crown.

#### **Established:**

- Declared that the federal government had supreme title to the land.
- Eliminated tribal ability to sell their own land.
- Further diminished tribal sovereignty.

### *Cherokee Nation v. Georgia, 1831*

#### **Background:**

In order to become a state, Georgia had to give up its discovery claims to lands in the west. In return, members of the federal government promised to extinguish Indian title to lands within Georgia. Georgia became tired of waiting for the federal government to make good on its promise and began enacting state laws that divided up Cherokee territory and invalidated Cherokee sovereignty. The Cherokee brought their grievance before the Supreme Court based on the Treaty of Hopewell in 1785, which had recognized Cherokee sovereignty and had firmly established Cherokee territory. The Supreme Court dismissed the case, stating that the tribe did not have standing to bring cases straight to the Supreme Court based on the Commerce Clause in the United States Constitution:

*“Congress shall have Power: To regulate Commerce with foreign Nations, and among the several States, and with the Indian tribes...”*

#### **Court Findings:**

- Only a foreign state can bring suits directly to the Supreme Court.
- Tribes are nations—distinct political societies separate from others and capable of managing their own affairs and governing themselves.
- But, tribes are not *foreign* nations; rather, they occupy territories to which the US asserts a title, independent of tribal will.

**Established**

- Tribes are domestic, dependent nations.
- The U.S. has guardianship over tribes.
- Tribes cannot form relations with foreign countries without the permission of US government.
- Tribes cannot bypass lower courts.

***Worcester v. Georgia, 1832*****Background:**

The state of Georgia passed laws restricting authority of the Cherokee over their own lands. Among these was a law requiring ALL whites living in Cherokee Territory, including missionaries and persons married to a Cherokee, to obtain a state license to live there. Seven missionaries refused to obtain licenses; they were arrested, convicted, and sentenced to four years of hard labor. They appealed their case to the United States Supreme Court, arguing that the law under which they had been convicted was unconstitutional.

**Court Findings:**

- The Cherokee tribe is a distinct political community.
- The Cherokees occupy their own territory, within which their authority is exclusive.
- States have no authority to pass laws concerning sovereign Indian Nations.

**Established:**

- Jurisdictional law: states have no power over Indian affairs.
- States cannot enforce state law on tribal land.

***Lone Wolf vs Hitchcock, 1903*****Background:**

According to the Treaty of Medicine Lodge (1867), no further Kiowa land cessions would occur without the approval of a supermajority of the tribe. Article XII of the treaty stated that any cession of tribal land required the signatures of "at least three-fourths of all the adult male Indians occupying the same." Lone Wolf, the Kiowa chief, led his people in a resistance to the allotment of their reservation. Once negotiations faltered, the American treaty commissioners fraudulently induced some tribal members to sign various allotment documents under false pretenses. To obtain the supermajority required by the treaty for the cession of the Kiowa lands, the commissioners had members of other tribes sign the documents as well.

By October 6, 1892, the government claimed that a majority of Kiowas had signed the agreement, which proposed to give every member of the tribe a 160-acre allotment and to pay \$2 million for the surplus lands. The treaty commission then returned to Washington, asking Congress to proceed with the allotment of the Kiowa lands. The Kiowa argued that the agreement was invalid since, according to the tribal rolls, less than three-fourths of the adult male Indians signed the agreement. The tribes held a council and drafted a petition to Congress signed by an actual supermajority of eligible Kiowa members. Nonetheless, Congress proceeded with allotment. Lone Wolf filed a complaint with the Supreme Court.

**Court Findings:**

- Reaffirmed tribes are domestic dependents.
- Congress was entitled to allot the reservation without the Kiowa peoples' consent.
- A supermajority of the tribe signing the allotment documents was inconsequential.

**Established:**

- Plenary power over Indian peoples due to domestic dependency.
- Congress has power to:
- abrogate treaties at its discretion;
- dispose of treaty-protected Indian land at will.



## Appendix E: President Andrew Jackson's Speech on Removal

*Transcript of President Andrew Jackson's Message to Congress on Indian Removal, 1830*

### **Andrew Jackson's Annual Message**

It gives me pleasure to announce to Congress that the benevolent policy of the Government, steadily pursued for nearly thirty years, in relation to the removal of the Indians beyond the white settlements is approaching to a happy consummation. Two important tribes have accepted the provision made for their removal at the last session of Congress, and it is believed that their example will induce the remaining tribes also to seek the same obvious advantages.

The consequences of a speedy removal will be important to the United States, to individual States, and to the Indians themselves. The pecuniary advantages which it promises to the Government are the least of its recommendations. It puts an end to all possible danger of collision between the authorities of the General and State Governments on account of the Indians. It will place a dense and civilized population in large tracts of country now occupied by a few savage hunters. By opening the whole territory between Tennessee on the north and Louisiana on the south to the settlement of the whites it will incalculably strengthen the southwestern frontier and render the adjacent States strong enough to repel future invasions without remote aid. It will relieve the whole State of Mississippi and the western part of Alabama of Indian occupancy, and enable those States to advance rapidly in population, wealth, and power. It will separate the Indians from immediate contact with settlements of whites; free them from the power of the States; enable them to pursue happiness in their own way and under their own rude institutions; will retard the progress of decay, which is lessening their numbers, and perhaps cause them gradually, under the protection of the Government and through the influence of good counsels, to cast off their savage habits and become an interesting, civilized, and Christian community.

What good man would prefer a country covered with forests and ranged by a few thousand savages to our extensive Republic, studded with cities, towns, and prosperous farms embellished with all the improvements which art can devise or industry execute, occupied by more than 12,000,000 happy people, and filled with all the blessings of liberty, civilization and religion?

The present policy of the Government is but a continuation of the same progressive change by a milder process. The tribes which occupied the countries now constituting the Eastern States were annihilated or have melted away to make room for the whites. The waves of population and civilization are rolling to the westward, and we now propose to acquire the countries occupied by the red men of the South and West by a fair exchange, and, at the expense of the United States, to send them to land where their existence may be prolonged and perhaps made perpetual. Doubtless it will be painful to leave the graves of their fathers; but what do they [do] more than our ancestors did or than our children are now doing? To better their condition in an unknown land our forefathers left all that was dear in earthly objects. Our children by thousands yearly leave the land of their birth to seek new homes in distant regions. Does Humanity weep at these painful separations from everything, animate and inanimate, with which the young heart has become entwined? Far from it. It is rather a source of joy that our country affords scope where our young population may range unconstrained in body or in mind, developing the power and facilities of man in their highest perfection. These [young people] remove hundreds and almost thousands of miles at their own expense, purchase the lands they occupy, and support themselves at their new homes from the moment of their arrival. Can it be cruel

in this Government when, by events which it can not control, the Indian is made discontented in his ancient home to purchase his lands, to give him a new and extensive territory, to pay the expense of his removal, and support him a year in his new abode? How many thousands of our own people would gladly embrace the opportunity of removing to the West on such conditions! If the offers made to the Indians were extended to them, they would be hailed with gratitude and joy.

And is it supposed that the wandering savage has a stronger attachment to his home than the settled, civilized Christian? Is it more afflicting to him to leave the graves of his fathers than it is to our brothers and children? Rightly considered, the policy of the General Government toward the red man is not only liberal, but generous. He is unwilling to submit to the laws of the States and mingle with their population. To save him from this alternative, or perhaps utter annihilation, the General Government kindly offers him a new home, and proposes to pay the whole expense of his removal and settlement.

## Appendix F: Treaty of Hopewell with the Cherokee

### TREATY WITH THE CHEROKEE, 1785.

“Hopewell Treaty”

**Nov. 28, 1785. | 7 Stat., 18.**

*Articles concluded at Hopewell, on the Keowee, between Benjamin Hawkins, Andrew Pickens, Joseph Martin, and Lachlan M’Intosh, Commissioners Plenipotentiary of the United States of America, of the one Part, and the Head-Men and Warriors of all the Cherokees of the other.*

The Commissioners Plenipotentiary of the United States, in Congress assembled, give peace to all the Cherokees, and receive them into the favor and protection of the United States of America, on the following conditions:

#### **ARTICLE I.**

The Head-Men and Warriors of all the Cherokees shall restore all the prisoners, citizens of the United States, or subjects of their allies, to their entire liberty: They shall also restore all the Negroes, and all other property taken during the late war from the citizens, to such person, and at such time and place, as the Commissioners shall appoint.

#### **ARTICLE II.**

The Commissioners of the United States in Congress assembled, shall restore all the prisoners taken from the Indians, during the late war, to the Head-Men and Warriors of the Cherokees, as early as is practicable.

#### **ARTICLE III.**

The said Indians for themselves and their respective tribes and towns do acknowledge all the Cherokees to be under the protection of the United States of America, and of no other sovereign whosoever.

#### **ARTICLE IV.**

The boundary allotted to the Cherokees for their hunting grounds, between the said Indians and the citizens of the United States, within the limits of the United States of America, is, and shall be the following, viz. Beginning at the mouth of Duck river, on the Tennessee; thence running north-east to the ridge dividing the waters running into Cumberland from those running into the Tennessee; thence eastwardly along the said ridge to a north-east line to be run, which shall strike the river Cumberland forty miles above Nashville; thence along the said line to the river; thence up the said river to the ford where the Kentucky road crosses the river; thence to Campbell’s line, near Cumberland gap; thence to the mouth of Claud’s creek on Holstein; thence to the Chimney-top mountain; thence to Camp-creek, near the mouth of Big Limestone, on Nolichucky; thence a southerly course six miles to a mountain; thence south to the North-Carolina line; thence to the South-Carolina Indian boundary, and along the same south-west over the top of the Oconee mountain till it shall strike Tugaloo river; thence a direct line to the top of the Currohee mountain; thence to the head of the south fork of Oconee river.

#### **ARTICLE V.**

If any citizen of the United States, or other person not being an Indian, shall attempt to settle on any of the lands westward or southward of the said boundary which are hereby allotted to the Indians for

their hunting grounds, or having already settled and will not remove from the same within six months after the ratification of this treaty, such person shall forfeit the protection of the United States, and the Indians may punish him or not as they please: Provided nevertheless, That this article shall not extend to the people settled between the fork of French Broad and Holstein rivers, whose particular situation shall be transmitted to the United States in Congress assembled for their decision thereon, which the Indians agree to abide by.

#### **ARTICLE VI.**

If any Indian or Indians, or person residing among them, or who shall take refuge in their nation, shall commit a robbery, or murder, or other capital crime, on any citizen of the United States, or person under their protection, the nation, or the tribe to which such offender or offenders may belong, shall be bound to deliver him or them up to be punished according to the ordinances of the United States; Provided, that the punishment shall not be greater than if the robbery or murder, or other capital crime had been committed by a citizen on a citizen.

#### **ARTICLE VII.**

If any citizen of the United States, or person under their protection, shall commit a robbery or murder, or other capital crime, on any Indian, such offender or offenders shall be punished in the same manner as if the murder or robbery, or other capital crime, had been committed on a citizen of the United States; and the punishment shall be in presence of some of the Cherokees, if any shall attend at the time and place, and that they may have an opportunity so to do, due notice of the time of such intended punishment shall be sent to some one of the tribes.

#### **ARTICLE VIII.**

It is understood that the punishment of the innocent under the idea of retaliation, is unjust, and shall not be practiced on either side, except where there is a manifest violation of this treaty; and then it shall be preceded first by a demand of justice, and if refused, then by a declaration of hostilities.

#### **ARTICLE IX.**

For the benefit and comfort of the Indians, and for the prevention of injuries or oppressions on the part of the citizens or Indians, the United States in Congress assembled shall have the sole and exclusive right of regulating the trade with the Indians, and managing all their affairs in such manner as they think proper.

#### **ARTICLE X.**

Until the pleasure of Congress be known, respecting the ninth article, all traders, citizens of the United States, shall have liberty to go to any of the tribes or towns of the Cherokees to trade with them, and they shall be protected in their persons and property, and kindly treated.

#### **ARTICLE XI.**

The said Indians shall give notice to the citizens of the United States, of any designs which they may know or suspect to be formed in any neighboring tribe, or by any person whosoever, against the peace, trade or interest of the United States.

#### **ARTICLE XII.**

That the Indians may have full confidence in the justice of the United States, respecting their interests, they shall have the right to send a deputy of their choice, whenever they think fit, to Congress.

### ARTICLE XIII.

The hatchet shall be forever buried, and the peace given by the United States, and friendship re-established between the said states on the one part, and all the Cherokees on the other, shall be universal; and the contracting parties shall use their utmost endeavors to maintain the peace given as aforesaid, and friendship re-established.

In witness of all and every thing herein determined, between the United States of America and all the Cherokees, we, their underwritten Commissioners, by virtue of our full powers, have signed this definitive treaty, and have caused our seals to be hereunto affixed. Done at Hopewell, on the Keowee, this twenty-eighth of November, in the year of our Lord one thousand seven hundred and eighty-five.

*Benjamin Hawkins, [L. S.]*

*And'w Pickens, [L. S.]*

*Jos. Martin, [L. S.]*

*Lach'n McIntosh Koatohee, or Corn Tassel of Toquo, his x mark, [L. S.]*

*Scholauetta, or Hanging Man of Chota, his x mark, [L. S.]*

*Tuskegatahu, or Long Fellow of Chistohoe, his x mark, [L. S.]*

*Ooskwaha, or Abraham of Chilkowa, his x mark, [L. S.]*

*Kolakusta, or Prince of Noth, his x mark, [L. S.]*

*Newota, or the Gritzs of Chicamaga, his x mark, [L. S.]*

*Konatota, or the Rising Fawn of Highwassay, his x mark, [L. S.]*

*Tuckasee, or Young Terrapin of Allajoy, his x mark, [L. S.]*

*Toostaka, or the Waker of Oostanawa, his x mark, [L. S.]*

*Untoola, or Gun Rod of Seteco, his x mark, [L. S.]*

*Unsuokanail, Buffalo White Calf New Cussee, his x mark, [L. S.]*

*Kostayyak, or Sharp Fellow Wataga, his x mark, [L. S.]*

*Chonosta, of Cowe, his x mark, [L. S.]*

*Chescoonwho, Bird in Close of Tomotlug, his x mark, [L. S.]*

*Tuckasee, or Terrapin of Hightowa, his x mark, [L. S.]*

*Chesetoa, or the Rabbit of Tlacoa, his x mark, [L. S.]*

*Chesecotetona, or Yellow Bird of the Pine Log, his x mark, [L. S.]*

*Sketaloska, Second Man of Tillico, his x mark, [L. S.]*

*Chokasatahe, Chickasaw Killer Tasonta, his x mark, [L. S.]*

*Onanoota, of Koosote, his x mark, [L. S.]*

*Ookoseta, or Sower Mush of Kooloque, his x mark, [L. S.]*

*Umatooetha, the Water Hunter Choikamawga, his x mark, [L. S.]*

*Wyuka, of Lookout Mountain, his x mark, [L. S.]*

*Tulco, or Tom of Chatuga, his x mark, [L. S.]*

*Will, of Akoha, his x mark, [L. S.]*

*Necatee, of Sawta, his x mark, [L. S.]*

*Amokontakona, Kutcloa, his x mark, [L. S.]*

*Kowetatahee, in Frog Town, his x mark, [L. S.]*

*Keukuck, Talcoa, his x mark, [L. S.]*

*Tulatiska, of Chaway, his x mark, [L. S.]*

*Wooaluka, the Waylayer, Chota, his x mark, [L. S.]*

*Tatliusta, or Porpoise of Tilassi, his x mark, [L. S.]*

*John, of Little Tallico, his x mark, [L. S.]*

*Skeleak, his x mark, [L. S.]*

*Akonoluchta, the Cabin, his x mark, [L. S.]*  
*Cheanoka, of Kawetakac, his x mark, [L. S.]*  
*Yellow Bird, his x mark, [L. S.]*

Witness:

*Wm. Blount,*

*Sam'l Taylor, Major.,*

*John Owen,*

*Jess. Walton,*

*Jno. Cowan, capt. comm'd't,*

*Thos. Gregg,*

*W. Hazzard.*

*James Madison,*

*Arthur Cooley,*

Sworn interpreters.

## Appendix G: Dawes Act

### Transcript of Dawes Act, 1887

#### Forty-Ninth Congress of the United States of America; At the Second Session,

Begun and held at the City of Washington on Monday, the sixth day of December, one thousand eight hundred and eight-six.

#### **An Act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes.**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in all cases where any tribe or band of Indians has been, or shall hereafter be, located upon any reservation created for their use, either by treaty stipulation or by virtue of an act of Congress or executive order setting apart the same for their use, the President of the United States be, and he hereby is, authorized, whenever in his opinion any reservation or any part thereof of such Indians is advantageous for agricultural and grazing purposes, to cause said reservation, or any part thereof, to be surveyed, or resurveyed if necessary, and to allot the lands in said reservation in severalty to any Indian located thereon in quantities as follows:

To each head of a family, one-quarter of a section;

To each single person over eighteen years of age, one-eighth of a section;

To each orphan child under eighteen years of age, one-eighth of a section; and

To each other single person under eighteen years now living, or who may be born prior to the date of the order of the President directing an allotment of the lands embraced in any reservation, one-sixteenth of a section:

**Provided,** That in case there is not sufficient land in any of said reservations to allot lands to each individual of the classes above named in quantities as above provided, the lands embraced in such reservation or reservations shall be allotted to each individual of each of said classes pro rata in accordance with the provisions of this act: And provided further, That where the treaty or act of Congress setting apart such reservation provides the allotment of lands in severalty in quantities in excess of those herein provided, the President, in making allotments upon such reservation, shall allot the lands to each individual Indian belonging thereon in quantity as specified in such treaty or act: And provided further, That when the lands allotted are only valuable for grazing purposes, an additional allotment of such grazing lands, in quantities as above provided, shall be made to each individual.

**Sec. 2.** That all allotments set apart under the provisions of this act shall be selected by the Indians, heads of families selecting for their minor children, and the agents shall select for each orphan child, and in such manner as to embrace the improvements of the Indians making the selection. where the improvements of two or more Indians have been made on the same legal subdivision of land, unless

they shall otherwise agree, a provisional line may be run dividing said lands between them, and the amount to which each is entitled shall be equalized in the assignment of the remainder of the land to which they are entitled under his act: Provided, That if any one entitled to an allotment shall fail to make a selection within four years after the President shall direct that allotments may be made on a particular reservation, the Secretary of the Interior may direct the agent of such tribe or band, if such there be, and if there be no agent, then a special agent appointed for that purpose, to make a selection for such Indian, which selection shall be allotted as in cases where selections are made by the Indians, and patents shall issue in like manner.

**Sec. 3.** That the allotments provided for in this act shall be made by special agents appointed by the President for such purpose, and the agents in charge of the respective reservations on which the allotments are directed to be made, under such rules and regulations as the Secretary of the Interior may from time to time prescribe, and shall be certified by such agents to the Commissioner of Indian Affairs, in duplicate, one copy to be retained in the Indian Office and the other to be transmitted to the Secretary of the Interior for his action, and to be deposited in the General Land Office.

**Sec. 4.** That where any Indian not residing upon a reservation, or for whose tribe no reservation has been provided by treaty, act of Congress, or executive order, shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land-office for the district in which the lands are located, to have the same allotted to him or her, and to his or her children, in quantities and manner as provided in this act for Indians residing upon reservations; and when such settlement is made upon unsurveyed lands, the grant to such Indians shall be adjusted upon the survey of the lands so as to conform thereto; and patents shall be issued to them for such lands in the manner and with the restrictions as herein provided. And the fees to which the officers of such local land-office would have been entitled had such lands been entered under the general laws for the disposition of the public lands shall be paid to them, from any moneys in the Treasury of the United States not otherwise appropriated, upon a statement of an account in their behalf for such fees by the Commissioner of the General Land Office, and a certification of such account to the Secretary of the Treasury by the Secretary of the Interior.

**Sec. 5.** That upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect, and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever: Provided, That the President of the United States may in any case in his discretion extend the period. And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same, before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void: Provided, That the law of descent and partition in force in the State or Territory where such lands are situate shall apply thereto after patents therefor have been executed and delivered, except as herein otherwise provided; and the laws of the State of Kansas regulating the descent and partition of real estate shall, so far as practicable, apply to all lands in the Indian Territory which may be allotted in severalty under the provisions of this act: And provided further, That at any time after lands have been allotted to all the Indians of any tribe as herein provided, or sooner if in the opinion of the President it shall be for the best interests of said tribe, it shall be lawful for the Secretary of the Interior to negotiate with such Indian tribe for



the purchase and release by said tribe, in conformity with the treaty or statute under which such reservation is held, of such portions of its reservation not allotted as such tribe shall, from time to time, consent to sell, on such terms and conditions as shall be considered just and equitable between the United States and said tribe of Indians, which purchase shall not be complete until ratified by Congress, and the form and manner of executing such release prescribed by Congress: Provided however, That all lands adapted to agriculture, with or without irrigation so sold or released to the United States by any Indian tribe shall be held by the United States for the sale purpose of securing homes to actual settlers and shall be disposed of by the United States to actual and bona fide settlers only tracts not exceeding one hundred and sixty acres to any one person, on such terms as Congress shall prescribe, subject to grants which Congress may make in aid of education: And provided further, That no patents shall issue therefor except to the person so taking the same as and homestead, or his heirs, and after the expiration of five years occupancy thereof as such homestead; and any conveyance of said lands taken as a homestead, or any contract touching the same, or lieu thereon, created prior to the date of such patent, shall be null and void. And the sums agreed to be paid by the United States as purchase money for any portion of any such reservation shall be held in the Treasury of the United States for the sole use of the tribe or tribes Indians; to whom such reservations belonged; and the same, with interest thereon at three per cent per annum, shall be at all times subject to appropriation by Congress for the education and civilization of such tribe or tribes of Indians or the members thereof. The patents aforesaid shall be recorded in the General Land Office, and afterward delivered, free of charge, to the allottee entitled thereto. And if any religious society or other organization is now occupying any of the public lands to which this act is applicable, for religious or educational work among the Indians, the Secretary of the Interior is hereby authorized to confirm such occupation to such society or organization, in quantity not exceeding one hundred and sixty acres in any one tract, so long as the same shall be so occupied, on such terms as he shall deem just; but nothing herein contained shall change or alter any claim of such society for religious or educational purposes heretofore granted by law. And hereafter in the employment of Indian police, or any other employees in the public service among any of the Indian tribes or bands affected by this act, and where Indians can perform the duties required, those Indians who have availed themselves of the provisions of this act and become citizens of the United States shall be preferred.

**Sec. 6.** That upon the completion of said allotments and the patenting of the lands to said allottees, each and every member of the respective bands or tribes of Indians to whom allotments have been made shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. And every Indian born within the territorial limits of the United States to whom allotments shall have been made under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner affecting the right of any such Indian to tribal or other property.

**Sec. 7.** That in cases where the use of water for irrigation is necessary to render the lands within any Indian reservation available for agricultural purposes, the Secretary of the Interior be, and he is hereby, authorized to prescribe such rules and regulations as he may deem necessary to secure a just and equal distribution thereof among the Indians residing upon any such reservation; and no other

appropriation or grant of water by any riparian proprietor shall permitted to the damage of any other riparian proprietor.

**Sec. 8.** That the provisions of this act shall not extend to the territory occupied by the Cherokees, Creeks, Choctaws, Chickasaws, Seminoles, and Osage, Miamies and Peorias, and Sacs and Foxes, in the Indian Territory, nor to any of the reservations of the Seneca Nation of New York Indians in the State of New York, nor to that strip of territory in the State of Nebraska adjoining the Sioux Nation on the south added by executive order.

**Sec. 9.** That for the purpose of making the surveys and resurveys mentioned in section two of this act, there be, and hereby is, appropriated, out of any moneys in the Treasury not otherwise appropriated, the sum of one hundred thousand dollars, to be repaid proportionately out of the proceeds of the sales of such land as may be acquired from the Indians under the provisions of this act.

**Sec. 10.** That nothing in this act contained shall be so construed to affect the right and power of Congress to grant the right of way through any lands granted to an Indian, or a tribe of Indians, for railroads or other highways, or telegraph lines, for the public use, or condemn such lands to public uses, upon making just compensation.

**Sec. 11.** That nothing in this act shall be so construed as to prevent the removal of the Southern Ute Indians from their present reservation in Southwestern Colorado to a new reservation by and with consent of a majority of the adult male members of said tribe.

Approved, February, 8, 1887.

## Appendix H: Letter from Sam Resurrection to William Taft, March 9, 1909.

Between 1908 and 1913, Salish tribal member Sam Resurrection wrote numerous letters to the president of the United States and Commissioners of Indian Affairs regarding the pending allotment and fragmentation of the Flathead Reservation. (Please note, Sam Resurrection was not literate in English, but had interpreters translate and transcribe his letters. During translation, his name was often misspelled as “Resrection” or “Reslection” and this misspelling was repeated by the federal officials who responded to his letters.)

William H. Taft  
Cincinnati, Ohio  
March 9, 1909  
Arlee, Mont.

My Friend,

Did you receive my letter today? I am dropping you a few lines. It was nearly two years ago when Johnie Mat and Agnus McDonald to work for our Reservation. It was {ill.} not us that want them, because It was our mayor that caught our {ill.} .....When they had a treaty for our Reservation. And all our chiefs said it was all right. When they started to surveyed our Reservation, They told our chiefs that if they would have an Indian Reservation it would be there forever. From Washington the man that came to make a treaty with them was Mr. Stevens. And all our Chiefs made a petition because they made an Indian Reservation. It is what we are thinking of. Since 54 years ago that's we are all taking. And I am telling you that we never spoke to Dixon. Three men that are trying hard to throw the Reservation open Our Mayor, and Trather and Dixon. Today we find out you law and we are following the laws. And our chiefs, I have asked them when did they talked to Dixon and they say never talked with him no place. It shows plenty that when they have a treaty for anything. You see that time when our Chiefs had a treaty with Mr. Stevens. We remember it yet. And there was another man which was Garfield. he said that our reservation was to be ours for ever. This are 217 people in my petition. You saw it already. There are eight Chiefs in the petition. Well I want to know how you are thinking of my letter. Please return by mail right away.

Your sincerely your.  
Goodbye,  
Sam Reslection.  
Arlee P.O.  
Mont.

**Appendix I: Letter from Commission of Indian Affairs, R. G. Valentine, to Sam Resurrection, March 28, 1909.**

Land  
20423-1909  
W A H

Relative to settlement of lands on Flathead Reservation

March 28, 1909

Sam Reslection,  
Arlee, Montana.

My Friend:

The Office has received your letter of March 9, 1909, addressed to the President, complaining about the opening to settlement of the surplus lands on the Flathead Reservation.

In its letters of December 21, 1907, February 7, 1908, and June 15, 1908, in response to previous complaints from you, the Office explained the situation very fully and cited the Acts of Congress directing that the surplus lands be thrown open to settlement.

The Office suggests that the loss, if any, to the Flathead tribe of Indians by reason of having their Reservation thrown open to settlement, is more than fully compensated by the inestimable benefits derived from the effect of civilization and contact with white settlers.

You should look upon this as a distinct gain to individual members of your tribe rather than a loss.

Very respectfully,

[R.G. Valentine]  
Acting Commissioner

RHC-19

## Essential Understandings and Montana Content Standards

### Seven Essential Understandings Regarding Montana Indians

#### Essential Understanding 1

There is great diversity among the twelve tribal nations of Montana in their languages, cultures, histories and governments. Each nation has a distinct and unique cultural heritage that contributes to modern Montana.

#### Essential Understanding 2

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 3

The ideologies of Native traditional beliefs and spirituality persist into modern day life as tribal cultures, traditions, and languages are still practiced by many American Indian people and are incorporated into how tribes govern and manage their affairs. Additionally, each tribe has its own oral histories, which are as valid as written histories. These histories pre-date the “discovery” of North America.

#### Essential Understanding 4

Reservations are lands that have been reserved by the tribes for their own use through treaties, statutes, and executive orders and were not “given” to them. The principle that land should be acquired from the Indians only through their consent with treaties involved three assumptions:

- I. Both parties to treaties were sovereign powers.
- II. Indian tribes had some form of transferable title to the land.
- III. Acquisition of Indian lands was solely a government matter not to be left to individual colonists.

#### Essential Understanding 5

There were many federal policies put into place throughout American history that have affected Indian people and still shape who they are today. Many of these policies conflicted with one another. Much of Indian history can be related through several major federal policy periods:

- Colonization Period, 1492 - 1800s
- Treaty Period, 1789 - 1871
- Assimilation Period (Allotment and Boarding Schools), 1879 -1934
- Tribal Reorganization Period, 1934 - 1958
- Termination and Relocation Period, 1953 - 1971
- Self-determination, 1968 – Present

#### Essential Understanding 6

History is a story most often related through the subjective experience of the teller. With the inclusion of more and varied voices, histories are being rediscovered and revised. History told from Indian perspectives frequently conflicts with the stories mainstream historians tell.

#### 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.

## Montana College and Career Readiness Anchor Standards for Writing and Speaking & Listening

<http://opi.mt.gov/pdf/CCSSO/MCCS-ELA/Strands/MCCS-Anchor-Standards-K-12.pdf>

### Writing

**CCRA.W.2:** Write informative/explanatory texts to examine and convey complex ideas and information clearly and accurately through the effective selection, organization, and analysis of content.

**CCRA.W.3:** Write narratives to develop real or imagined experiences or events using effective technique, well-chosen details, and well-structured event sequences.

**CCRA.W.4:** Produce clear and coherent writing in which the development, organization, and style are appropriate to task, purpose, and audience.

**CCRA.W.7:** Conduct short as well as more sustained research projects based on focused questions, demonstrating understanding of the subject under investigation.

**CCRA.W.8:** Gather relevant information from multiple print and digital sources, assess the credibility and accuracy of each source, and integrate the information while avoiding plagiarism.

**CCRA.W.9:** Draw evidence from literary or informational texts to support analysis, reflection, and research.

### Speaking & Listening

**CCRA.SL.1:** Prepare for and participate effectively in a range of conversations and collaborations with diverse partners, building on others' ideas and expressing their own clearly and persuasively.

**CCRA.SL.2:** Integrate and evaluate information presented in diverse media and formats, including visually, quantitatively, and orally.

**CCRA.SL.3:** Evaluate a speaker's point of view, reasoning, and use of evidence and rhetoric.

**CCRA.SL.4:** Present information, findings, and supporting evidence such that listeners can follow the line of reasoning and the organization, development, and style are appropriate to task, purpose, and audience, comprehend complex literary and informational texts independently and proficiently.

## Montana Common Core Reading Standards for Informational Texts (RI) – Grades 9-10

<http://opi.mt.gov/pdf/CCSSO/MCCS-ELA/Strands/MCCS-Reading-Informational-Standards-K-12-5-11-12.pdf>

**RI.9-10.1:** Cite strong and thorough textual evidence to support analysis of what the text says explicitly as well as inferences drawn from the text.

**RI.9-10.2:** Determine a central idea of a text and analyze its development over the course of the text, including how it emerges and is shaped and refined by specific details; provide an objective summary of the text.

- RI.9-10.4:** Determine the meaning of words and phrases as they are used in a text, including figurative, connotative, and technical meanings; analyze the cumulative impact of specific word choices on meaning and tone (e.g., how the language of a court opinion differs from that of a newspaper, or how American Indian treaty language differs from everyday speech).
- RI.9-10.6:** Determine an author’s point of view or purpose in a text, including texts by and about Montana American Indians, and analyze how an author uses rhetoric to advance that point of view or purpose.
- RI.9-10.8:** Delineate and evaluate the argument and specific claims in a text, assessing whether the reasoning is valid and the evidence is relevant and sufficient.
- RI.9-10.9:** Analyze seminal U.S. documents of historical and literary significance (e.g., Washington’s Farewell Address, the Gettysburg Address, Roosevelt’s Four Freedoms speech, King’s “Letter from Birmingham Jail”, Onondaga Chief Canassatego’s address “On Colonizing Education”), including how they address related themes and concepts.
- RI.9-10.10:** By the end of grade 9, read and comprehend literary nonfiction in the grades 9–10 text complexity band proficiently, with scaffolding as needed at the high end of the range. By the end of grade 10, read and comprehend literary nonfiction at the high end of the grades 9–10 text complexity band independently and proficiently.

## Montana Common Core Reading Standards for Informational Texts (RI) – Grades 11-12

<http://opi.mt.gov/pdf/CCSSO/MCCS-ELA/Strands/MCCS-Reading-Informational-Standards-K-12-5-11-12.pdf>

- RI.11-12.1:** Cite strong and thorough textual evidence to support analysis of what the text says explicitly as well as inferences drawn from the text, including determining where the text leaves matters uncertain.
- RI.11-12.2:** Determine two or more central ideas of a text and analyze their development over the course of the text, including how they interact and build on one another to provide a complex analysis; provide an objective summary of the text.
- RI.11-12.4:** Determine the meaning of words and phrases as they are used in a text, including figurative, connotative, and technical meanings; analyze how an author uses and refines the meaning of a key term or terms over the course of a text (e.g., how Madison defines faction in Federalist No. 10; how the use of “sovereignty” in official documents impacts legal and political relationship).
- RI.11-12.6:** Determine an author’s point of view or purpose in a text, including texts by and about Montana American Indians, in which the rhetoric is particularly effective, analyzing how style and content contribute to the power, persuasiveness, or beauty of the text.
- RI.11-12.8:** Delineate and evaluate the reasoning in seminal U.S. texts including those that dealt with American Indians, including the application of constitutional principles and use of legal reasoning (e.g., in U.S. Supreme Court majority opinions and dissents) and the premises, purposes, and arguments in works of public advocacy (e.g., The Federalist, presidential addresses, American Indian policies).

**RI.11-12.9:** Analyze seventeenth-, eighteenth-, and nineteenth-century foundational U.S. documents of historical and literary significance (including The Declaration of Independence, the Preamble to the Constitution, the Bill of Rights, Lincoln’s Second Inaugural Address, American Indian treaties, and Iroquois Confederacy) for their themes, purposes, and rhetorical features.

**RI.11-12.10:** By the end of grade 11, read and comprehend literary nonfiction in the grades 11–CCR text complexity band proficiently, with scaffolding as needed at the high end of the range. By the end of grade 12, read and comprehend literary nonfiction at the high end of the grades 11–CCR text complexity band independently and proficiently.

## **Montana Social Studies Content Standards, with Benchmarks for Grades 9-12**

**Content Standard 1:** Students access, synthesize, and evaluate information to communicate and apply social studies knowledge to real world situations.

Grade 12, Benchmark 3: Students will synthesize and apply information to formulate and support reasoned personal convictions within groups and participate in negotiations to arrive at solutions to differences (e.g., elections, judicial proceedings, economic choices, community service projects).

**Content Standard 2:** Students analyze how people create and change structures of power, authority, and governance to understand the operation of government and to demonstrate civic responsibility.

Grade 12, Benchmark 1: Students will analyze the historical and contemporary purpose of government and how the powers of government are acquired, modified, justified and used (e.g., checks and balances, Bill of Rights, court decisions).

Grade 12, Benchmark 4: Students will relate the concept of tribal sovereignty to the unique powers of tribal governments as they interact with local, state and federal governments.

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

Grade 12, Benchmark 4: Students will analyze how human settlement patterns create cooperation and conflict which influence the division and control of the Earth (e.g., treaties, economics, exploration, borders, religion, exploitation, water rights).

**Content Standard 4:** Students demonstrate an understanding of the effects of time, continuity, and change on historical and future perspectives and relationships.

Grade 12, Benchmark 1: Students will select and analyze various documents and primary and secondary sources that have influenced the legal, political, and constitutional heritage of Montana and the United States.

Grade 12, Benchmark 2: Students will interpret how selected cultures, historical events, periods, and patterns of change influence each other.

Grade 12, Benchmark 3: Students will apply ideas, theories, and methods of inquiry to analyze historical and contemporary developments, and to formulate and defend reasoned decisions on public policy issues.

Grade 12, Benchmark 6: Students will investigate, interpret, and analyze the impact of multiple historical and contemporary viewpoints concerning events within and across cultures, major world religions, and political systems (e.g., assimilation, values, beliefs, conflicts).

Grade 12, Benchmark 7: Students will analyze and illustrate the major issues concerning history, culture, tribal sovereignty, and current status of the American Indian tribes and bands in Montana and the United States (e.g., gambling, artifacts, repatriation, natural resources, language, and jurisdiction).



## Resources

Canby, W. C. *American Indian Law in a Nutshell, 5<sup>th</sup> Edition*. St. Paul, Minnesota: West Academic Publishing Company, 2009.

Kappler, Charles J., compiler and editor. *Indian Affairs: Laws and Treaties*. Washington, D.C.: Government Printing Office, 1904. Reprinted by Oklahoma State University Library, 2015.

<http://digital.library.okstate.edu/kappler/vol2/treaties/che0008.htm>

Letter from Acting Commissioner of Indian Affairs, Robert G. Valentine, to Sam Resurrection, March 28, 1909. Central Classified Files, 1907-1939, Flathead Agency - 054, Record Group 75, Box 09.

<http://cdm16013.contentdm.oclc.org/cdm/ref/collection/p15018coll44/id/99926> (Digital copies available on the Montana Memory Project, courtesy of the Natives of Montana Archival Project.)

Letter from Sam Resurrection to William Taft, March 9, 1909. Central Classified Files, 1907-1939, Flathead Agency - 054, Record Group 75, Box 09.

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Miller, R. J. *Native America, Discovered and Conquered: Thomas Jefferson, Lewis and Clark, and Manifest Destiny*. Lincoln, NE: University of Nebraska Press, 2008.

Miller, Robert J. "The Doctrine of Discovery: The International Law of Colonialism." Indigenous Peoples Forum on the Impact of the Doctrine of Discovery. Posted March 30, 2012.

<http://doctrineofdiscoveryforum.blogspot.com/2012/03/doctrine-of-discovery-international-law.html>

Pevar, S. L. *The Rights of Indians and Tribes*. New York: New York University Press, 2004.

Prucha, F. P. *Documents of United States Indian Policy*. Lincoln, NE: University of Nebraska Press, 2000.

Rubios, Palacios and the Council of Castille. *El Requerimiento*, 1510. (English translation.) National Humanities Center Resource Toolbox.

<http://nationalhumanitiescenter.org/pds/amerbegin/contact/text7/requirement.pdf>

The Constitution of the United States: A Transcription. (Transcription of 1787 Constitution by Jacob Shallas.) The U.S. National Archives & Records Administration, 2015.

[http://www.archives.gov/exhibits/charters/constitution\\_transcript.html](http://www.archives.gov/exhibits/charters/constitution_transcript.html)

Transcript of Dawes Act (1887). (Transcript by The Avalon Project, Yale University.) Our Documents, 2015. <http://www.ourdocuments.gov/doc.php?doc=50&page=transcript>

Transcript of President Andrew Jackson's Message to Congress 'On Indian Removal' (1830). (Transcript by Civics Online.) Our Documents, 2015.

<http://www.ourdocuments.gov/doc.php?flash=true&doc=25&page=transcript>