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## **Did You Know?**

# **Facts About Treaties Between the United States and Native Nations**

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### **Introduction**

The United States acquired much of its land through treaties with Indian Tribes. These negotiated, bilateral agreements are, therefore, fundamental to understanding how the United States was created, and how its citizens obtained the land and natural resources they enjoy today.

From a Native perspective, the story begins with American acceptance of tribal self-government and nation-to-nation diplomacy through treaty making. That promising start quickly morphed into disaster through broken and coercive treaties that promoted Indian removal and tribal land loss, as well as government policies that dismantled Indian Tribes as political institutions, obliterated tribal land ownership, and forced assimilation of Native people into white culture.

Happily, the story does not end there. For Native people never gave up on their treaties or the tribal sovereignty that treaties recognized. Beginning in the 1960s, Native leaders invoked America's growing commitment to social justice to restore broken treaties, to demand congressional legislation . . . that repaired the damages that had been inflicted on native Nations by U.S. Indian policies, and to rejuvenate tribal governments. . . . Today, the reassertion of treaty rights and tribal self-determination is evident in renewed tribal political, economic, and cultural strength, as well as in reinvigorated nation-to-nation relations with the United States.<sup>1</sup>

Kevin Gover, Director, National Museum of the American Indian

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<sup>1</sup> Kevin Gover, "Foreword," in *Nation to Nation: Treaties Between the United States and American Indian Nations*, ed. Suzan Shown Harjo (Washington, DC: National Museum of the American Indian in association with Smithsonian Books, 2014), xi-xiii.

## Purpose

The following facts about treaties between the United States and Native Nations serve as a supplemental resource to the NMAI's online lessons about treaties history. They can be useful in a variety of educational ways—for example, as:

- Culturally appropriate and historically accurate background information for educators
- Primary source topics for classroom practice and student-centered instruction
- Topics for projects, presentations, or Socratic discussion
- Sources for essays, projects, mock trials, or presentations
- Cold reads for test-dependent multiple-choice questions

These facts do not tell the whole story of treaties. They provide a glimpse into a complicated history that belongs to every American. Treaties are still relevant and important to both Native Nations and the United States. Facts about them are provided here to increase general understanding, generate additional interest, and stimulate further research.<sup>2</sup>

## Facts

- “It was a white concept, the [written] treaty. Basically, what everyone shared was oral tradition, nothing in writing. The word was considered sacred once you said it. It was your bond. That was held sacred. So you were careful what you said, because you were held to it. That was the sacredness of our language and our words. That’s what we went by.”<sup>3</sup>
- “Approximately 368 treaties that were negotiated and signed by the U.S. commissioners and tribal leaders (and subsequently approved by the U.S. Senate) from 1777 to 1868 enshrine promises our government made to Indian Nations.”<sup>4</sup>
- Article 6, clause 2 of the United States Constitution says that, “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land.”<sup>5</sup>

<sup>2</sup> For more information about the history of American Indian treaties, see full essays in *Nation to Nation: Treaties Between the United States and American Indian Nations*, ed. Susan Harjo, (Washington, DC: National Museum of the American Indian in association with Smithsonian Books, 2014). Or, plan to see the exhibition of the same name at the National Museum of the American Indian.

<sup>3</sup> Bernadine Young Bird (Hidatsa) at NMAI’s symposium on the 1851 Horse Creek Treaty, quoted in Arwen Nuttall, “Language and World View at the Horse Creek Treaty,” in Harjo, *Nation to Nation*, 113.

<sup>4</sup> Kevin Gover, “Foreword,” xi.

<sup>5</sup> U.S. Const. art. 6, cl. 2.

- “After the adoption of the Constitution, treaties and federal statutes became the principal instruments of the United States Indian policy. In 1790 the first federal Congress enacted the Indian Trade and Intercourse Act, which prohibited the sale of tribal lands without the consent of the federal government.”<sup>6</sup>
- “In short, each treaty is an explicit recognition of the sovereign governmental status of an Indian Tribe. Hundreds of Indian Tribes continue to share treaty relationships with the United States. These Indian *Tribes* are actually Indian *Nations*.”<sup>7</sup>
- “In 1778, the Continental Congress made a treaty with the Lenape (Delaware) Nation. Known as the Treaty of Fort Pitt, it was the first treaty made between the new United States and an American Indian Nation. The treaty was enacted to facilitate trade and a mutual political and military alliance between the Lenape and the U.S.”<sup>8</sup>
- “Far from being dusty documents of dubious relevance, treaties are legally binding and still in effect.”<sup>9</sup>
- “Treaties are living documents that bind the nations in friendship and in law and are the foundation for keeping promises and realizing ideals today.”<sup>10</sup>
- “In *Worcester v. Georgia* (1832), Chief Justice John Marshall developed a critical rule (or canon) for construing treaties with Indian Nations. He wrote:

*The language used in treaties with the Indians should never be construed to their prejudice. If words be made use of which are susceptible of a more extended meaning than their plain import, as connected with the tenor of the treaty, they should be considered as used only in the latter sense. . . . How the words of the treaty were understood by this unlettered people, rather than their critical meaning, should form the rule of construction.*<sup>11</sup>

<sup>6</sup> Mark G. Hirsch, “Illegal State Treaties,” in Harjo, *Nation to Nation*, 66.

<sup>7</sup> Matthew L. M. Fletcher, “Treaties as Recognition of a Nation-to-Nation Relationship,” in Harjo, *Nation to Nation*, 34.

<sup>8</sup> Duane Champagne, “First Treaty Signed at Fort Pitt with Delaware for Trade and Alliance,” *Indian Country Today*, February 15, 2014, <https://indiancountrymedianetwork.com/history/events/first-treaty-signed-at-fort-pitt-with-delaware-for-trade-and-alliance/>.

<sup>9</sup> Kevin Gover, “Foreword,” xi.

<sup>10</sup> *Nation to Nation: Treaties Between the United States and American Indian Nations*, exhibition at the National Museum of the American Indian, 2014.

<sup>11</sup> *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 582 (1832).



- This canon, which is still enforced, has played an important role in many Indian law cases, including disputes involving the protection of Indian hunting and fishing rights and Indian water rights.”<sup>12</sup>
- “Senator Daniel Inouye, the longtime chairman, vice chairman, and member of the Senate Committee on Indian Affairs” said the following about treaties:

*Too few Americans know that the Indian nations ceded millions of acres of lands to the United States, or that . . . the promises and commitments made by the United States were typically made in perpetuity. History has recorded, however, that our great nation did not keep its word to the Indian nations, and our preeminent challenge today . . . is to assure the integrity of our treaty commitments and to bring an end to the era of broken promises.*<sup>13</sup>

- “In the Fort Stanwix Treaty of 1784 Native signers ceded western Pennsylvania and Ohio to the new American government. The Native Nations affected by this treaty claimed that it was signed under pressure by people who did not have authority. American encroachment into the disputed lands led to Indian wars in the 1780s and 1790s.”<sup>14</sup>

<sup>12</sup> Robert N. Clinton, “Treaties with Native Nations,” in Harjo, *Nation to Nation*, 20. See, for example: *Washington v. Washington State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 858 (1979); *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172 (1999); *Winters v. United States*, 207 U.S. 564 (1908).

<sup>13</sup> Senator Daniel K. Inouye, foreword to *Documents of American Indian Diplomacy: Treaties, Agreements, and Conventions 1775-1979*, ed. Vine Deloria Jr. and Raymond J. DeMallie (Norman: University of Oklahoma Press, 1999), 1:ix, quoted in Kevin Gover, “Foreword,” xii.

<sup>14</sup> “Treaties,” in *Encyclopedia of North American Indians*, ed. Fredrick E. Hoxie (New York: Houghton Mifflin Company, 1996), 646.



- “The United States did not give anything to the Indian Tribes. American Indian leaders guaranteed their nations’ sovereign status through the treaty process with the United States.”<sup>15</sup>
- “American Indians never gave up on their treaties and struggled throughout the twentieth century to assert their right of tribal self-government, and to restore the principles of sovereign equality and nation-to-nation diplomacy that characterized the treaty-making era.”<sup>16</sup>
- “Intense lobbying by tribal leaders and Native organizations also persuaded Congress to pass more significant Indian legislation between 1970 and 1990 than during any comparable period in American history. At the same time, the U.S. Supreme Court handed down some sixty-five Indian law decisions, which upheld the treaties as well as the sovereignty of Native Nations.”<sup>17</sup>

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<sup>15</sup> Matthew L. M. Fletcher, “Treaties as Recognition of the Nation-to-Nation Relationship,” in Harjo, *Nation to Nation*, 34.

<sup>16</sup> Harjo, *Nation to Nation*, 198.

<sup>17</sup> Harjo, *Nation to Nation*, 198.

