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Federal Indian law in less than 30 Minutes

A Very Brief Summary

Tribal Nations in Montana:
A Handbook for
Legislators

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U.S. CONSTITUTION

- Article 1, Section 8 **of the Constitution** states that
 - "Congress shall have the power to regulate Commerce with foreign nations and among the several states, and with the Indian **tribes**".

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TRIBAL SOVEREIGNTY

- As sovereign entities, Indian nations have the inherent authority to govern themselves. This includes the power and/or right to:
 - determine their form of government,
 - define citizenship,
 - make and enforce laws through their own police force and courts,
 - Handle domestic relations,
 - collect taxes, and
 - regulate property use.

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Basic principles of federal Indian law

- **Territorial sovereignty:** Tribal authority on Indian land is inherent or conferred by federal action. It is not granted by the states in which Indian lands are located.
- **Plenary power doctrine:** Congress, and not the Executive Branch or Judicial Branch, has ultimate authority with regard to matters affecting the Indian tribes. Federal courts give greater deference to Congress on Indian matters than on other subjects.
- **Trust relationship:** The federal government has a "duty to protect" the tribes, due to obligations largely created by treaties as the supreme law of the land.

MARSHALL TRILOGY

- *Johnson v. M'Intosh* (1823), held that private citizens could not purchase lands from the original inhabitants, only the U.S. government could negotiate for the sale of tribal lands.
- *Cherokee Nation v. Georgia* (1831), holding the Cherokee nation was not a foreign nation but rather was a domestic dependent nation within the United States.
- *Worcester v. Georgia* (1832), articulates the relationship between tribes, states and the federal governments. The case held that State laws do not apply in Indian country and there is government to government relationship between the federal government and Indian nations.

1889 Montana Constitution

- Ordinance No. 1, Second Provision
- Disclaim all rights to lands owned or held by any Indian or Indian Tribe.
- Jurisdiction over these lands remains with the U.S. Congress

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1972 Montana Constitution

- ARTICLE I
- COMPACT WITH THE UNITED STATES All provisions of the enabling act of Congress (approved February 22, 1889, 25 Stat. 676), as amended and of Ordinance No. 1, appended to the Constitution of the state of Montana and approved February 22, 1889, including the agreement and declaration that all lands owned or held by any Indian or Indian tribes shall remain under the absolute jurisdiction and control of the congress of the United States, continue in full force and effect until revoked by the consent of the United States and the people of Montana.

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State-Tribal Cooperative Agreements Act

- 18-11-101 *et. seq.*
- Purpose:
 - promote cooperation between the state or a public agency and a sovereign tribal government in mutually beneficial activities and services.
 - prevent the possibility of dual taxation by governments while promoting state, local, and tribal economic development.

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