

INDIAN ISSUES IN MONTANA
CIVICS EDUCATION:
Background Information Prepared by Margaret Bentwood for
the LWV-MT 2019 Civics Education Study Committee

Montana social studies content standards (2000) currently reference some Indian issues, but it is unclear how much attention is given to Indian issues in high school classes (American History and U.S. Government). Some instruction is devoted to Montana state government, but less instructional time may be devoted to Montana tribal government and Indian issues generally.

Especially in this year of focus on Diversity, Equity, and Inclusion, it is fitting that the LWV-MT draw its attention to Indian issues and tribal governments. Seven percent of Montana's population is American Indian. We acknowledge that few League members may identify as American Indians. Nevertheless, knowing who we are as Montanans and as League members requires us to know about American Indian heritage because American Indians are our friends, our neighbors, and our fellow Montanans. Their history is also our history, and our future is shared. This is the abstract reason why not only LWV members but Montana high school students should study Indians issues in civics education.

Beyond these abstractions, however, there are also more practical reasons why Indian issues should be taught as part of Montana civics education. Indian issues are important because Indian law is so very intertwined with both state and federal civil, criminal, and constitutional law, making Indian issues immediately relevant to all Montana high school students. For example, a Montana student may wish to purchase land located within a Montana tribal reservation or to work on a reservation. It is highly pertinent to that student what the tribal laws might be as pertains to non-tribal members living on a reservation. A Montana student may wish to start a business and sell products to tribal members (both on and off tribal lands). Tribal laws may impact that relationship. A Montana student may be a tribal member, may marry a tribal member, and may have children who are tribal members. A Montana student may wish to adopt a child who is eligible for tribal enrollment. Federal, state, and tribal law may govern

many of these aspects of family life. Having a fundamental understanding of the workings of tribal governments in Montana and the relationship between federal, state, and tribal law is not just a reflection of being an educated Montanan today (although it is that)--it is also very helpful in the day-to-day life of any Montana citizen. In essence, Montana high school students need to learn about Indian issues in civics because it will allow them to understand current affairs in Montana and in their personal lives.

Ultimately, if Montanans have a general, accurate understanding of Indian rights, including **voting** rights, that will help protect those rights from attack or erosion.

What Indian issues might be taught as part of Montana civics education? At the high school level, the following topics might productively be taught, although these suggestions are not exhaustive. They are drawn from the “Essential Understandings Regarding Montana Indians (Revised 2019),” published by the Montana Office of Public Instruction, Indian Education for All Unit.

1. Students should understand the meaning of tribal sovereignty and have a working knowledge of tribal jurisdiction over civil and criminal cases on reservations.

“Tribal sovereignty” refers to the inherent authority of indigenous tribes to govern themselves. By law and long historic experience, the United States government recognizes tribal nations as “domestic dependent nations,” and the U.S. Constitution reserves to Congress (not the states) the right to regulate commerce with Indian tribes.

Principles of U.S. Indian law:

--Territorial Sovereignty: Tribal authority on Indian land is organic, meaning that it arises naturally, and most significantly meaning that it is not granted by the states where tribal land is located.

--Plenary Power Doctrine: Congress (not the Executive or Judicial branches) has ultimate authority over matters affecting Indian tribes.

--Trust Relationship: The federal government is duty bound to protect tribes. According to the U.S. Supreme Court in 1831 (*Cherokee Nation v. Georgia*), the relationship of the tribe to the United States is that of a

“ward to its guardian.” This trust relationship arises from the agreements made by treaty, and depends upon the integrity and good faith of both nations. A deal is a deal, and no breaking promises no matter how long ago they were entered into.

In 1871, Congress made it a federal crime to commit murder, manslaughter, rape, assault with intent to kill, arson, burglary, and larceny within any Territory of the United States. (Indian Appropriations Act of 1871) Crimes in Indian Country not involving Indian persons are prosecuted by the state.

In 1953, Congress enacted Public Law 280, under which the State of Montana has jurisdiction over the most criminal and some civil cases involving Indians on the Flathead reservation. (The other Montana tribes did not enter into P.L. 280 agreements.) The U.S. Supreme Court has ruled that tribal nations do have authority over non-members on the reservation to the extent necessary to protect health, welfare, economic interests or political integrity of the tribal nations (*Montana v. United States*, 1981). The Supreme Court has also ruled that tribes can eject undesirable persons from tribal lands and have criminal jurisdiction over all Indians found within their reservations, including non-members (*Duro v. Reina*, 1990, and *U.S. v. Lara*, 2004).

Nation to Nation Relationship:

The federal – tribal relationship is one of nation-to-nation. The federal government now has settled on a policy of self-determination for the tribes, meaning that they are self-governing and have the right to make decisions affecting their people. Tribes are assumed to have all powers unless they have been limited by a treaty or a statute of Congress. That said, most tribal lands are still held in trust by the United States.

Tribal – State Relations: A Sovereign Within a Sovereign:

Under the U.S. Constitution, only Congress can regulate commerce with the tribes, and states cannot regulate tribes. States and tribes often clash over Indian gaming, fishing, hunting, and water rights. The U.S. Supreme Court ruled in *Menominee Tribe v. United States* (1968) that

establishment of reservation by treaty, statute, or agreement (e.g. executive order) means gives tribes “an implied right of Indians to hunt and fish on that reservation free of regulation by the state.” Many states have tried to control tribes but the federal government has always stepped in and asserted the tribes’ sovereignty over their reservation land and people.

2. Students should have knowledge of Montana’s 12 sovereign tribes. Seven tribes are federally recognized, and an eighth tribe, the Little Shell ,awaits federal recognition (probably forthcoming later this year). Each of these recognized tribes has its own government.

- Blackfeet Nation, 17,321 members.
- Crow Tribe of Indians, 13,269 members.
- Confederated Salish & Kootenai Tribes, 7,920 members.
- Fort Belknap Indian Community (Assiniboine Tribe and Gros Ventre Tribe), 7,000 members.
- Fort Peck Tribes (Assiniboine and Sioux Tribes), 12,975 members.
- Little Shell Tribe of Chippewa Indians, 5,300 members.
- Northern Cheyenne Tribe, 11,266 members.
- Chippewa-Cree Tribe, 6,000 members.

3. Student should have knowledge of the creation of the permanent tribal homelands in Montana through Treaties, Statutes, and Executive Orders of the federal government. There are seven reservations in Montana. “Reservations are lands that have been reserved by tribes or for tribes for their exclusive use as permanent homelands.” These homelands still exist and the treaties, statutes, and executive orders still govern tribal rights and are in effect today.

- The Fort Laramie Treaty, 1851, 1868
- The Hellgate Treaty of 1855.

Treaties between tribal nations and the U.S. government created the Blackfeet (1855), Crow (1868), and Flathead (1855) reservations, two Congressional statutes created the Fort Belknap reservation (1888) and the Rocky Boy’s reservation (1916), and

two presidential executive orders created the Fort Peck reservation (1886) and the Northern Cheyenne reservation (1884).

4. Students should understand both historic and contemporary federal policies relating to Montana tribal governments.

Colonial Period, 1492-1800s

Treaty-Making and Removal Period, 1778-1871

Reservation Period – Allotment and Assimilation, 1887-1934

Tribal Reorganization Period, 1934-1953

Termination and Relocation Period, 1953-1968

Self-Determination Period, 1971-Present.

The Continental Congress began regulating its relationship with the Indian nations during the Colonial Period. Congress has enacted over 400 treaties, statutes, and regulations and guidelines. “American Indians are the most regulated population in the United States.” (Essential Understanding 5 at 16.)

In the current period, the federal government has enacted the “Indian Self-Determination and Education Assistance Act of 1975,” as amended in 1988 and 1994.

“The current federal Indian policy importantly recognizes tribal sovereignty and the government-to-government relationship between tribes and the federal government, as well as the existence of the federal trust responsibility to tribes.” (Essential Understanding 5 at 21.)

5. Students should be familiar with Indian citizenship and suffrage in Montana. For more information on this topic, see the excellent article by Professor Richmond Clow in *Montana: The Magazine of Western History (Spring 2019)*: “Crossing the Divide from Citizen to Voter: Tribal Suffrage in Montana, 1880-2016.”

American citizens hold multiple citizenships, usually U.S. citizenship and the citizenship of a state. Some Americans hold dual citizenships with foreign countries, such as American-Canadian dual

citizenship, etc. Similarly, a member of a tribe can be a citizen of a tribe, a citizen of a state, and a citizen of the United States. Multiple citizenships are commonplace—almost everyone holds multiple citizenships. The U.S. Supreme Court in 1916 (*U.S. v. Nice*), held that being a tribal member was not inconsistent with citizenship status and that tribal members had a right to citizenship of their states.

Before 1924, a few Indians in Montana became citizens but there was no clear path to citizenship, and there was a patchwork of shifting rules used to permit or deny citizenship to Indians. In 1924, Congress passed the Indian Citizenship Act, which removed the requirement that an Indian needed to own property in order to become a citizen.

Pre-1924 Indian Citizenship and Suffrage in Montana

Some highlights from Dr. Clow's study of tribal suffrage in Montana will point out the heavy burden of racism and discrimination that Montana Indians have carried. For example, Montana's 1889 Constitution mandated that only taxpayers could vote on any issue relating to taxation. Since Indians did not pay state assessments or property taxes on tribal lands, Montana's Indian population was not able to vote. In 1891, the taxpaying requirement was extended to school board elections, in 1897 it was extended to municipal elections, and in 1901 road district elections also began implementing a taxpayer requirement. Obviously, one could not hold office if one could not vote. In 1895, the Montana legislature passed a law banning voting precincts in Indian agencies, trading posts, and reservations. In 1905, some Crow tribal members received land allotments (taxable) and citizenship awarded by Congress, but Montana's attorney general was a hard-liner who denied citizenship and franchise to Montana Indians. He even said that tribal members who owned non-tribal (taxable) lands could not vote. The next Montana Attorney General said that just because Crow members were citizens did not entitle their children to attend public school (reasoning that the parents did not pay taxes). Thus, "the Lodge Grass and Wyola public schools on the Crow Reservation [did not] enroll Crow Children." (p. 51.) In 1914, only one Crow member (apparently a citizen taxpayer) was permitted to vote.

Increasingly, citizenship was tied to ownership of non-tribal (fee patent) land as a means of encouraging the opening of tribal lands to homesteading. In essence, citizenship was a scam upon the Indians, who received citizenship but did not have enough income to keep up with their property taxes. The Indians lost their properties, which were then sold to homesteaders, and, significantly, that was the point of granting citizenship in the first place. Unpaid property taxes resulted in huge losses of tribal land. ("By 1922, 75 percent of the Flathead Reservation patent-in-fee land had been sold to outsiders." "By 1924, 95 percent of the Blackfeet patent-in-fee allotments were gone." p. 47). So many homesteaders purchased fee patent lands within reservations that the reservation-voting prohibition was lifted in 1919 (but not the prohibition as to Indian agencies and trading posts). However, several reservations in Montana had no unallotted land and therefore no citizens who could vote. In June 1924, Congress passed the Indian Citizenship Act, which "eliminated the property standard to receive a certificate of citizenship." (p. 48) Still, many Montana Indian citizens could not vote because there was no voting precinct on their reservation. This prevented them from meeting the requirement of residing for 30 days in their voting precinct. Also, the Montana law requiring that only taxpayers could vote meant that the local elections administrator had to determine whether an Indian had paid taxes. If not, that Montana citizen was not allowed to vote in special elections involving the collection of taxes or creation of debt. Professor Clow states that the mere absence of precinct voting places "near their residences continued to deny [tribal voters] equal access to the polls for many decades." (p.50)

Dr. Clow concludes that "the state's calculated aim at non-taxpayers deprived a large percentage of tribal citizens the vote in all elections and effectively became Montana's de facto poll tax, denying tribal citizens equal participation in the political process." (p.53)

Post-1924 Indian Citizenship and Suffrage

Although American Indians became U.S. citizens officially by an act of Congress in 1924, the right to vote did not follow automatically. Polling places were not available in many parts of Montana where

Indians resided. Indians were prevented from voting in special elections or any question that involved collection of taxes if they were not taxpayers. Thus, citizenship did not lead automatically to the right to vote, and one can imagine that there were many other impediments to voting.

In 1937, for example, a voter fraud scandal relating to Silver Bow County (and voting by deceased individuals) caused a severe impediment to tribal members state-wide. The voter rolls of the entire state were purged completely and the Montana legislature passed a law requiring “all voters to re-register in person at the county courthouse.” (p.53) For persons living more than 10 miles from the courthouse, a deputized notary could re-register voters. However, reservations commonly had no notaries in residence, and the result was disenfranchisement of Indian voters on Montana reservations.

In 1945, the legislature passed a law requiring the county clerk to stamp the word “TAXPAYER’ on the poll book opposite the name of each qualified voter who is a taxpayer and entitled to vote upon any of the questions.” (p.53.)

It was not until 1971 that the Montana legislature repealed the property tax voting requirement in the Montana Constitution. However, problems persist today. The “old issue of too few voting precincts on the reservations continued into the twenty-first century.” (p.54) In 2012, Crow, Fort Belknap, and Northern Cheyenne Reservations took this issue to court, asserting that reservation residents were being deprived of the ability to register to vote and had no polling places. A settlement of that case resulted in state and county elections officials promising to open satellite offices on reservations “twice a week through Election Day.” (p.54)

Current Issues for Montana Indian Voters

Interview Jason Smith, Director of Indian Affairs, Office of the Governor, State of Montana.

There is a non-profit in Montana that focuses on Indian voting. Jason Smith might know the name of that organization.