

NR 3

Indian Treaties



As a Young Political Scientist, I will be able to...

- **Define what a treaty is**
- **Analyze the history of treaties in the U.S.**
- **Discuss How treaties are recognized today**

What is a Treaty?

What do you think?

Treaty- A contract between two sovereign nations

1823- Tribes were recognized “as distinct, independent political communities, retaining their original natural rights”

Who can sign a treaty on behalf of the U.S.?



Information about Treaties

Constitution authorizes the president, with 2/3 approval by Senate, can create treaty

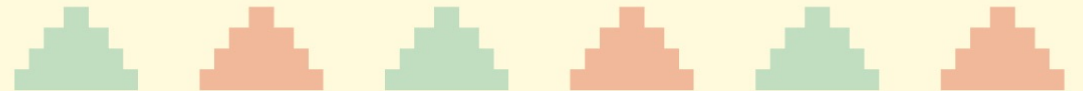


Federal treaties are “supreme law of the land” thus have more power than state law



Treaties can't deprive citizens rights guaranteed by the Constitution

Treaties can cover things such as rules of war, trade, travel, etc.



Treaties with the U.S.

There are nearly 400 treaties with Indian tribes in the U.S.

Most tribes have at least 1 treaty, but **NOT ONE** of the California tribes have a treaty

1871- Congress passed a law that ended treaty-making with Indian tribes



What do they say?

Nearly all the treaties were to obtain Indian land through negotiation rather than warfare.

Typically, a series of promises are given to tribes, recognizing the sovereignty of the tribe is the most common

Treaties usually assured that Indians would not have to move from their new reservation

However, many of these treaties were broken, sometimes taking land, allowing settlement outside the tribe, or mixing warring nations



Grant of Rights

Some treaties contain specific instructions such as trading, fishing, and hunting rights

Some have a “bad man” clause that says federal agents will arrest “bad men among the whites”

Is a treaty a grant of rights to a tribe? What do you think?

Treaties contain certain promises, but no effort made to list specific rights of tribal governments

Reserved Rights Doctrine- Any right that a sovereign nation would normally have that is not expressed in a treaty is presumed legal

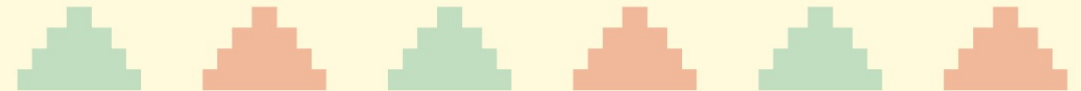
Volunteer

**Did Indian tribes enter into treaties voluntarily?
Thoughts?**

**Yes...However, as our federal government grew, the
treaties became more one-sided**

**As nation expanded, then they were forced to
sign treaties & placed on reservations.**

**Often times they were broken and forced to
sign new treaties**



Section 71

1871- Congress prohibits the federal government from entering into additional treaties with Indians

Section 71 Passed because House of Representatives disliked being excluded from Indian policy making

Congress could pass laws without Indian consent or tribes opposition

This caused many treaties to be broken via statutes such as the Fort Laramie Treaty of 1868

Validity

Are treaties valid today? Thoughts?

Section 71 states “no obligation of any treaty...shall be hereby invalidated or impaired.”

While Section 71 does not invalidate treaties, some Congressional laws have.

Abrogate- To repeal or do away with a law

Compensation

Are tribes entitled to compensation when treaty rights are abrogated? Thoughts?

According to the 5th Amendment, yes, Congress should compensate tribes for rights or property taken

However, does money fix everything?

The Lakota Sioux have \$1.3 billion in the bank that they will not accept

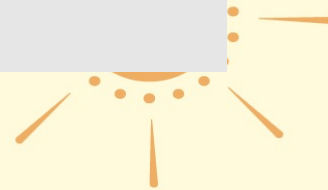
Disputes

There are 3 rules that govern the interpretation of Indian treaties called **canons of treaty construction**

1. Ambiguities (uncertainties) in treaties must be resolved in favor of the Indians

2. Treaties must be interpreted as Indians would have understood them at the time it was signed

3. Treaties must be interpreted liberally in favor of the Indians



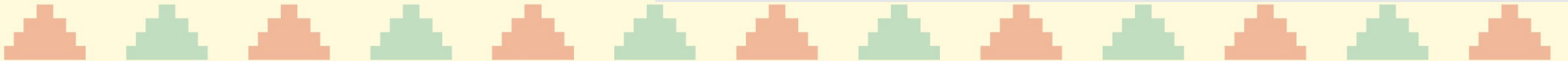
Has Congress Abrogated?

Congress has recently recognized that Indian rights are too fundamental to be easily cast aside

Evidence has to prove that Congress abrogated the law

Implied abrogation- Circumstances & legislative history indicate a congressional intent to abrogate a treaty

Type





Enforcement of Rights

Federal Agencies and States cannot abrogate an Indian treaty.



Violation of an Indian treaty is a violation of federal law, can't go against them unless Congress has authorized it



Indian treaties are also in defense of everyone in the U.S.

