

MODERN INDIAN ISSUES

The Lesson: Treaty Rights.

Learner Goal: After participating in the lesson, students will gain a greater understanding of what treaty rights mean to American Indian people.

Learner Outcomes: Students will be able to:

Define the term "treaty" and **give examples** of how treaty agreements have affected American Indian people.

Explain what each participant in treaty making gained or lost as a result of treaty agreements.

Point out how treaties negotiated in the past affect Indian-white relations today.

Evaluate the importance of primary historical sources in understanding past events.

Outcome Indicators:

Students demonstrate that they have been able to define treaty and give examples of how treaty agreements have affected American Indian people, explain what each participant in treaty making gained or lost as a result of treaty agreements, point out how treaties of the past affect Indian-white relations, and evaluate the importance of primary historical sources to understand past events, by completing the student activity questions at the end of the student reading, by reading the the Treaty of 1851 and the historical perspective explaining how the treaty negotiations took place, by creating journal entries in which they explain what they learned from the reading, by participating in a treaty negotiation simulation, and by conducting independent research on treaty rights and Indian leaders and creating a journal entry based on what they learned.

Materials:

Student Readings "Treaty Rights" and "The Treaty of 1851: An Historical Perspective". Copies of the Treaties of 1851. Student Activities: Questions About the Reading, Classroom and Student Activities. Optional: Copies of other treaties, readings on Dakota and Anishinabe leaders (see supplementary resources).

Vocabulary:

treaty: a legal agreement between two or more sovereign nations.

Iroquois: a union of six Indian nations including the Mohawk, Oneida, Onondaga, Cayuga, Seneca, and Tuscarora.

wampum belts: strings of shell beads woven into belts. These belts were used to bind agreements between Indian nations.

cede or cession: to give up

Dakota: an American Indian nation whose homeland is Minnesota. The Dakota are also known as Sioux. The four divisions of the Eastern Dakota are Sisseton (People of the Ridged Fish Scales), Wahpeton (Dwellers Among the Leaves), Wahpekute (Shooters Among the Leaves) and Mdewakanton (Dwellers of the Spirit Lake).

Anishinabe: the name the Chippewa/Ojibwe Indians use to refer to themselves and the name they use to refer to all Indian people.

usufructuary: the right to use or enjoy all the advantages or profits of the property of another.

Teaching the Lesson:

Provide an overview to students of some of the issues that are important to American Indian people today. Tell students they will be reading about one of these issues. This is the issue of treaty rights.

Have students read the student reading together in class. Ask students to answer the questions at the end of the reading as a small group activity. During the next class period, select one of the suggested student activities to carry out in class. Participation in answering the questions generated from the student reading, participation in the classroom simulation, and journal entries based on student independent research on treaty rights are used to evaluate the student learner outcomes.

STUDENT READING

TREATY RIGHTS

What is a Treaty?

A treaty is a legal agreement between two or more sovereign nations. Article 4, Section 2 of the United States Constitution states that "all treaties made under the authority of the United States shall be the Supreme Law of the Land"—"and judges in every state shall be bound" when a treaty is made to consider treaty law as a higher law than state law.

How Old Are Treaty Agreements?

American Indian nations made formal binding agreements with each other long before white men began making treaty agreements with these nations. Sometimes these agreements were recorded, as in the case of the wampum belts of the Iroquois Confederacy. More often they were verbal agreements made in the presence of tribal members at intertribal gatherings. The spoken word carried with it the obligations to tell the truth and keep one's word.

The British and Dutch were the first Europeans to make treaties with Indian nations. These early treaties recognized Indian tribes as the true owners of the land. When the United States became organized, government officials continued the practice of making treaty agreements with Indian nations. From 1789 until 1871, the United States government made hundreds of treaties with American Indian tribes. Not all these treaties involved land cessions, but many did. The Indian leaders who were present at treaty conferences often agreed to give up large portions of their ancestral lands in return for a certain portion of these lands being set aside for the exclusive use of tribal members and their descendants. In no instance, did the government give Indians land. The Indian reservations and tribal communities today, in most cases, represent the land base that Indian nations retained for themselves as stated in the treaties.

Most of the treaties also promised Indian nations certain things in exchange for the land given up by the tribes. Treaties usually included provisions for payments of money as well as certain services such as schools and teachers, medical care, food and clothing, services of a blacksmith, and farming equipment and supplies.

Why Did Indian Leaders Sign the Treaties?

Contemporary Indian people have mixed feelings about whether treaty agreements should have been made with the federal government. In retrospect, Indian nations were cheated in that their leaders were often persuaded to give up a vast land base for very little in return. To understand why Indian leaders agreed to sign land cession treaties it is important to take into consideration the fact that American Indians and European Americans held very different concepts of the land.

In Euro-American belief, the land and all that grows and exists upon the land were seen as resources or commodities which could be bought and sold, and in the case of the land, could be privately owned. In American Indian belief, the land is a sacred living being. The Earth is not viewed as a commodity which could be divided by imaginary lines and then bought and sold. Indian nations believed not in outright ownership but only that families within the nation had the right to use hunting and fishing grounds, maple sugar groves, wild rice beds, or sections of land cleared for planting in order to live.

Indian leaders who signed land cession treaties were sometimes greatly moved when government agents asked them to cede land so that Euro-Americans could have a land base to feed their families. American Indians have always believed in generosity and sharing. They may have signed these treaties believing only that Euro-Americans wanted to use the land for a short period of time since outright ownership of the land was a foreign concept.

Indian leaders were also coerced at times into signing land cession treaties. They were led to believe they owned a great debt to white fur traders for supplies they had received over a period of years from the traders. In some cases, when Indian leaders asked for proof of their debts, no proof was offered. These fur traders ended up profiting considerably from Indian land cession treaties. Indian people were also led to believe that if they did not sign the treaties, white men would simply take the land by force.

Which Treaties Affected Indian Nations in Minnesota?

The Pike Treaty of 1806 was the first treaty which actually ceded Indian lands in Minnesota to the federal government. Colonel Zebulan Pike negotiated this treaty on behalf of the United States government with two chiefs from the Dakota nation. This treaty allowed the government to claim a small section of land near the confluence of the Minnesota and Mississippi Rivers. A military fort, which became known as Fort Snelling, was built on this land.

The 1825 Treaty of Prairie du Chien was not a land cession treaty but it did create an imaginary east-west boundary line across Minnesota which separated the lands of the Dakota to the south from the lands of the Anishinabe (Chippewa, Ojibwe) to the north. Because some Anishinabe leaders who lived around Lake Superior did not attend this treaty conference, an additional treaty session was arranged with these leaders at Fond du Lac (near Duluth, Minnesota) in 1826.

The 1851 Treaty of Traverse des Sioux became the first treaty to deeply affect the land base of the Dakota Indians of Minnesota. According to the provisions of this treaty, the Dakota agreed to cede most of their lands in southern Minnesota to the federal government in exchange for a narrow 10 to 20 mile wide strip of land which ran along the Minnesota River. Many Dakota leaders refused to sign this treaty. Those who did were often coerced into signing because they were led to believe they owned a great debt to white fur traders. One leader, Red Iron, was actually placed under arrest and confined in a makeshift jail by territorial Governor, Alexander Ramsey, until he signed an additional treaty paper which gave "hand money" to the traders.

The failure of the federal government to live up to what it promised the Dakota according to the provisions of this treaty led to a war between the Dakota and white settlers in 1862. After this war, Congress declared null and void all treaties previously negotiated with the Eastern Dakota. Not all Dakota had participated in the war against white settlers, but they were also punished and driven out of the state. It was not until several years after this war that Dakota people began to return to their old Minnesota homelands. The four Dakota communities of Minnesota today were created by Proclamations of the Secretary of Interior or by special Acts of Congress.

The land cession treaties which affected the Anishinabe (Chippewa, Ojibwe) nation were negotiated in 1836, 1837, 1842, 1847, 1854, 1855, 1863,

1864, 1866, and 1867. Thousands of acres of Anishinabe land were transferred to the federal government through these treaties. Mining interests, timber interests, and land hungry settlers had pressured the federal government into negotiating these treaties. The Treaty of 1867 established the White Earth Indian Reservation. Government agents who negotiated this treaty intended for all the Anishinabe to relinquish their homelands throughout northern Minnesota and move to a single location. Some of the Anishinabe bands did move to White Earth, but others refused to leave their homes. Most of the seven Anishinabe reservations in Minnesota were created in treaty agreements.

Are Treaties Honored Today?

Congress passed a law in 1871 that ended the practice of treaty making with Indian nations. However, the law also stated that all agreements made by previous treaties would be honored. In practice, the United States government has broken its promises to Indian nations in nearly every treaty negotiated. One past treaty which affects Minnesota's Indian people today is the Treaty of 1837. This treaty took place between agents of the federal government and leaders from several Anishinabe bands living in Wisconsin and Eastern Minnesota. The treaty stated that the Anishinabe and their descendants would be able to hunt, fish, and gather wild rice not only on the lands the bands reserved for themselves but also on the lands that were ceded in the treaty. This kind of agreement is not unusual even according to American property law. Called usufructuary rights, the right on the part of Indian tribes to secure and use game, fish and wild rice on ceded lands is similar to white men selling land but retaining the mineral rights.

The Anishinabe who have tried to retain and exercise their treaty rights have met opposition from state government officials, and non-Indians who have little understanding of treaty rights issues. These treaty rights conflict with state laws which allow states to regulate hunting, fishing, and wild rice gathering within their borders. In the case of the Wisconsin Anishinabe, federal courts have upheld Indian treaty rights over state rights. The Mille Lacs Band in Minnesota has the same right as the Wisconsin Anishinabe to hunt, fish, and gather wild rice on ceded lands. This band attempted a negotiated agreement with the State of Minnesota during the spring of 1993. The band members approved the agreement but it met opposition in the Minnesota State legislature. This case, and others like it, will probably eventually be set-

ted in federal court.

While American Indian people have mixed feelings about their ancestors signing land cession treaty agreements with the United States, the rights guaranteed to Indian tribes in these treaties are rights which Indian people believe should be honored. These rights, among many others, include the right of Indian tribes to exist as sovereign nations within the boundaries of the United States.

TREATY RIGHTS

STUDENT ACTIVITY

Read the article entitled "Treaty Rights" and answer the following questions:

1. What is a treaty?
2. What legal basis do treaties have according to the United States Constitution?
3. What does the spoken word mean to Indian tribes?
4. How were Indian reservations (and tribal communities) formed?
5. What did Indian nations give up in treaties and what did they receive in return?
6. When treaties were being negotiated, did American Indians and Euro-Americans hold the same or different attitudes toward the land? Briefly explain.

7. State two possible reasons why Indian nations agreed to cede their lands to the federal government?

8. What circumstances led up to the 1862 war between the Dakota and the United States?

9. How does the Treaty of 1837 affect Indian-white relations in Minnesota today?