

FEDERAL-INDIAN RELATIONS IN THE EARLY YEARS OF THE REPUBLIC

A Unit Plan for Teachers



DESIRED RESULTS

Established Goals:

United States Era Four

Standard 1A. The student understands the international background and consequences of the Louisiana Purchase, the War of 1812, and the Monroe Doctrine.

Standard 1B. The student understands federal and state Indian policy and the strategies for survival forged by Native Americans.

Source: National Standards for History

CCSS.ELA-Literacy.RH.11-12.1. Cite specific textual evidence to support analysis of primary and secondary sources, connecting insights gained from specific details to an understanding of the text as a whole.

CCSS.ELA-Literacy.RH.11-12.2. Determine the central ideas or information of a primary or secondary source; provide an accurate summary that makes clear the relationships among the key details and ideas.

CCSS.ELA-Literacy.RH.11-12.9. Integrate information from diverse sources, both primary and secondary, into a coherent understanding of an idea or event, noting discrepancies among sources.

CCSS.ELA-Literacy.SL.11-12.1a. Come to discussions prepared, having read and researched material under study; explicitly draw on that preparation by referring to evidence from texts and other research on the topic or issue to stimulate a thoughtful, well-reasoned exchange of ideas.

CCSS.ELA-Literacy.SL.11-12.1b. Work with peers to promote civil, democratic discussions and decision-making, set clear goals and deadlines, and establish individual roles as needed.

CCSS.ELA-Literacy.SL.11-12.1c. Propel conversations by posing and responding to questions that probe reasoning and evidence; ensure a hearing for a full range of positions on a topic or issue; clarify, verify, or challenge ideas and conclusions; and promote divergent and creative perspectives.

CCSS.ELA-Literacy.SL.11-12.1d. Respond thoughtfully to diverse perspectives; synthesize comments, claims, and evidence made on all sides of an issue; resolve contradictions when possible; and determine what additional information or research is required to deepen the investigation or complete the task.

Source: Common Core State Standards

Understandings:

Students will understand that...

- Early U.S. policies towards American Indians were influenced by European ideas and attitudes

Students will know...

- The role played by Thomas Jefferson in shaping U.S. relations with Indians
- The role that the Marshall court played in shaping the destiny of American Indians
- Key factual information about interactions between the federal government and Indian tribes during the first seven presidential administrations

Essential Questions:

- What role does and should the treatment of American Indians in the early 1800s play in the way we think about the founding generation?
- By what criteria should we assess the actions of historical figures? (if doing optional 5th lesson)

Students will be able to...

- Assess why many Native Americans supported the British in the War of 1812 and the consequences of this policy.
- Assess how the Louisiana Purchase affected relations with Native Americans and the lives of various inhabitants of the Louisiana Territory.
- Compare the policies toward Native Americans pursued by presidential administrations through the Jacksonian era.

ASSESSMENT EVIDENCE**Performance Tasks:**

Students will engage in a class-wide debate about the responsibility of one generation for the policies of previous generations. Students will also write an essay that explains how their views of the founding fathers are shaped by the content of this unit.

Other Evidence:

Group products, such as document analyses and predictions, and individual tasks such as responses to reflection questions.

Homework, including a response to a news article about the anniversary of the War of 1812.

LEARNING PLAN**Learning Activities:**

- Short lectures followed by small group discussions
- Debate
- Reading, discussing and analyzing primary source documents
- Secondary source readings
- Small group work

SUGGESTED GRADE LEVEL: 10-12

LESSON ONE – WASHINGTON, THE REVOLUTION, AND AMERICAN INDIANS

Overview: After being introduced to the themes and central questions of the unit and briefly revisiting the history of the Revolutionary War’s impact on American Indian tribes, students will make predictions about the relationship between the Federal government and American Indians in the nation’s early years. Students will then begin to test their predictions by reading two documents: a treaty between the U.S. government and an Indian tribe, and a private communication from George Washington.

Time: 90 minutes

Procedure

Establish unit theme..... 10 minutes

- Think-Pair-Share on the following questions:
 - In the present, what can nations do to address wrongs committed in their history?
 - Does a nation bear responsibility for past actions?
- Take a few responses to the second question.
- Explain: During this unit, we will examine the relationship between the founding fathers and American Indians. Questions examined will include:
 - How should we classify the actions of the founders towards Indians?
 - How should the actions and ideas of Thomas Jefferson, George Washington and others inform our views about the Founding Fathers?
 - What responsibility, if any, do we bear in the present for atrocities committed by our nation in the past?

Recap Indian-Colonists relations..... 15 minutes

- Do a mini-lecture that covers major issues from the French and Indian War through the Revolution:
 - During French Indian War, many Indian tribes fought alongside the French to combat British expansion into Canada and French held territories to the west. Because the French established trading outposts, as opposed to major colonies, many tribes found the French to be the lesser of two evils.
 - The Treaty of Paris, which was negotiated after Britain won the French Indian (Seven Years’) War, officially expanded British holdings to the Mississippi River. However, to avoid antagonizing Indians into a second costly war, King George III issued the Proclamation of 1763, which forbade settlement west of the Appalachian Mountains.
 - Settlers pushed this limit. Daniel Boone lead efforts to settle Kentucky; these and other tensions precipitated Dunmore’s War (named for the Royal Governor of Virginia, the Earl of Dunmore). This was exactly the type of conflict that King George III had been attempting to avoid.
 - During the American Revolution, many tribes sided with the British because they believed that British control of the territories would prevent further westward expansion by the settlers. This was particularly true of the tribes of the Southeast, where the Shawnee, Creek and Seminoles joined the British, and New York state, where the Iroquois Confederacy split, where some nations (Seneca, Onondaga, Cayuga) fought alongside the British, some (the Tuscarora and Oneida Nations) sided with the colonists and others (the Mohawks) fought on both sides.
 - After the Revolution, white settlers generally thought of Indians as supporters of the British.

- Take a few responses to the following questions:
 - How might American Indians have viewed the defeat of the British?
 - How might Americans have viewed Indians after the Revolution?

Make predictions..... 15 minutes

- Post or display the following questions:
 - How do you think the newly formed government will interact with Indian tribes? Will the government treat all tribes equally?
 - How do you think various Indian tribes will react to the newly formed federal government? Do you expect all tribes to act similarly?
- Place students in groups of 4 to 5. Ask each group to discuss these questions and to record their answers.
- Ask students to record the names of all group members so that they can return to these groups later in the unit.

Examine early documents..... 25 minutes

- Place students in pairs. Give each pair either Handout A (George Washington's letter to James Duane) or Handout B (Treaty with the Cherokee Nation).
- Give each pair a tool for document analysis (such as Handout C).
- Instruct students to do a close analysis of the document and to record their findings.

Synthesize 15 minutes

- Combine each A pair with a B pair to form groups of four. Ask each group to respond to the following questions using information from both documents:
 - What are the main objectives of U.S. policy towards American Indians?
 - How is the United States carrying out its policies?
 - How are Indians responding to U.S. policies?
 - What does George Washington's comparison of Indians to wolves mean? How do you interpret that analogy?

Individual reflection 10 minutes

- Ask students to record their responses to the following questions:
 - What evidence is there to support the claim that the United States had good intentions in its dealings with Indian tribes?
 - What evidence refutes that claim?

Homework¹

- Students will read an account of the Lewis and Clark expedition meeting with the Oto Indians on a website created by Public Broadcasting Service. (<http://www.pbs.org/lewisandclark/native/oto.html>)
- Students should then read about a document used by Spanish explorers in the 16th century called the Requerimiento. (http://www.grossmont.edu/carlos.contreras/History114/maps_graphs_pics/The%20Requirement.pdf)
- Ask students to compare the ceremony described in the account of the Lewis and Clark ceremony to the Requerimiento. What are the similarities? What are the differences?

¹ Depending on the availability of technology in your school and in your students' homes, either print out these documents for students or direct them to the websites. If using the websites, the PBS website has a lot of other information about tribal interactions with the expedition that students could be directed to explore.

Excerpts from George Washington's letter to James Duane²

To suffer a wide extended Country to be over run with Land Jobbers, Speculators, and Monopolisers or even with scatter'd settlers, is, in my opinion, inconsistent with that wisdom and policy which our true interest dictates, or that an enlightened People ought to adopt and, besides, is pregnant of disputes both with the Savages, and among ourselves, the evils of which are easier, to be conceived than described; and for what? But to aggrandize a few avaricious Men to the prejudice of many, and the embarrassment of Government. For the People engaged in these pursuits without contributing in the smallest degree to the Support of government, or considering themselves as amenable to its Laws, will involve it by their unrestrained conduct, in inextricable perplexities, and more than probable in a great deal of Bloodshed.

My ideas therefore of the line of conduct proper to be observed not only towards the Indians, but for the government of the Citizens of America, in their Settlement of the Western Country (which is intimately connected therewith) are simply these.

That the Indians should be informed, that after a Contest of eight years for the Sovereignty of this Country G: Britain has ceded all the Lands of the United States within the limits described by the article of the Provisional Treaty.

That as they (the Indians) ... were determined to join their Arms to those of G Britain and to share their fortune; so, consequently, with a less generous People than Americans they would be made to share the same fate; and be compelled to retire along with them beyond the Lakes. But as we prefer Peace to a state of Warfare, as we consider them as a deluded People; as we persuade ourselves that they are convinced, from experience, of their error in taking up the Hatchet against us, and that their true Interest and safety must now depend upon our friendship. As the Country, is large enough to contain us all; and as we are disposed to be kind to them and to partake of their Trade, we will from these considerations and from motives of Companionship draw a veil over what is past and establish a boundary line between them and us beyond which we will endeavor to restrain our People from Hunting or Settling, and within which they shall not come, but for the purposes of Trading, Treating, or other business unexceptionable in its nature.

In establishing this line, in the first instance, care should be taken neither to yield nor to grasp at too much. But to endeavor to impress the Indians with an idea of the generosity of our disposition to accommodate them, and with the necessity we are under, of providing for our Warriors, our Young People who are growing up, and strangers who are coming from other Countries to live among us. And if they should make a point of it, or appear dissatisfied at the line we may find it necessary to establish, compensation should be made them for their claims within it.

It is needless for me to express more explicitly because the tendency of my observations evinces it is my opinion that if the Legislature of the State of New York should insist upon expelling the Six Nations from all the country they Inhabited previous to the War, within their Territory (as General Schuyler seems to be apprehensive of) that it will end in another Indian War. I have every reason to believe from my enquiries, and the information I have received, that they will not suffer their Country (if it was our policy to take it before we could settle it) to be wrested from them without another struggle. That they would compromise for a part of it I have very little doubt, and that it would be the cheapest way of coming at it, I have no doubt at all. The same observations, I am persuaded, will hold good with respect to Virginia, or any other state which has powerful Tribes of Indians on their Frontiers; and the reason of my mentioning New York is because General Schuyler has expressed his opinion of

² For full text of letter, see: <http://teachingamericanhistory.org/library/document/letter-to-james-duane/> (Some words which were abbreviated in the original text have been spelled out here)

the temper of its Legislature; and because I have been more in the way of learning the Sentiments of the Six Nations, than any other Tribes of Indians on the Subject.

The limits being sufficiently extensive (in the New Country) to comply with all the engagements of Government and to admit such emigrations as may be supposed to happen within a given time not only from the several States of the Union but from Foreign Countries, and moreover of such magnitude as to form a distinct and proper Government; a Proclamation in my opinion, should issue, making it Felony (if there is power for the purpose and if not imposing some very heavy restraint) for any person to Survey or Settle beyond the Line; and the Officers Commanding the Frontier Garrison should have pointed and peremptory orders to see that the Proclamation is carried into effect.

Measures of this sort would not only obtain Peace from the Indians, but would, in my opinion, be the surest means of preserving it. It would dispose of the Land to the best advantage; People the Country progressively, and check Land Jobbing and Monopolizing (which is now going forward with great avidity) while the door would be open, and the terms known for every one to obtain what is reasonable and proper for himself upon legal and constitutional ground.

Every advantage that could be expected or even wished for would result from such a mode of procedure. Our Settlements would be compact, Government well established, and our Barrier formidable, not only for ourselves but against our Neighbours, and the Indians as has been observed in Gen. Schuylers Letter will ever retreat as our Settlements advance upon them and they will be as ready to sell, as we are to buy; That it is the cheapest as well as the least distressing way of dealing with them, none who are acquainted with the Nature of Indian warfare, and has ever been at the trouble of estimating the expense of one, and comparing it with the cost of purchasing their Lands, will hesitate to acknowledge.

For I repeat it, again, and I am clear in my opinion, that policy and economy point very strongly to the expediency of being upon good terms with the Indians, and the propriety of purchasing their Lands in preference to attempting to drive them by force of arms out of their Country; which as we have already experienced is like driving the Wild Beasts of the Forest which will return as soon as the pursuit is at an end and fall perhaps on those that are left there; when the gradual extension of our Settlements will as certainly cause the Savage as the Wolf to retire; both being beasts of prey tho' they differ in shape. In a word there is nothing to be obtained by an Indian War but the Soil they live on and this can be had by purchase at less expense, and without that bloodshed, and those distresses which helpless Women and Children are made partakers of in all kinds of disputes with them.

Excerpts from the U.S. treaty with the Cherokee Nation, 1791³

A Treaty of Peace and Friendship made and concluded between the President of the United States of America, on the Part and Behalf of the said States, and the undersigned Chiefs and Warriors of the Cherokee Nation of Indians, on the Part and Behalf of the said nation.

ARTICLE 1.

There shall be perpetual peace and friendship between all the citizens of the United States of America, and all the individuals composing the whole Cherokee nation of Indians.

ARTICLE 2.

The undersigned Chiefs and Warriors, for themselves and all parts of the Cherokee nation, do acknowledge themselves and the said Cherokee nation, to be under the protection of the said United States of America, and of no other sovereign whosoever; and they also stipulate that the said Cherokee nation will not hold any treaty with any foreign power, individual state, or with individuals of any state.

ARTICLE 3.

The Cherokee nation shall deliver to the Governor of the territory of the United States of America, south of the river Ohio, on or before the first day of April next, at this place, all persons who are now prisoners, captured by them from any part of the United States: And the United States shall on or before the same day, and at that same place, restore to the Cherokees, all the prisoners now in captivity, which the citizens of the United States have captured from them.

ARTICLE 5.

It is stipulated and agreed, that the citizens and inhabitants of the United States, shall have a free and unmolested use of a road from Washington district to Mero district, and of the navigation of the Tennessee river.

ARTICLE 6.

It is agreed on the part of the Cherokees, that the United States shall have the sole and exclusive right of regulating their trade.

ARTICLE 7.

The United States solemnly guarantee to the Cherokee nation, all their lands not hereby ceded.

ARTICLE 8.

If any citizen of the United States, or other person not being an Indian, shall settle on any of the Cherokees' lands, such person shall forfeit the protection of the United States, and the Cherokees may punish him or not, as they please.

ARTICLE 9.

No citizen or inhabitant of the United States, shall attempt to hunt or destroy the game on the lands of the Cherokees; nor shall any citizen or inhabitant go into the Cherokee country, without a passport first obtained from the Governor of some one of the United States, or territorial districts, or such other person as the President of the United States may from time to time authorize to grant the same.

³ For full text of treaty, see <http://digital.library.okstate.edu/kappler/Vol2/treaties/che0029.htm>

ARTICLE 13.

The Cherokees shall give notice to the citizens of the United States, of any designs which they may know, or suspect to be formed in any neighboring tribe, or by any person whatever, against the peace and interest of the United States.

ARTICLE 14.

That the Cherokee nation may be led to a greater degree of civilization, and to become herdsmen and cultivators, instead of remaining in a state of hunters, the United States will from time to time furnish gratuitously the said nation with useful implements of husbandry, and further to assist the said nation in so desirable a pursuit, and at the same time to establish a certain mode of communication, the United States will send such, and so many persons to reside in said nation as they may judge proper, not exceeding four in number, who shall qualify themselves to act as interpreters. These persons shall have lands assigned by the Cherokees for cultivation for themselves and their successors in office; but they shall be precluded exercising any kind of traffic.

ARTICLE 15.

All animosities for past grievances shall henceforth cease, and the contracting parties will carry the foregoing treaty into full execution with all good faith and sincerity.

DOCUMENT ANALYSIS ⁴

TEXT	CONTEXT
SUBTEXT	CONCLUSIONS

⁴ This type of document analysis was suggested by Bruce Lesh in Why Won't You Just Tell Us the Answer? There are many other tools available to help students analyze documents. For some other suggestions, see the worksheets provided by the National Archives at <http://www.archives.gov/education/lessons/worksheets/>

LESSON TWO – JEFFERSON AND THE DOCTRINE OF DISCOVERY

Overview: Students will first review their homework from the previous class meeting. Then, after a brief introduction to the lesson, students will examine the Doctrine of Discovery and consider its relationship to early federal government policies towards American Indians. After revisiting readings from the previous meeting, students will read two of Thomas Jefferson’s confidential communications about Indian policy and use them to inform discussions about the Doctrine of Discovery, American policy, and likely Indian responses.

Time: 90 minutes

Procedure

Review homework..... 10 minutes

- Place students in pairs and ask them to review their findings from the homework assignment (comparing Lewis and Clark expedition to those by the Spanish in 16th century).

Introduce lesson 5 minutes

- Explain to students that they will be examining a central figure in America’s founding, Thomas Jefferson, to learn more about his interactions with and intentions towards Indian tribes. Because Thomas Jefferson served as Secretary of State in George Washington’s administration, he oversaw relations with Indians. Later, as President, he made two policy decisions that had a significant impact on Indians. First, he made the Louisiana Purchase, extending America’s territory into the unexplored west. Second, he funded the Lewis and Clark expedition to the Pacific Ocean.
- Thomas Jefferson also had a longstanding fascination with American Indians. The main entrance of his home, Monticello, was decorated with many Indian artifacts. Though the room was not dedicated solely to Indian culture and history, Indian artifacts so predominated that the room is referred to as Indian Hall.
- During this lesson, students will examine closely some of the actions and words of Thomas Jefferson in light of the broader context of international law that discovery and colonial expansion in the 15th – 19th centuries.

Introduce the Doctrine of Discovery 20 minutes

- Explain: The Doctrine of Discovery is a concept that dates back to the Crusades, when Christian armies needed justification for their quests in the Holy Land. The Catholic Church explained all the ways that a conquering power could justly claim lands in foreign territories. Over the centuries, the Doctrine expanded and was altered.
- During the race to colonize the New World, the Doctrine of Discovery played a central role in guiding the behaviors of the Western powers.

- Place students in groups of 3-4. Give each group an explanation of the Doctrine of Discovery (Handout A).
- Ask groups to review documents from the previous class meeting to find evidence that the Doctrine of Discovery was influencing government policy during the Washington administration.
- Then, ask that students consider the Lewis and Clark episode they examined for homework. How, if at all, did the Doctrine of Discovery influence the expedition of Lewis and Clark?

Read Jefferson's writings 20 minutes

- Explain to students that they will now be examining two letters written by Thomas Jefferson, both of which he intended to be private. One is a letter to Congress about policy towards Indian tribes. This letter also seeks authorization for the Lewis and Clark expedition. The second letter is to William Henry Harrison, the governor of the Indiana territories (and future President). In that letter, Jefferson hoped to give some explanation of the official policies Harrison was to carry out.
- Place students in pairs and give each pair one of the letters (Handouts B and C) and a Document Analysis tool (like Handout C from the first lesson of this unit).
- Ask students to do a close reading of the document and to record their findings.

Combine groups 15 minutes

- Create groups of four by combining an A pair with a B pair. In these groups, students should discuss, and record their responses to, the following questions:
 - How does Thomas Jefferson view Indians?
 - How does he believe Indian tribes view the United States?
 - What are his primary aims in his dealings with Indians?
 - Is there evidence that the Doctrine of Discovery influenced his thinking?

Examine timeline..... 15 minutes

- Give each group a timeline of Jefferson's interactions with American Indians (Handout D).
- Ask students to review the timeline and to consider what elements of the Doctrine of Discovery, if any, they can find present in Jefferson's actions, words, and policies.
- Ask students to discuss how Indian tribes should respond to the actions of Thomas Jefferson and the United States.

Homework

Students should access a June 18, 2012 story on the Indian Country Today website about the history of the War of 1812. (Indian Country Today is the major news organization for tribal and indigenous peoples in the United States.) After reading the story, students should respond to the article, or to another commenter, in the comments section using some piece of information gathered during the first two lessons of the unit. During the next class meeting, students must turn in their screen names. The article can be found at the following URL: <http://indiancountrytodaymedianetwork.com/article/the-war-of-1812-could-have-been-the-war-of-indian-independence-118851>

10 Elements of Discovery⁵

First Discovery

The first European 'discoverer' of new lands grants an incomplete title to the discovering nation. Gave a window of time to make the title 'complete.'

Actual occupancy and possession

To 'complete' the title granted by first discovery, the discovering nation had to establish a physical presence, usually in the form of a settlement, fort, or trading outpost, in the newly discovered lands.

Preemption

The completion of the title prevented other European countries from buying the land in the discovered area; only the 'discovering' nation was allowed to purchase land from the indigenous people.

Indigenous title

Indigenous land titles could only be extinguished by the sale of land to the 'discovering' nation or by right of conquest.

Hypothetically, this title could be held forever should indigenous people choose not to sell. However, this hypothetical rarely played out.

Limited indigenous sovereignty

Trade and diplomatic relations could only exist with the discovering nation.

For example: Indigenous people in territory conquered by the Dutch could not have trade relations with the French, only with the Dutch.

Contiguity

Discovering nations were granted tracts of land to make contiguous spread out claims. Discovering nations were also granted contiguity of watersheds, which means that 'discovering' a river is very valuable.

Terra nullius

Empty or unimproved lands could be taken over by discovering nations. Lands had to be 'improved upon' in European standards, which meant large-scale land clearing and domestication of livestock. Indian groups that did settle the land rarely did so in this fashion (especially in North America).

Christianity

Non-Christians were not deemed to have the same property rights as Christians.

Civilization

European nations felt bound by duty and God to bring civilization and education to indigenous peoples. Therefore, Europeans took lands into stewardship.

Conquest

Any lands won in a war.

⁵ Adapted from *America, Discovered and Conquered: Thomas Jefferson, Lewis and Clark, and Manifest Destiny* by Robert J. Miller.

Excerpts from Thomas Jefferson's Secret Message to Congress of Jan. 18, 1803⁶

As the continuance of the act for establishing trading houses with the Indian tribes will be under the consideration of the Legislature at its present session, I think it my duty to communicate the views which have guided me in the execution of that act, in order that you may decide on the policy of continuing it, in the present or any other form, or discontinue it altogether, if that shall, on the whole, seem most for the public good.

The Indian tribes residing within the limits of the United States, have, for a considerable time, been growing more and more uneasy at the constant diminution of the territory they occupy, although effected by their own voluntary sales: and the policy has long been gaining strength with them, of refusing absolutely all further sale, on any conditions; insomuch that, at this time, it hazards their friendship, and excites dangerous jealousies and perturbations in their minds to make any overture for the purchase of the smallest portions of their land. A very few tribes only are not yet obstinately in these dispositions. In order peaceably to counteract this policy of theirs, and to provide an extension of territory which the rapid increase of our numbers will call for, two measures are deemed expedient. First: to encourage them to abandon hunting, to apply to the raising of stock, to agriculture and domestic manufacture, and thereby prove to themselves that less land and labor will maintain them in this, better than in their former mode of living. The extensive forests necessary in the hunting life, will then become useless, and they will see advantage in exchanging them for the means of improving their farms, and of increasing their domestic comforts. Secondly: to multiply trading houses among them, and place within their reach those things which will contribute more to their domestic comfort, than the possession of extensive, but uncultivated wilds. Experience and reflection will develop to them the wisdom of exchanging what they can spare and we want, for what we can spare and they want. In leading them to agriculture, to manufactures, and civilization; in bringing together their and our settlements, and in preparing them ultimately to participate in the benefits of our governments, I trust and believe we are acting for their greatest good...We possess what is below the Yazoo [river], and can probably acquire a certain breadth from the Illinois and Wabash to the Ohio; but between the Ohio and Yazoo, the country all belongs to the Chickasaws, [a] friendly tribe within our limits, but the most decided against the alienation of lands. The portion of their country most important for us is exactly that which they do not inhabit. Their settlements are not on the Mississippi, but in the interior country. They have lately shown a desire to become agricultural; and this leads to the desire of buying implements and comforts. In the strengthening and gratifying of these wants, I see the only prospect of planting on the Mississippi itself, the means of its own safety. Duty has required me to submit these views to the judgment of the Legislature; but as their disclosure might embarrass and defeat their effect, they are committed to the special confidence of the two Houses.

While the extension of the public commerce among the Indian tribes, may deprive of that source of profit such of our citizens as are engaged in it, it might be worthy the attention of Congress, in their care of individual as well as of the general interest, to point, in another direction, the enterprise of these citizens, as profitably for themselves, and more usefully for the public. The river Missouri, and the Indians inhabiting it, are not as well known as is rendered desirable by their connexion with the Mississippi, and consequently with us. It is, however, understood, that the country on that river is inhabited by numerous tribes, who furnish great supplies of furs and peltry to the trade of another nation, carried on in a high latitude, through an infinite number of portages and lakes, shut up by ice through a long season. The commerce on that line could bear no competition with that of the Missouri, traversing a moderate climate, offering according to the best accounts, a continued navigation from its source, and possibly with a single portage, from the Western Ocean...An intelligent officer... might explore the whole line, even to the Western Ocean, have conferences with the natives on the

⁶ Full text of document can be found here: <http://www.ourdocuments.gov/doc.php?flash=true&doc=17&page=transcript>

subject of commercial intercourse, get admission among them for our traders, as others are admitted, agree on convenient deposits for an interchange of articles, and return with the information acquired, in the course of two summers. Their arms and accoutrements, some instruments of observation, and light and cheap presents for the Indians, would be all the apparatus they could carry, and with an expectation of a soldier's portion of land on their return, would constitute the whole expense...While other civilized nations have encountered great expense to enlarge the boundaries of knowledge by undertaking voyages of discovery, and for other literary purposes, in various parts and directions, our nation seems to owe to the same object, as well as to its own interests, to explore this, the only line of easy communication across the continent, and so directly traversing our own part of it.

Excerpts of a letter from Thomas Jefferson to William Henry Harrison February 27, 1803⁷

You will receive herewith an answer to your letter as President of the Convention; and from the Secretary at War you receive from time to time information and instructions as to our Indian affairs. There communications being for the public records are restrained always to particular objects and occasions. But this letter being unofficial, and private, I may with safety give you a more extensive view of our policy respecting the Indians, that you may better comprehend the parts dealt out to you in detail through the official channel, and observing the system of which they make a part, conduct yourself in unison with it in cases where you are obliged to act without instruction. [The] system is to live in perpetual peace with the Indians, to cultivate an affectionate attachment from them, by every thing just & liberal which we can [offer?] them within the bounds of reason, and by giving them effectual protection against wrongs from our own people. The decrease of game rendering their subsistence by hunting insufficient, we wish to draw them to agri culture, to spinning and weaving. The latter branches they take up with great readiness, because they fall to the women, who gain by quitting the labours of the field [for] these which are exercised within doors. When they withdraw themselves to the culture of a small piece of land, they will perceive how useless to them are their extensive forests, and will be willing to pare them off from time to time in exchange for necessaries for their farms & families. To promote this disposition to exchange lands which they have to spare and we want for necessaries, which have to spare and they want, we shall push our trading houses, and be glad to see the good and influential individuals among them run in debt, because we observe that when these debts get beyond what the individuals can pay, they become willing to lop them off by a cession of lands. At our trading houses too we mean to sell so low as merely to repay cost and charges so as neither to lessen or enlarge our capital. This is what private traders cannot do, for they must gain; they will consequently retire from the competition, and we shall thus get clear of this pest without giving offence or umbrage to the Indians. In this way our settlements will gradually circumscribe and approach the Indians, and they will in time either incorporate with us as citizens of the United States or remove beyond the Missisipi. The former is certainly the termination of their history most happy for themselves. But in the whole course of this, it is essential to cultivate their love. As to their fear, we presume that our strength and their weakness is now so visible that they must see we have only to shut our hand to crush them, and that all our liberalities to them proceed from motives of pure humanity only. Should any tribe be fool-hardy enough to take up the hatchet at any time, the seizing the whole country of that tribe and driving them across the Missisipi, as the only condition of peace, would be an example to others, and a furtherance of our final consolidation.

Combined with these views, and to be prepared against the occupation of Louisiana by a powerful and enterprising people, it is important that setting less value on interior extension of purchases from the Indians, we bend our whole views to the purchase and settlement of the country on the Missisipi from it's mouth to it's Northern regions, that we may be able to present as strong a front on our Western as on our Eastern border, and plant on the Missisipi itself the means of it's own defence. We now own from 31 to the Yazoo, and hope this summer to purchase what belongs to the Choctaws from the Yazoo up to their boundary, supposed to be about opposite the mouth of Acanza [Arkansas]. We wish at the same time to begin in your quarter, for which there is at present a favorable opening.

⁷ The full letter can be found here: <http://www.in.gov/history/2573.htm>

The Caskias [Kaskaskias] being extinct, we are entitled to their country by our paramount sovereignty. The Peorias we understand have all been driven off from their county, and we might claim it in the same way; but as we understand there is one chief remaining, who would, as the survivor of the tribe, sell the right, it will be better to give him such terms as will make him easy for life, and take a conveyance from him. The Kaskaskias being reduced to a few families, I presume we may purchase their whole country for what would place every individual of them at his ease, and be a small price to us: say by laying off for each family wherever they would chuse it as much rich land as they could cultivate, adjacent to each other, inclosing the whole in a single fence, and giving them such an annuity in money or goods for ever as would place them in happiness; and we might take them also under the protection of the United States. Thus possessed of the rights of these three tribes, we should proceed to the settling their boundaries with the Poutawatamies and Kickapoos; claiming all doubtful territory but paying them a price for the relinquishment of their concurrent claims, and even prevailing on them if possible to cede at a price such of their own unquestioned territory as would give us a convenient Northern boundary...Of the means however of obtaining what we wish you will be the best judge; and I have given you this view of the system which we suppose will best promote the interests of the Indians and of ourselves, and finally consolidate our whole country into one nation only, that you may be enabled the better to adapt your means to the object. For this purpose we have given you a general commission for treating. The crisis is pressing. Whatever can now be obtained, must be obtained quickly. The occupation of New Orleans, hourly expected, by the French, is already felt like a light breeze by the Indians. You know the sentiments they entertain of that nation. Under the hope of their protection, they will immediately stiffen against cessions of land to us. We had better therefore do at once what can now be done. I must repeat that this letter is to be considered as private and friendly, and not to controul any particular instructions which you may receive through an official channel. You will also perceive how sacredly it must be kept within your own breast, and especially how improper to be understood by the Indians. [For] their interests and their tranquility it is best they should see only the present [stat]e of their history. I pray you to accept assurances of my esteem and consideration.

Jefferson and Indians – A timeline

1776

Jefferson calls for the removal of the Cherokee Nation of Georgia because they fought for the British during the Revolution.

1795

A group of Indians suffer a crushing defeat at Fallen Timbers in Ohio. They are forced to sign a treaty that cedes large segments of their lands in the Northwest Territory to whites.

1802

U.S. acquires the Louisiana Purchase from France, thereby obtaining the rights to vast amounts of land inhabited by Indians.

1803

In a letter to General Andrew Jackson, Jefferson wrote, “In keeping agents among the Indians, two objects are principally in view: 1. The preservation of peace; 2. The obtaining of lands”

1803

Lewis and Clark expedition to the Pacific Northwest, which Jefferson sends to the Columbia River, makes the first American contact with many northern tribes. Lewis and Clark was Jefferson’s 5th attempt at such an expedition.

1803

Jefferson urges a policy of giving food, money, munitions and aid to Indian tribes living west of the Mississippi “with a view to render a situation there desirable to those they left behind” become a “means of tempting all our Indians on the east....to remove to the west.”

1803-1808

Jefferson urges the use of debt in getting Indians to sell their lands.

1806

Jefferson, informing the Osage chiefs about the shift in discovery powers from Spain to France and then to the United States in the Louisiana territory, tells them, “We hope you will have no cause to regret the change.”

1807

Jefferson wrote in a letter: “we should extend to them the blessings of civilized life, and prepare their minds for becoming useful members of the American family.”

1813

When the Creek Nation fights against U.S. encroachments on their land, Jefferson stated that their “barbarities justified extermination.”

LESSON THREE – REDEFINING INDIAN TRIBES

Overview: Students will examine the impact of the War of 1812 on American Indians then examine three Supreme Court cases that were influential in defining the rights and roles of Indians and tribal governments.

Time: 90 minutes

Procedure

Review predictions 10 minutes

- Students should return to the groups they worked with during the first day of the unit to create predictions. Return their predictions to them and ask them to review:
 - How accurate were your predictions about how the U.S. government would act?
 - How accurate were your predictions about the likely Indian response?

Review homework:..... 20 minutes

- In groups of four-five (they can stay in the prediction groups), ask students to discuss their reactions to the assigned reading. In groups where students have smartphones, they should open the article and share the main points of their responses to the article. If groups do not have smartphones, they should share their responses from memory.
- Ask students to discuss the following questions:
 - Given what Jefferson and Washington said and did regarding the Indians, do you think Indians were justified in joining with the British during the War of 1812?
 - How do you think the United States will respond to Indian actions during the War of 1812?

Provide background 10 minutes

- Use a mini-lecture to explain the following:
 - Prior to the War of 1812, the federal government treated Indian tribes separately; rather than having an “Indian policy,” the government had a Cherokee policy, a Chickasaw policy, a Delaware policy and so on. The government negotiated many treaties with various tribes and made trade arrangements with each tribe individually.
 - After the War of 1812, this began to change. While the government continued to negotiate treaties directly with tribes, these treaties began to look more similar and were clearly all guided by the same policy objectives. The main objectives were:
 - Taking control of all land east of the Mississippi River and south of the Canadian border.
 - Consolidating trade routes into the western part of the continent so that the French, British and Spanish did not have access to the western fur trade.
 - Weakening Indian tribes so that they would not pose a significant threat to westward expansion.
 - “Civilizing” Indians, particularly eastern Indians, so that they would join U.S. society (though they were rarely welcome when they attempted to do so).

- After the War of 1812, there were not significant fights with Indian nations east of the Mississippi River.
- Debates in Congress began to focus less on how to deal with particular tribes and instead became oriented towards the “Indian question” or “Indian problem.”
- The Supreme Court played an important role in setting Indian policy in the 1820’s and 30’s, and these decisions shaped policy until the late 1800’s. These three cases are referred to in Indian law as the Marshall Trilogy.

Examine court cases 30 minutes

- Place students in groups of 3 or 4. Distribute summaries of the following court cases to students so that each group is looking at one case:
 - Johnson v. McIntosh, 1823 (Handout A)
 - Cherokee Nation v. Georgia, 1831 (Handout B)
 - Worcester v. Georgia, 1832 (Handout C)
- After reading about their case, students should discuss the questions at the bottom of their hand-out.
- After students have examined their case, create new groups of six where two students examined each case.
- Ask students to discuss the following questions:
 - How did these three cases impact Indian tribes?
 - Did Indians gain or lose authority? What authority did they gain or lose?
 - Did the federal government gain or lose authority? What authority did it gain or lose??

Provide context⁸ 10 minutes

- While the two Georgia cases were being heard in the Supreme Court, Congress was also taking up the question of Indian removal. Andrew Jackson supported the right of the state of Georgia (and of other states) to remove Indians living in their borders.
- The Supreme Court, however, said that only the federal government could make laws regarding the treatment of Indians and tribal lands (Worcester v. Georgia).
- Prior to that ruling, Congress passed the Indian Removal Act of 1830 (which Andrew Jackson had been calling for since he was elected).
- After the Worcester v. Georgia ruling, President Jackson essentially ignored the court, creating a situation in which two separate sets of laws were operating simultaneously.
- Because Jackson did not enforce the Supreme Court’s ruling, Georgia went ahead with the eviction of the Cherokee Indians.
- This eviction of over 15000 Cherokees is known as the Trail of Tears. Over a quarter of those evicted died before reaching Oklahoma.

⁸ For additional information to support this mini-lecture, see the Cherokee Indians’ website, www.cherokee.org, and its information on the Trail of Tears (under the About the Nation tab).

Homework and preparation for debate 10 minutes

- Give each student one of the three primary sources (attachments D, E, F).
- They are to read the document and use a document analysis tool (such as Handout C from the first lesson of this unit or one suggested in the endnotes of this unit).
- Students should then write a one paragraph response to each of the following questions (central questions of the unit):
 - How should we classify the actions of the founders towards Indians?
 - What responsibility do we bear in the present for atrocities committed by our nation in the past?

Facts of the Case:

In 1775, Thomas Johnson and other British citizens purchased land in the Northwest Territory, then in the colony of Virginia, from members of the Piankeshaw Indian tribes. This purchase was arranged under a 1763 proclamation by the King of England. Thomas Johnson left this land to his heirs. In 1818, William M'Intosh¹⁰ purchased from Congress, 11,000 acres of the land originally purchased by Johnson. Upon realizing the competing claims on the land, Johnson's heirs sued M'Intosh in the United States District Court for the District of Illinois to recover the land. The District Court ruled for M'Intosh, reasoning that M'Intosh's title was valid since it was granted by Congress. Johnson's heirs appealed to the Supreme Court.

Question before the Court:

Was M'Intosh's claim to the disputed land superior to Johnson's claim because M'Intosh's claim was the result of Congressional action?

Conclusion:

Yes. In a unanimous decision, the Court held M'Intosh's claim to have precedent over Johnson's, affirming the District Court. In an opinion authored by Chief Justice John Marshall, the Court established that European settlers that discovered the land had the "sole right of acquiring the soil from the natives." Through the Revolutionary War and the treaties that followed, the United States earned the "exclusive right...to extinguish [the Indians'] title, and to grant the soil." The Indians themselves did not have the right to sell property to individuals. M'Intosh's claim, which was derived from Congress, was superior to Johnson's claim, which was derived from the non-existent right of Indians to sell their land.

1. What are the major facts of this case?
2. How will the ruling likely impact American Indians?
3. Does this ruling increase or decrease federal authority over Indian tribes?
4. How, if at all, does this ruling relate to the Doctrine of Discovery?

⁹ Adapted from the Oyez Project at Chicago-Kent College of Law (http://www.oyez.org/cases/1792-1850/1822/1822_0)

¹⁰ Court documents from the era spell his last name M'Intosh; in modern writing, it is typically changed to the more familiar McIntosh

Facts of the Case:

In 1791, a federal treaty granted the Cherokee Indians land within the boundaries of Georgia. In the 1820s (after the discovery of gold on Cherokee property) the state began to enforce strict laws which were meant to assert control over the Indians and their land. The Cherokee Nation filed suit requesting the Supreme Court of the United States to order the state to stop enforcing these laws. The Cherokee Nation argued that the Georgia laws were intended to “annihilate the Cherokees as a political society.” The Georgia officials refused to participate in the suit. Meanwhile, Georgia’s governor and legislature executed a Cherokee Indian, Corn Tassel, under the laws being contested by the Cherokee Nation. This was in direct defiance of the Supreme Court’s notice to the state of Georgia that it was looking into the conviction of Corn Tassel, thus furthering the problem.

Question before the Court:

Could the state of Georgia could enforce its state laws upon the Cherokee nation and deny the constitutional jurisdiction of the Supreme Court? Was the Cherokee nation a foreign nation?

Conclusion:

The Supreme Court denied the Cherokees request reasoning it had no jurisdiction to decide such a case. Chief Justice Marshall wrote, “this is not the tribunal that can redress the past or prevent the future.” The reasoning was based on the idea that the Cherokee nation was not a true foreign nation, but a domestic dependent nation. The state of Georgia was able to continue to enforce their laws, which were aimed at removing the Cherokee Nation from Georgia.

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2. How will the ruling likely impact American Indians?
3. Does this ruling increase or decrease federal authority over Indian tribes?
4. How, if at all, does this ruling relate to the Doctrine of Discovery?

¹¹ Adapted from information provided by Tuoro Law School (<http://tlc-patch.tourolaw.edu/patch/CaseSummary.asp>) and other sources

Facts of the Case:

A Georgia law required all whites living in Cherokee Indian Territory to obtain a state license. Two missionaries refused to obey the state law, were arrested, convicted, and sentenced to four years of hard labor for violating the state licensing law. They appealed their case to the Supreme Court of the United States arguing that the laws they had been convicted under were unconstitutional because states have no power or authority to pass laws concerning sovereign Indian Nations.

Question before the Court:

Do states have the power to pass laws regarding Indian nations?

Conclusion:

The Court ruled that the State had no power to pass any laws affecting the Cherokees because Federal jurisdiction over the Cherokees was exclusive. The missionaries' convictions were therefore reversed. This case led to much disagreement within the three branches of government. The President of the United States, Andrew Jackson, was rumored to have said that the Chief Justice has made his decision with this case, now let him enforce it. In what has been described as a political outcome to this case, the state of Georgia would, in time, pardon the two missionaries.

1. What are the major facts of this case?
2. How will the ruling likely impact American Indians?
3. Does this ruling increase or decrease federal authority over Indian tribes?
4. How, if at all, does this ruling relate to the Doctrine of Discovery?

¹² Compiled from information gathered from multiple sources, including the Oyez Project, Tuoro Law School, and *America, Discovered and Conquered: Thomas Jefferson, Lewis and Clark, and Manifest Destiny* by Robert J. Miller.

Letter from General Winfield Scott to all Cherokees remaining in Georgia (May 10, 1838)¹³

“Cherokees! The President of the United States has sent me with a powerful army, to cause you, in obedience to the treaty of 1835, to join that part of your people who have already established in prosperity on the other side of the Mississippi. Unhappily, the two years which were allowed for the purpose, you have suffered to pass away without following, and without making any preparation to follow; and now, or by the time that this solemn address shall reach your distant settlements, the emigration must be commenced in haste, but I hope without disorder. I have no power, by granting a farther delay, to correct the error that you have committed. The full moon of May is already on the wane; and before another shall have passed away, every Cherokee man, woman and child in those states must be in motion to join their brethren in the far West.

My friends! This is no sudden determination on the part of the President, whom you and I must now obey. By the treaty, the emigration was to have been completed on or before the 23rd of this month; and the President has constantly kept you warned, during the two years allowed, through all his officers and agents in this country, that the treaty would be enforced.

I am come to carry out that determination. My troops already occupy many positions in the country that you are to abandon, and thousands and thousands are approaching from every quarter, to render resistance and escape alike hopeless. All those troops, regular and militia, are your friends. Receive them and confide in them as such. Obey them when they tell you that you can remain no longer in this country. Soldiers are as kind-hearted as brave, and the desire of every one of us is to execute our painful duty in mercy. We are commanded by the President to act towards you in that spirit, and much is also the wish of the whole people of America.

Chiefs, head-men and warriors! Will you then, by resistance, compel us to resort to arms? God forbid! Or will you, by flight, seek to hid yourselves in mountains and forests, and thus oblige us to hunt you down? Remember that, in pursuit, it may be impossible to avoid conflicts. The blood of the white man or the blood of the red man may be spilt, and, if spilt, however accidentally, it may be impossible for the discreet and humane among you, or among us, to prevent a general war and carnage. Think of this, my Cherokee brethren! I am an old warrior, and have been present at many a scene of slaughter, but spare me, I beseech you, the horror of witnessing the destruction of the Cherokees.

Do not, I invite you, even wait for the close approach of the troops; but make such preparations for emigration as you can and hasten to this place, to Ross’s Landing or to Gunter’s Landing, where you all will be received in kindness by officers selected for the purpose. You will find food for all and clothing for the destitute at either of those places, and thence at your ease and in comfort be transported to your new homes, according to the terms of the treaty.

This is the address of a warrior to warriors. May his entreaties be kindly received and may the God of both prosper the Americans and Cherokees and preserve them long in peace and friendship with each other!

¹³ Source: Edward J. Cashin (ed.), *A Wilderness Still The Cradle of Nature: Frontier Georgia* (Savannah: Beehive Press, 1994), pp. 137-38., retrieved from www.cherokee.org

The undersigned in behalf of a long meeting, composed of the Citizens of Turkey Town, take the liberty of addressing you through the public journal of our Nation, on the subject of emigration to the west, to which the United States have their attention. The view we take of this measure, and the sentiments will take occasion to express, will be simple and plain, founded on truth as handed down to us by our ancestors. Limited in knowledge and possessing but a small share of experience, our apology in this attempt is in the interest we feel in everything that concerns the well being of our Nation. Our ancestors settled in this place at a period not now in our recollection. Here was sacred ground, and on this spot the Council-fire blazed with lustre, and here were the dwellings and seats of Kings and our beloved Chief!-- We speak of days when we lived in the hunter's state, and when our feet were swift in the track of game.

General Washington, after having smoked the pipe of peace with our Chiefs, sent us word to discontinued the pursuit of vagrant habits and adopt those more substantial and become cultivators of the soil. His successors pursued, in regard to us, the same policy, and sent to us the same Talk from time to time -- that as game was precarious and liable to destruction, the bosom of the earth afforded means of subsistence, both infinite and inexhaustible. But time was not allowed us to experience the blessing of putting this recommendation to practice by interested wicked white men, who lived near to us, and who esteemed us a nuisance, because the Great Spirit had placed our habitations in a desirable County, and because they themselves had crossed the Big Water (the Ocean) and had become our neighbors. The bitter cup of adversity was filled to us on every side, by our enemies. Our safety was often endangered by intrigue and misrepresentation of our character to the General Government; and it was not mental or natural disability that opposed itself to our advancement in civilization, but obstacles place in our way to reach it.

The Indians were represented as incapable of learning the arts of civilized life, and at the same time treated in in most uncivil manner. They were savagely revengeful, because they had the spirit to resent the murder of their friends & relations. They were rogues and thieves, because, not knowing the mother of legal processes to obtain justice, and if they did, their oath decreed to non-availing, they retaliated in the same way. They were drunkards, because intoxicating liquors were introduced among them. They were disinclined to the study of books, because of some few superficially educated under bad instruction had betrayed their countrymen and had set bad examples. They were stubborn, because they loved the land that had been endeared to them as an inheritance of their fathers. This flood of inconsistency raged with violence over the heads of our Chiefs & swept with its waves, from under their feet, the earth, for which they had struggled for ages past. In this way our territory diminished, and our inheritance was circumscribed to its present bounds.

Our Chief displaced wonderful forbearance in this trials, and maintained the faith of treaties, with the United States, whose chief magistrate also exercised the spirit of paternal affection, and adhered to his engagements as pledged to us by treaties. With caution have we passed the strong shoals of opposition, and its mingled cruelties to the light of civilization. The sun has arise in our moral horizon is fast advancing to its meridian. We hail it with joy! Although a part of our nation have detached themselves from us, to follow the chase, in the western wilds, and we are invited to retrograde to

¹⁴ Printed in a Cherokee newspaper, the *Cherokee Phoenix and Indians' Advocate*, volume 1, number 51. Retrieved from www.cherokee.org

savageism, with strong talks and inducements as bribes our appetite for our present enjoyments if is too strong to relinquish them because we have tasted their sweets and are contented.

We have noticed the ancient ground of complaint founded on the ignorance of our ancestors and their fondness of the chase, and for the purposes of agriculture as having in possession too much land for their numbers. What is the language of objection at this time? The case is reversed, and we are now assaulted with menaces of expulsion because we have unexpectedly become civilized and because we have formed and organized a constitutional government. It is too much for us now to be honest and virtuous and industrious because then are we capable of aspiring to the calls of Christians and Politicians which renders our attachment to the soil more strong and therefore more difficult to defend us of the possession. Disappointment inflicts on the mind of the avaricious whiteman; the mortification of delay, or the probability of the intended victim's escape from the snares laid for its destruction. It remains for us in this situation of the question, to act as free agents in choosing for ourselves to walk in the straight forward path of the impartial recommendations of Washington, Jefferson, Madison, and Monroe, as most congenial to our feelings and knowledge of the means calculated to promote our happiness. We hereby individually set our faces to the rising sun and turn our backs to its setting. As our ancestors revered the sepulchral monuments of the noble dead, we cherish the sacred of their repose as they lie under hillocks of clay, that cover them from our sight.

If the country, to which we are directed to go is desirable and well watered, why is it so long a wilderness and a wasteland and uninhabited by respectable white people whose enterprise ere this, would have attended them to monopolize it from the poor and unfortunate of their fellow citizens as they have hitherto done? From correct information we have formed a bad opinion of the western country beyond the Mississippi. But if report was favorable to the fertility of the soil, if the running streams were as transparent as crystal, and silver fish abounded in their element in profusion we should still adhere to the purposes of spending the remnant of our lives on the soil that gave us birth and rendered deer from the nourishment we receive from its bosom.

We take the liberty of acknowledging our obligations to Major Ridge for his attendance at our meeting and for an eloquent speech suitable for the occasion which he delivered at our request.

It is well known that for a number of years past we have been harassed by a series of vexations, which it is deemed unnecessary to recite in detail, but the evidence of which our delegation will be prepared to furnish. With a view to bringing our troubles to a close, a delegation was appointed on the 23rd of October, 1835, by the General Council of the nation, clothed with full powers to enter into arrangements with the Government of the United States, for the final adjustment of all our existing difficulties. The delegation failing to effect an arrangement with the United States commissioner, then in the nation, proceeded, agreeably to their instructions in that case, to Washington City, for the purpose of negotiating a treaty with the authorities of the United States.

After the departure of the Delegation, a contract was made by the Rev. John F. Schermerhorn, and certain individual Cherokees, purporting to be a "treaty, concluded at New Echota, in the State of Georgia, on the 29th day of December, 1835, by General William Carroll and John F. Schermerhorn, commissioners on the part of the United States, and the chiefs, headmen, and people of the Cherokee tribes of Indians." A spurious Delegation, in violation of a special injunction of the general council of the nation, proceeded to Washington City with this pretended treaty, and by false and fraudulent representations supplanted in the favor of the Government the legal and accredited Delegation of the Cherokee people, and obtained for this instrument, after making important alterations in its provisions, the recognition of the United States Government. And now it is presented to us as a treaty, ratified by the Senate, and approved by the President [Andrew Jackson], and our acquiescence in its requirements demanded, under the sanction of the displeasure of the United States, and the threat of summary compulsion, in case of refusal. It comes to us, not through our legitimate authorities, the known and usual medium of communication between the Government of the United States and our nation, but through the agency of a complication of powers, civil and military.

By the stipulations of this instrument, we are despoiled of our private possessions, the indefeasible property of individuals. We are stripped of every attribute of freedom and eligibility for legal self-defence. Our property may be plundered before our eyes; violence may be committed on our persons; even our lives may be taken away, and there is none to regard our complaints. We are denationalized; we are disfranchised. We are deprived of membership in the human family! We have neither land nor home, nor resting place that can be called our own. And this is effected by the provisions of a compact which assumes the venerated, the sacred appellation of treaty.

We are overwhelmed! Our hearts are sickened, our utterance is paralyzed, when we reflect on the condition in which we are placed, by the audacious practices of unprincipled men, who have managed their stratagems with so much dexterity as to impose on the Government of the United States, in the face of our earnest, solemn, and reiterated protestations.

The instrument in question is not the act of our Nation; we are not parties to its covenants; it has not received the sanction of our people. The makers of it sustain no office nor appointment in our Nation, under the designation of Chiefs, Head men, or any other title, by which they hold, or could acquire, authority to assume the reins of Government, and to make bargain and sale of our rights, our pos-

¹⁵ Source: The Papers of Chief John Ross, vol 1, 1807-1839, Norman OK, retrieved from www.cherokee.org

sessions, and our common country. And we are constrained solemnly to declare, that we cannot but contemplate the enforcement of the stipulations of this instrument on us, against our consent, as an act of injustice and oppression, which, we are well persuaded, can never knowingly be countenanced by the Government and people of the United States; nor can we believe it to be the design of these honorable and high-minded individuals, who stand at the head of the Govt., to bind a whole Nation, by the acts of a few unauthorized individuals. And, therefore, we, the parties to be affected by the result, appeal with confidence to the justice, the magnanimity, the compassion, of your honorable bodies, against the enforcement, on us, of the provisions of a compact, in the formation of which we have had no agency.

LESSON FOUR – DEBATING RESPONSIBILITY

Overview: After briefly reviewing the readings assigned for homework, students will prepare for and engage in a debate, drawing on resources presented during the course of the unit, that focuses on the responsibilities, if any, that those of us living in the present bear for the actions of previous generations of Americans. Students will then reflect on the debate and on the unit as a whole.

Time: 90 minutes

Procedure

Review assigned readings..... 15 minutes

- Put students in groups of three where each student read a different document for homework (Handouts D, E, and F from Lesson Three in this unit).
- Ask each student to share the contents of his or her document.
- Students should then share their responses to two of the unit's three central questions (the two questions students were assigned to respond to for homework).

Set up debate 15 minutes

- Explain to students that they will engage in a debate about what debt (not necessarily monetary), if any, the current generation of Americans owes American Indians in recompense for actions of the Founding generations of Americans. Students will also discuss how this unit has informed their views or understanding of the Founders.
- Pose the question that will drive the debate:
 - Does the current generation of Americans bear some responsibility for the actions of earlier generations of Americans?
- Before students respond to this central question, they should consider the following:
 - The "responsibility" does not have to be accounted for in terms of money.
 - Do they believe that the U.S. government behaved inappropriately or unjustly towards American Indians? By what standards? Modern standards or the standards of the times?
 - Are current Americans benefitting from the actions of earlier generations of Americans?
 - Should these policies of the past influence present-day debates over future policies?
- Students should respond to each of these questions individually (in writing), then students should respond in 1-2 sentences to the debate question.

Student debate prep..... 15 minutes

- Separate students into two teams based on their responses to the debate question. If the teams are uneven, considering asking some students from the more popular position to join the other team. Identify 3-5 students to serve as a panel of judges. This can be used as an opportunity to even out the debate teams.
- Give students time to prepare for the debate. Students should make use of all the readings to respond to the debate question.

- Work with the judges to develop questions that will move the debate forward. They should have at least three questions ready to go, and the questions should be crafted so that both teams are able to respond. Ask the judges to appoint a chairperson who will run the debate. The chairperson should keep track of time (or designate a fellow judge to be timekeeper). Other judges can still ask questions, the chair is merely responsible for keeping the debate moving.
- Five minutes before beginning the debate, alert students to the debate's format (see below for one possible example) so that they may begin final preparations. (NOTE: Other debate formats, such as a fishbowl debate, can work well for this lesson.) Before the debate begins, groups should decide who will make the opening and closing statements and in what order the students will take the floor.

Debate Structure

The debate will go in rounds;

In round one, each side will get a 2-minute opening statement;

Round two will open with one question from one of the judge; both sides will have 90 seconds to answer;

For each subsequent round, one judge will pose a question or challenge to which each side will have 90 seconds to respond;

Each side will get a 2-minute closing statement.

Hold the debate! 20 minutes

- Turn the debate over to the judges.
- Interject as necessary to keep the debate on track and moving forward.
- Let the judges know when they should move to the closing statements.

Reflect on the debate 10 minutes

- Put students into pairs so that each student is working with someone from the opposing side of the debate. (Keep the judges together; they have a separate task)
- Ask the pairs to discuss the following question:
 - Which of the opposing team's arguments was most difficult to refute?
 - What were the strongest points made by each side?
 - Was there an argument your team wanted to make but didn't get to?
 - How, if at all, did the debate change your views on the topic?
- Keep the judges in a group by themselves. Ask the judges to convene to determine:
 - Which side won the debate;
 - What the strongest arguments on each side of the debate were;
 - Which side best marshaled resources to make their case.
- Ask the judges to share their answers with the whole class.

Individual reflection 15 minutes

- For the remainder of class, students should work to answer the following question in essay form.
 - How, if at all, has this unit shaped your view of this nation's founding fathers? If it has not changed your views, how has it reinforced views you already held?
- Students should continue to work on their essay as homework.
- OPTION: This could be treated either as a short reflection piece or as a formal essay.

LESSON FIVE (OPTIONAL) – THE USEFULNESS OF MODERN STANDARDS

Overview: Students will apply modern standards for atrocities, developed by the international community, to assess the actions of the founding generation of Americans. Students will then debate the usefulness of modern standards when considering historical actions.

Time: 90 minutes

Note: This lesson is intended to follow up the four lesson unit included here. However, this lesson could easily be adapted for use at a different time in the course. For example, the criteria offered here could be used after studying Spanish actions in the Caribbean, Central and South America, or after examining European conquest of Africa.

Procedure

Introduce the lesson..... 5 minutes

- Explain to students that the class will be engaging in a discussion about how to classify the actions of the founders.
- We will use categories developed in the 20th century to frame the discussion. After our initial discussion, we will debate the usefulness of these criteria and categories in judging the actions of the founders.
- Finally, we will deliberate on the question: By what standards should the actions of the United States towards American Indians be judged?

Examine the categories..... 15 minutes

- Place students in groups of three. Give each group one copy of handout A (on genocide) and two copies of handout B (on other categories). One student should read handout A, one should read the front of B and one should read the back.
- Students should then share and compare the different definitions offered, considering questions such as:
 - How are these categories different from each other?
 - Is there overlap between the categories? In other words, could the same action be classified in multiple ways?
 - Are these definitions too vague to be useful?
- Alert students that they should be ready to begin applying these criteria in the next portion of the lesson; therefore, all students should thoroughly understand all criteria.

Apply the categories..... 20 minutes

- Combine groups of three to form groups of six. In these groups of six, students should discuss the following questions:
 - Do the actions of Thomas Jefferson examined during this unit meet the criteria of any of these categories?
 - Do the actions of Andrew Jackson examined during this unit meet the criteria of any of these categories?
 - Do the actions of the U.S. government examined during this unit meet the criteria of any of these categories?
 - If you answered yes to any of these questions, which category is most appropriate? If you answered no, why not?
- Let students know that they should choose a spokesperson to explain the position(s) of the group. It is fine if groups do not reach consensus; the spokesperson will need to explain all views present in the group.
- Ask each group to report out.

Debate 20 minutes

- Facilitate a debate among the various views present. The possible positions are:
 - The actions of the U.S. government towards American Indians...
 - Amount to genocide
 - Amount to crimes against humanity
 - Amount to ethnic cleansing
 - Amount to war crimes
 - Amount to none of these
- Ask students to form groups based on their position – for students who argued in their small groups that more than one category fit the actions of the founders, they must now pick one category.
- In their groups, students should discuss the strongest arguments for their position. Allow five to seven minutes of debate preparation.
- Hold a fishbowl debate where only one representative from each position may speak at a time.

Assess the usefulness of these criteria..... 25 minutes

- After the debate, return students to their initial groups of three. In these groups, students should discuss the following questions:
 - Is it appropriate (or just or fair) to evaluate the actions of the United States by criteria that had not been formally developed at the time the actions were committed?
 - How, if at all, are these criteria useful in thinking about the actions of the founding generation towards American Indians?
- Return to a whole class discussion and deliberate on these same questions. What are the arguments that the criteria are useful? What are the arguments that they are not?

- Pose the following open-ended question for students. If they need time to grapple with it prior to whole group discussion, conduct a think-pair-share:
 - o By what standards should we judge the actions of historical figures?

Remembrance 5 minutes

- Read students the following Adolf Hitler quote (from an AP report in 1939) and ask them to consider whether this quote influences their thinking about the above question:
 - I have issued the command – and I shall have anybody who utters but one word of criticism executed by firing squad – that our aim does not consist in reaching certain lines, but in the physical destruction of the enemy. Accordingly, I have placed my death head formations in readiness – for the present only in the east – with orders to them to send to death mercilessly and without compassion men, women, and children of Polish derivation and language. Only thus shall we gain the living space which we need. *Who, after all, speaks today of the annihilation of the Armenians?*
 - Italicized for emphasis – not in original.

Excerpts from the Convention on the Prevention and Punishment of the Crime of Genocide¹⁷

Convention on the Prevention and Punishment of the Crime of Genocide

Adopted by Resolution 260 (III) A of the United Nations General Assembly on 9 December 1948.

Article 1

The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

Article 2

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

Article 3

The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

¹⁷ Source: <http://legal.un.org/avl/ha/cppcg/cppcg.html>

Definition of Crimes Against Humanity

The definition of “crimes against humanity” has evolved over the past century, and overlaps to some extent with other atrocity crimes. The International Criminal Court (ICC) defined crimes against humanity for ICC proceedings. Article 7 of the Rome Statute of the ICC reads:

For the purpose of this Statute, ‘crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- Murder;
- Extermination;
- Enslavement;
- Deportation or forcible transfer of population;
- Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- Torture;
- Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- Enforced disappearance of persons;
- The crime of apartheid;
- Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Definition of Ethnic Cleansing

Unlike the crimes defined above in the Rome Statute, there is no formal legal definition of “ethnic cleansing,” though its scope is within the definitions of war crimes and crimes against humanity.

According to Gareth Evans’ *Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*, ethnic cleansing can include “outright killing, expulsion, acts of terror designed to encourage flight, and rape when perpetrated either as another form of terrorism or as a deliberate attempt to change the ethnic composition of the group in question.”

¹⁸ Source: Genocide Prevention Project (www.preventorprotect.org)

Definition of War Crimes

War crimes are defined in the statute that established the International Criminal Court. They include:

1. Grave breaches of the Geneva Conventions, such as:
 - Willful killing, or causing great suffering or serious injury to body or health
 - Torture or inhumane treatment
 - Unlawful wanton destruction or appropriation of property
 - Forcing a prisoner of war to serve in the forces of a hostile power
 - Depriving a prisoner of war of a fair trial
 - Unlawful deportation, confinement or transfer
 - Taking hostages
2. The following acts as part of an international conflict:
 - Directing attacks against civilians
 - Directing attacks against humanitarian workers or UN peacekeepers
 - Killing a surrendered combatant
 - Misusing a flag of truce
 - Settlement of occupied territory
 - Deportation of inhabitants of occupied territory
 - Using poison weapons
 - Using civilians as shields
 - Using child soldiers
3. The following acts as part of a non-international conflict:
 - Murder, cruel or degrading treatment and torture
 - Directing attacks against civilians, humanitarian workers or UN peacekeepers
 - Taking hostages
 - Summary execution
 - Pillage
 - Rape, sexual slavery, forced prostitution or forced pregnancy