

Business Management Curriculum

Module 5: Introduction to American Indian Land Tenure

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Module 5: Introduction to American Indian Land Tenure

This module is set up as two sections, with each section consisting of about 1–2 hours of instruction.

- Module 5.1: Understanding How American Indian Reservations Were Established
- Module 5.2: American Indian Land Tenure

The information covered in this module will review the background information on American Indian Land Tenure. However, each reservation has a unique government structure with their own rules and regulations about starting up a business. It is highly suggested to bring in a local representative to help guide your students through the issues that are brought up in this module.

Module 5.1: Understanding How American Indian Reservations Were Established

Teaching Notes:

The Doctrine of Discovery stated that the first European country to discover new lands unknown to others gained the property and sovereign rights over the land. When first discovery occurred, American Indians lost their property rights and ownership to the lands they had occupied in addition to some of their rights to free trade and international relations.

Manifest Destiny, the 19th-century belief that the United States should exist as a nation from coast to coast, resulted in the displacement of several American Indian tribes to allow expansion west of the Mississippi River. Federal policy during this era was to acquire all Indian lands on a firmly held belief that American Indians were inferior to that of Americans of European ancestry.

The office of Indian Affairs was created in 1824. The Indian Removal Act of 1830 authorized the president of the United States to grant unsettled lands west of the Mississippi River to American Indians in exchange for lands that American Indians were already occupying within existing state borders. Relocating American Indians to specific established areas would theoretically resolve the disputes between Indians and settlers. While some American Indian tribes went peacefully, many resisted being relocated from their homelands.

Federal trust responsibility has evolved over time and was clarified in what is called the Marshall Trilogy, a series of court cases (1823, 1831, and 1832) asserting the legal and political standing of American Indians in the United States:

- Johnson v. M'Intosh (1823) held that private citizens could not purchase lands from Native Americans.
- Cherokee Nation v. Georgia (1831) held that the Cherokee Nation was a “domestic dependent nation” subject to the sovereignty of the United States.
- Worcester v. Georgia (1832) held that American Indian tribes, as separate nations, had defined territorial boundaries and state law did not have regulatory or tax jurisdiction.

Educational Objectives:

- Understand the Doctrine of Discovery
- Examine Manifest Destiny and its impact on American Indians
- Understand the creation of American Indian Land Bases
- Comprehend the concepts of the Trust Doctrine and Trust Responsibility

Discussion Topics:

- How would you describe a reservation land base?
- Think about a reservation that you are familiar with. Do you know how the reservation land base was established? Treaty? Executive Order? Congressional Action?

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- Where reservations land bases established before or after the formal tribal government was set up under the Indian Reorganization Act of 1934?
- How did the rulings under the Marshall Trilogy affect tribal sovereignty and the ability of an Indian tribe to govern their land base? What is your definition of trust responsibility?
- Do you believe that the federal government should maintain a trust responsibility to Indian tribes in the United States?

Available Materials:

1. PowerPoint Presentation (1) – can be printed and used as a handout
2. Other Resources
 - a. Miller, R. (2008). *Native America Discovered and Conquered: Thomas Jefferson, Lewis and Clark and Manifest Destiny*. Lincoln, NE: Board of Regents of the University of Nebraska.
 - b. Emm, S. & Singletary, L. (2009). *People of the Land: Sustaining American Indian agriculture in Nevada, Oregon, and Washington*. (CM-09-01). Reno, NV: University of Nevada Cooperative Extension. (pp.89). Retrieved from <http://www.unce.unr.edu/publications/files/ag/2009/cm0901.pdf>
 - c. Emm, S. & Singletary, L. (2010). *Working Effectively with American Indian Populations: Tribal Government (FS-10-10)*. Reno, NV: University of Nevada Cooperative Extension. Retrieved from <http://www.unce.unr.edu/publications/files/cd/2010/fs1010.pdf>
 - d. Singletary, L. & Emm, S. (2011). *Working Effectively with American Indian Populations: A Brief Overview of Federal Indian Policy (FS-11-34)*. Reno, NV: University of Nevada Cooperative Extension. Retrieved from <http://www.unce.unr.edu/publications/files/ag/2011/fs1134.pdf>

Outline:

1. Objectives
2. Federal Policy Eras:
 - a. Doctrine of Discovery
 - b. Plenary Power
 - c. Trade and Intercourse Era: 1790–1830
 - d. Removal Era: 1830–1850
 - e. Reservation Era: 1850–1887
 - f. Allotment and Assimilation Era: 1887–1934
 - g. Indian New Deal Era: 1934–1945
 - h. Termination Era: 1945–1965
 - i. Self-Determination Era: 1965–present
 - j. Indian Gaming Act
3. Tribal Governance and the Federal Relationship
 - a. Separation of Ideas
 - b. Miriam Report
 - c. Evolution and Structure of Tribal Governance
 - d. Federal Trust Responsibility
 - e. Tribal Sovereignty

Module 5: Introduction to American Indian Land Tenure

Module 5.2: American Indian Land Tenure

Teaching Notes:

Every reservation is unique with each tribal government having its own specific structure. Written and unwritten policy affect tribal decision making. Make sure that you know how a tribal government is set up, when it was established, and governing power. This can be done by finding a mentor within the tribe or researching the tribe online or in a library.

How the reservation was established and whether or not it was impacted by the General Allotment Act (Dawes Act) of 1887 will determine the land tenure on a reservation. Definitions of different land tenure on reservations can be found in the People of the Land Curriculum. The Indian Land Tenure Foundation also provides message runners and information about the different types of land on their website at <https://www.iltf.org>.

American Indian trust land is unique in that the United States Government holds title to the land and it is held in a “trust status” for a tribe or individual member. In essence, the trustee has beneficial use of the land and can decide land use only if they hold 51% interest of the land base. In the case of allotments, this becomes a problem when there is fractionation of Indian allotments resulting in hundreds of owners for a single parcel of land.

In some cases, trust allotments have reverted to fee simple states for various reasons. This can impact jurisdiction related to land use (building permits, flood plains, etc), policing, and property taxes. It is important to identify land status to realize who has jurisdiction. In some cases, both a tribe and a county/state will say they have jurisdiction.

Indian water rights can be a contentious issue. The Winters Doctrine set precedent for an Indian water right at the date the reservation was established for agricultural purposes. Today there are Indian irrigation systems, each with a unique structure. There are also Indian irrigation projects still under the jurisdiction and control of the Bureau of Indian Affairs that provide water to reservation lands. It is difficult to use Indian trust land as collateral for Indian land. Only tribes or the United States Department of Agriculture have traditionally provided loans to purchase or develop Indian land parcels. Leases are usually given for housing units and run through the tribe’s housing authority utilizing United States Department of Housing and Urban Development funds. The tribe also can lease for agricultural production and/or other commodities. Depending on whether or not the tribe has compacted or contracted out programs, there still may be oversight by the Bureau of Indian Affairs.

Educational Objectives:

- Realize every reservation is unique.
- Understand the different types of American Indian land tenure.
- Type of American Indian Land dictates jurisdiction.
- How trust responsibility and beneficial use of land impacts ownership.
- Collateral and ownership of American Indian lands.

Discussion Topics:

- How would you begin to work with an Indian tribe in starting a business?
- What different types of land make up the reservation land base? Tribal land, Allotments, Fee Simple

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- Determine and discuss the jurisdictions on the land base and how that impacts personal and/or tribal business.
- How were the water rights for the tribe determined?
- **Determine the irrigation infrastructure or what water rights were designated for?**
- What type of water rights does the land have and does this impact business activities, business startup, and future development?
- Discuss if the tribe is compacted or if they have just contracted specific programs and how does this impact business development.

Available Materials:

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 - b. Emm, S. & Singletary, L. (2010). *Working Effectively with American Indian Populations: Contracting and Compacting* (FS-10-14). Reno, NV: University of Nevada Cooperative Extension. Retrieved from <http://www.unce.unr.edu/publications/files/cd/2010/fs1014.pdf>
 - c. Emm, S. & Singletary, L. (2010). *Working Effectively with American Indian Populations: Indian Water Rights* (FS-10-13). Reno, NV: University of Nevada Cooperative Extension. Retrieved from <http://www.unce.unr.edu/publications/files/cd/2010/fs1013.pdf>
 - d. Emm, S. & Singletary, L. (2010). *Working Effectively with American Indian Populations: Gaining Perspectives* (FS-10-09). Reno, NV: University of Nevada Cooperative Extension. Retrieved from <http://www.unce.unr.edu/publications/files/cd/2010/fs1009.pdf>
 - e. Emm, S. & Singletary, L. (2012). *American Indian Farmer and Rancher Outreach and Improvement Project* (CM-12-06). Reno, NV: University of Nevada Cooperative Extension. Retrieved from <http://www.unce.unr.edu/publications/files/ag/2012/cm1206.pdf>

Outline:

1. Objectives
2. American Indian Land Tenure
3. Forced Trust to Fee Conversion
 - a. Restricted Indian land
 - b. Trust allotments and fractionation
 - c. Checkerboard Lands
 - d. Trust responsibility
 - e. Trust land ownership and collateral
4. Water Rights on Reservation
 - a. Water right definitions
 - b. Indian water rights
 - i. Winters Doctrine
 - c. Indian irrigation works
 - i. Water rights and future
5. Questions?

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Module 5: Introduction of American Indian Land Tenure

Understanding how American Indian Reservations were Established



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Objectives

- Discuss the Doctrine of Discovery
- Examine Manifest Destiny and its impact on American Indians
- Understand the creation of American Indian Land Bases
- Comprehend the concepts of the Trust Doctrine and Trust Responsibility





Federal Policy Eras: A Brief Overview



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Doctrine of Discovery

- First discoverer gained exclusive rights and claim to title of lands
- Indian people were required to trade and negotiate exclusively with discoverers
- Discovery powers enabled federal government to restrict Indian rights and properties



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Doctrine of Discovery

- Early Europeans felt compelled to play paternalistic role forcing religion and education, values
- Non-Christians ineligible for same rights as Christians
- Manifest Destiny-
 - Federal government is superior
 - Dominant race is superior
 - Religion superior to all others...
- Plenary Power of US government



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Plenary Power

- Early Europeans played paternalistic role forcing religion and education, values
- Non-Christians ineligible for same rights as Christians
- Manifest Destiny- the belief that...
 - Federal government is superior
 - Dominant race is superior
 - Religion superior to all others...
- Plenary Power or "Complete" Power of US government



Trade and Intercourse Era: 1790-1830

- Peaceful government-to-government relations
- Recognized sovereign Indian nations
- Fueled expansion into Pacific Northwest
- Office of Indian Affairs, 1775
 - Discourage alliances
 - Forge treaties
 - Recreated as BIA 1824



Trade and Intercourse Act (1790)

- Federal government authorized all Indian land sales and managed all Indian trade and commerce
- Doctrine of Discovery gave discoverer exclusive right to extinguish Indian title either by purchase or conquest
- Lands seen as "unused" were "available"
- Indians relinquished title through occupancy or use--granting preemptive power to federal government



Removal Era: 1830-1850

- Emigrants demanded access to lands
- 1820s land disputes between settlers and Five Civilized Nations who had assimilated successfully motivated Indian Removal Act (1830)



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Removal Era: 1830-1850

- Removal Act relocated Indians from southeast
- Trail of Tears (1830-1840) relocated 50,000 to 100,000 Indians to Oklahoma Territory



Indian reservation...area of land set aside or reserved for Indian use and occupancy but which legal title remains under federal trust
– Andrew Jackson



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Reservation Era: 1850-1887

- Indian Appropriations Act (1851) set aside lands farther west
- Reduce land conflicts
- Restrict movement
- Pres. Grant's Peace Policy
- Prepare Indians for US citizenship



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Allotment and Assimilation Era: 1887-1934

- General Allotment Act [Dawes] (1887)
 - Allocated reservation land parcels to individual Indians to encourage "ownership" European customs, assimilation...
- Indians required to farm allotments to be granted US citizenship
- Reservation land base reduced and life on reservations deteriorated—poverty, disease



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American Indian Land Tenure

Congress agreed to pass Dawes Act only if **surplus lands** were sold to "actual and bona fide settlers."
Proceeds from land sales funded boarding schools.



Following passage of Dawes Act, Indian land holdings were reduced by 50 to 66 percent.

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Indian Boarding Schools



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Stewart Indian School in Nevada



Slide 16: From 1890 until it closed in 1980, the Stewart Indian School in Carson City was the only off-reservation boarding school in Nevada for Native American children. Taken from Nevada and throughout the West, the children were forced to attend the institution through secondary school age. Students came from many tribes including the Nevada-based Washoe and Paiute tribes. Each interior panorama in this feature includes an audio remembrance from a Stewart alumnus or worker.

Vocational Education



Indian New Deal Era: 1934-1945

- Miriam Report, 1928
- Indian lands lost
- Funds misused
- Infant mortality rate 3X
- Measles and TB
- Life span 44 years



Indian New Deal Era: 1934-1945

- Indian Reorganization Act (1934) repealed GAA or Dawes Act – ended allotments
- Re-establish tribal sovereignty
- End assimilation policy



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Termination Era: 1945-1965

- Termination Act (1946)- Cold War
- Repealed laws granting Indians different status than non-Indians
- Ended federal trust responsibility to tribes
- Disband BIA, transfer duties to tribes or local governments



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Termination Era: 1945-1965

- Relocation Act (1956) encouraged Indians to leave reservations to work in cities
- BIA's Voluntary Relocation Program relocated more than 31,000 Indians (30% nationwide)
- Termination integrated more Indian lands into state and local jurisdiction = property taxed

Between 1953 and 1970, 1.3 million acres of reservation lands were taken out of federal trust and sold to non-Indians



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Self-Determination Era: 1965-

- National civil rights unrest and action
- Red Power Movement attracted attention to past federal Indian policies and reservation living conditions

Indian Civil Rights Act (1968)
ensured Indians basic civil rights

American Indian Movement
Women of All Red Nations

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Self-Determination Era: 1965-

- Indian Self-Determination and Education Assistance Act (1975) sought to reverse policies of Termination Era
- Allowed tribes on reservations to oversee their social services
- Allowed tribes to make decisions about reservation education, health...

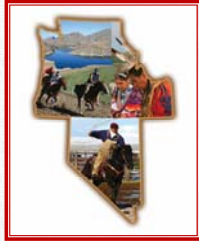
23

Indian Gaming Act (1988)

- Provide for welfare of the Indian tribe and members
- Promote tribal economic development
- Donate to charitable organizations
- Help fund tribal agency operations



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Tribal Governance and the Federal Relationship

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Separation of Ideas

- Reservations were the land bases set aside for Indian people.
- Tribe(s) -
 - Euro-American culture referred to Indian groups as tribes.
 - The concept of tribe in the next few slides is mostly referring to the political governmental structure recognized by the Department of Interior. However, tribe is also used when referring to a group of Indians.

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Miriam Report

- Secretary of Interior commissioned a study in 1926 on the conditions of Indians and administration of federal Indian policy.
 - Lewis Miriam published his report in 1928.
- Miriam described living conditions on reservations as deplorable.
 - Infant mortality rates were three times that of Euro-Americans, with large numbers of Indians dying from measles and tuberculosis.
 - Average lifespan of Indians during this time was 44 years old.

This report led to the creation of new legislation...the Indian Reorganization Act of 1934

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Evolution and Structure of Tribal Governance

- Indian Reorganization Act (IRA) of 1934... provided opportunity to...
 - Create and adopt a tribal government constitution;
 - Restore to tribal governments the authority to conduct government-to-government negotiations with local, state and federal government;
 - Receive a majority of approval from tribal members prior to negotiations land sales or exchanges.

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Evolution and Structure of Tribal Governance

- Indian Reorganization Act (IRA) of 1934
 - Also, intended to slow the loss of Indian lands due to the allotment process.
 - Sought to decrease poverty on reservation lands by establishing a revolving fund to make loans to Indian corporations or governments.
 - BIA was authorized to oversee tribal forest and range management.

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IRA of 1934 and Tribal Governance

IRA proposed an outline for tribal governance creating the entity, "Tribal Government."

BIA assisted with the process of creating constitutions and bylaws.

More than 100 tribes or tribal confederacies adopted the IRA policy and developed constitutions creating a democratic centralized secular government elected by the majority and approved by the Department of Interior.

However, not all tribes adopted the IRA provisions, which required that tribal constitutions be ratified by the Department of Interior.

Some tribes organized governments, but did not create a constitution.

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Tribal Governance Structure

- Tribal Government
 - Tribal Council
 - Specified number of elected officials.
 - Service terms
 - Oversees various tribal departments and tribal operations.
 - The tribal council leader holds the title of "Chairman."
 - This position may be open for competition in a democratic election, or may be elected from within the tribal council member ranks.
 - Due to land tenure issues, the jurisdictional authority of a tribal council can vary widely by reservation.
 - Some tribal governments have separated business from the government structure and created business corporations.

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Federal Trust Responsibility

- An idea that has evolved over time and underlies the majority of federal Indian policies implemented since the Trade and Intercourse Era (1790-1830).
 - Marshall Trilogy
 - 1823: Johnson v. McIntosh
 - The court ruled that Indian tribes could not convey land to private parties without the consent of the federal government.
 - 1831: Cherokee Nation v. Georgia
 - The court found that the Cherokee Nation was not a "foreign state" but a "domestic dependent nation" to whom the U.S. has a guardian-ward relationship.
 - 1832: Worcester v. Georgia
 - The Supreme Court held that state laws did not extend into Indian Country because they were incompatible with treaties, the Constitution ...asserted the concept of tribal sovereignty.

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Federal Trust Responsibility

The federal government has held money in trust for American Indians since 1820. The American Indian Trust Fund Management Reform Act of 1994 officially gave responsibility to the Secretary of Interior to account for Indian Trust Funds.

- Office of Special Trustee (OST) was established (1994) to handle appraisals, probate and supervise the accounting of revenues.
- Lead to the eventual court case of Eloise Cobell.
 - A court case brought against the Department of Interior for alleged federal government misappropriation of revenue collected from Indian lands.
- Plaintiffs' requested \$45 billion
- U.S. Court Decision awarded about \$3.4 billion
 - 1.5 billion to Individual Indian Trust Beneficiaries
 - 1.9 billion to purchase undivided Trust land interests
 - 60 million Indian Scholarship Fund



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Tribal Sovereignty

Tribal nations acting as independent, self-governing units.

"...the courts have concluded that Indian tribes have all the powers of self-government of any sovereignty except insofar as those powers have been modified or repealed by act of Congress or treaty. Hence over large fields of criminal and civil law, and particularly over questions of tribal membership, inheritance, tribal taxation, tribal property, domestic relations, and the form of tribal government, the laws, customs and decision of the proper tribal governing authorities have, to this day, the force of law."

-Felix Cohen, 1945, Handbook of Federal Indian Law

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Tribal Sovereignty

The question.....Does Tribal Sovereignty really exist????

"By definition sovereignty is supreme and complete political independence and self-government. A sovereign nation must have the ability to defend its borders, exercise authority over its citizens and conduct its business free from outside interference.

Tribal sovereignty is a paradox because the U.S. government, while recognizing the tribes as domestic sovereign nations, has perpetuated a relationship of tribal dependence on the government."

-George Russell, 2000, Native American FAQ's Handbook.

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Tribal Sovereignty

- The essence of tribal sovereignty continues to be a hotly debated topic among federal policy makers, tribal governments and tribal members.
- Tribal sovereignty is considered by many Indians as the right of Indian tribes to govern themselves on all matters. How this concept plays out in reality, however, raises many jurisdictional issues as tribes seek to be sovereign nations within a sovereign nation.



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Questions



The First Tribal Council

Standing: Frank Winishut, Isane McKinley, Joe McCorkle;

Second Row: Chief Frank Quealpama Sr., James Johnson, George Meacham, Moses Helton, William McCorkle;

Front Row: Sam Weva, Superintendent Elliott, Fred Wagner, Oliver Kalma



Warm Springs Leaders, 1938

(Left to right) George Meacham, Isane McKinley, Charlie McKinley, Matt Quinn, Jackson Colby

