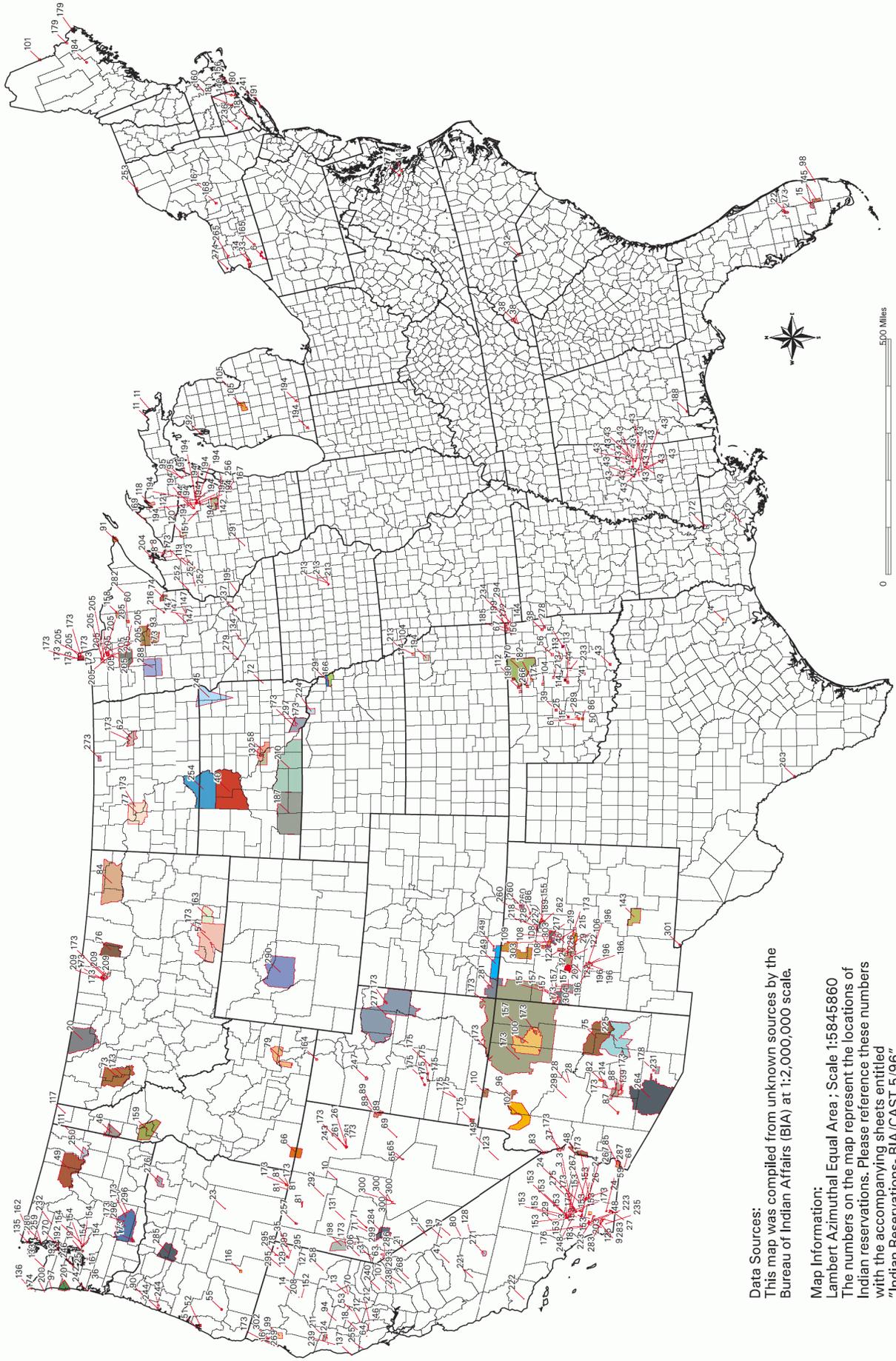


# Reservations and Reconstruction

**Dr. Walter C. Fleming**  
**Professor/Department Head**  
**Native American Studies**  
**Montana State University**

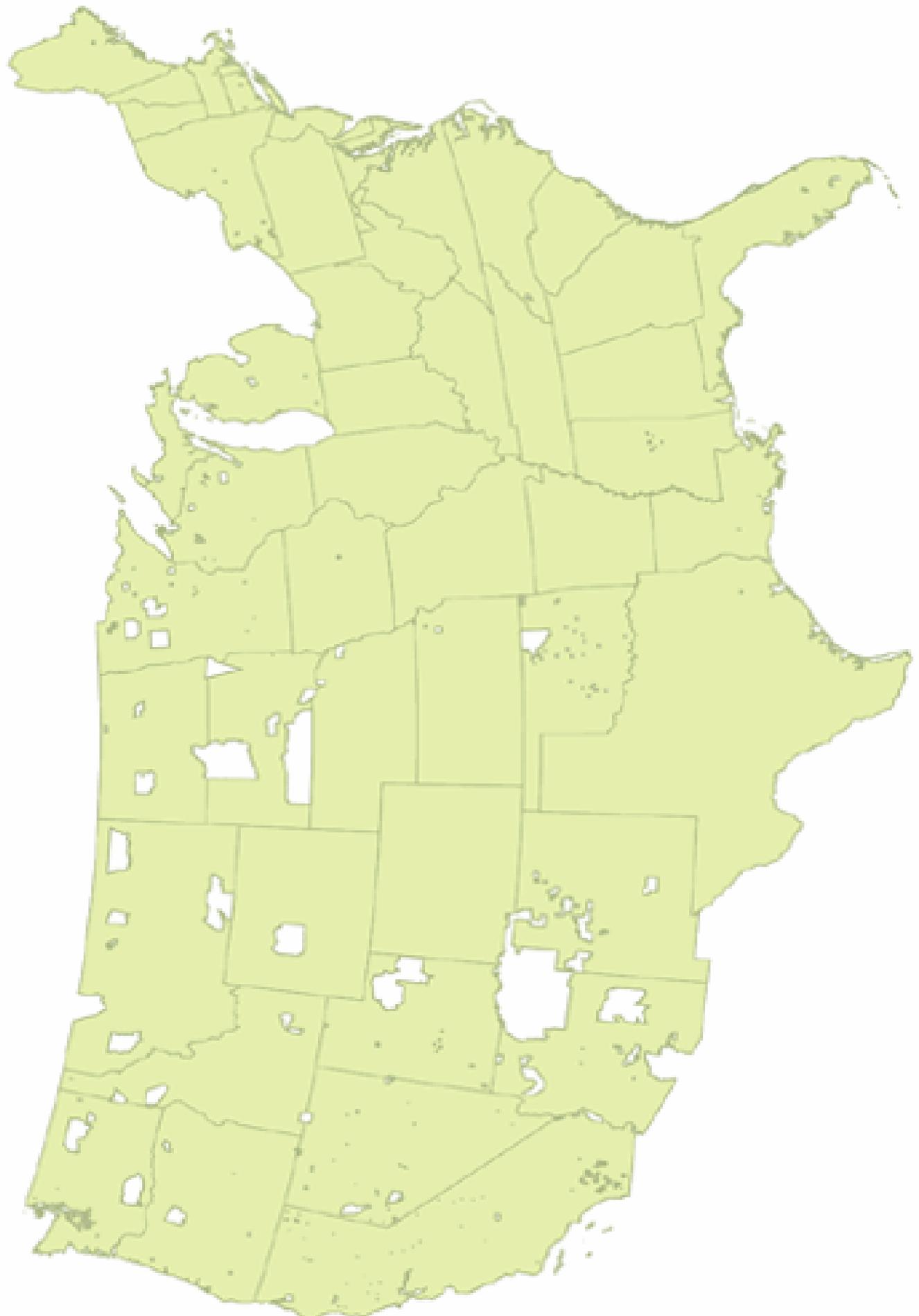


# Indian Reservations in the Continental United States



**Data Sources:**  
This map was compiled from unknown sources by the Bureau of Indian Affairs (BIA) at 1:2,000,000 scale.

**Map Information:**  
Lambert Azimuthal Equal Area ; Scale 1:5845860  
The numbers on the map represent the locations of Indian reservations. Please reference these numbers with the accompanying sheets entitled "Indian Reservations- BIA/CAST 5/96".



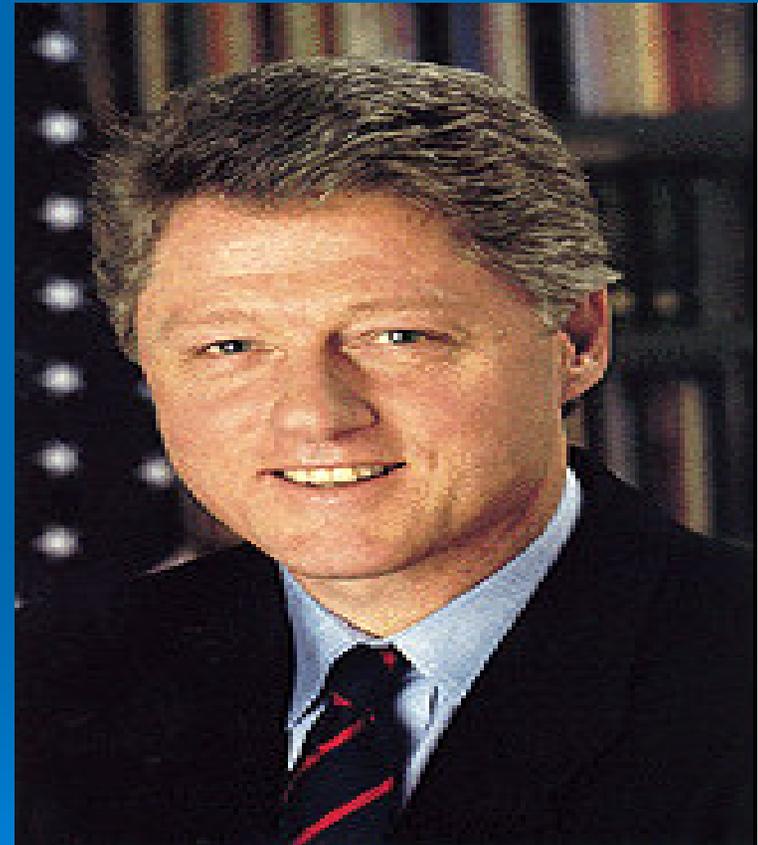
# Full Circle?

- Reservation
- Nation
  - Sovereignty
  - Government
  - Autonomy



# “Government to Government Relationship”

- November 6, 2000
- Executive Order 13084
- **“CONSULTATION AND COORDINATION WITH INDIAN TRIBAL GOVERNMENTS”**



President Bill Clinton  
(1993-2001)

# So, what does that mean?

- Sovereignty is the right of a nation or group of people to be self-governing.
- Indian tribes in the United States possess a form of divided sovereignty that resembles that held by states, counties, cities, and towns.
- Government-to-Government means that the Federal government recognizes the sovereignty of Tribal governments and works in conjunction with the Tribes on matters that affect both governments, including Federal programs and policies that affect Tribes.

June 7, 2006, electronic edition of the Findlay, Ohio *Courier*  
[http://www.thecourier.com/opinion/editorial/ar\\_ED\\_060706.asp](http://www.thecourier.com/opinion/editorial/ar_ED_060706.asp)

‘It’s long been apparent that the laws granting Native American tribes sovereign nation status were a huge mistake. Rather than improving the lives of native people, the laws have created a state of dependency in which the tribes are neither truly sovereign nor fully a part of the larger nation. They are essentially wards of the federal government. They receive some special privileges designed to advance their welfare or maintain their native culture, but for the most part, the laws have made dependent victims of people who should have been integrated into the larger culture...’

“We've foolishly allowed the Native Americans special tribal privileges, which has benefited neither them nor the nation as a whole.”



# What does sovereignty mean in the 21<sup>st</sup> Century?

"Tribal sovereignty means just that; it's sovereign. You're a -- you've been given sovereignty, and you're viewed as a sovereign entity."

August 6, 2004



President George W. Bush  
2001 - Present

# Sovereignty

- Rights to structure its government as it desires;
- To conduct foreign relations and trade with other nations;
- To define its own membership;
- To make and enforce its own laws;
- And to regulate its resources and property.

# The Road from Sovereign Nation to Reservation and Back

- In 1823, the Christian Doctrine of Discovery was quietly adopted into U.S. law by the Supreme Court in the celebrated case, JOHNSON v. McINTOSH.

# Nuts and Bolts

- chiefs of Illinois & Piankeshaw tribes-deeded away parcels of land to Johnson
- later these chiefs treated w/ U.S. & retained a reservation but gave other lands away
- U.S. then sold some of these traded lands to McIntosh --but Johnson claimed that some of this land was his by prior agreement

# Chief Justice Marshall

- Christian European nations had assumed “*ultimate dominion*” over the lands of America during the Age of Discovery
- Upon “*discovery*,” the Natives lost “*their rights to complete sovereignty, as independent nations,*”
- And only retained a right of “*occupancy*” in their lands.

# Up-shot

- Chief Justice Marshall ruled for the Court that Indian tribes could not convey land to private parties without the consent of the federal government.
- *“discovery gave title to the government, by whose subject, or by whose authority, it was made, against all other European governments.”*

# So, what changed?

- Natives failed to assimilate.
- Balance of power shifted after the American Revolution.

# Delaware Treaty 1778

- America's first Native treaty
- All offenses mutually forgiven.  
Peace and friendship perpetual.  
In case of war, each party to assist the other.  
United States to have free passage to forts or towns of their enemies.  
Such warriors as can be spared, to join the troops of the United States.  
Neither party to inflict punishment without an impartial trial.  
Nor protect criminal fugitives, etc.  
Agent to be appointed by the United States to trade with the Delaware Nation.  
United States guarantee to them all territorial rights as bounded by former treaties.  
To have a representation in Congress on certain conditions.

“...a just and necessary war,...”

- ARTICLE 3. And whereas the United States are engaged in a just and necessary war, in defence and support of life, liberty and independence, against the King of England and his adherents, and as said King is yet possessed of several posts and forts on the lakes and other places, the reduction of which is of great importance to the peace and security of the contracting parties, and as the most practicable way for the troops of the United States to some of the posts and forts is by passing through the country of the Delaware nation, the aforesaid deputies, on behalf of themselves and their nation, do hereby stipulate and agree to give a free passage through their country to the troops aforesaid, and the same to conduct by the nearest and best ways to the posts, forts or towns of the enemies of the United States, affording to said troops such supplies of corn, meat, horses, or whatever may be in their power for the accommodation of such troops, on the commanding officer's, &c. paying, or engaging to pay, the full value of whatever they can supply them with.

# Northwest Ordinance

- In 1787, the U.S. Congress passed the Northwest Ordinance, which contained a section titled the Utmost Good Faith Law, which asserted:
- *"The utmost good faith shall always be observed towards the Indians; their land and property shall never be taken from them without their consent; and in the property rights and liberty, they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall from time to time be made for preventing wrongs being done to them, and for preserving peace and friendship with them."*

# General Overview of Constitutional Inclusion

The Constitution gave final authority for Indian Affairs to Congress, although all three branches of the Federal Government have played significant roles in this sphere. Both specific and implied powers have been used to anchor federal authority for Indian Affairs in the Constitution. Specific power can be found in the Commerce Clause (Article I, Section 8); implied power has been found in treaty-making powers (Article II, Section 2); in the war powers (Article I, Section 8 and Article II, Section 2); in the ownership clause relating to territories (Article IV, Section 3) and, most widely, in the general welfare clause (Article II, Section 8).

# American Indians and the U.S. Constitution

## ➤ Article 1, section 8, clause 3

- *“The Congress shall have Power ...*
- *[Clause 3:] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes”*

# Cherokee Nation v. Georgia (1831)

- Gold discovered on Cherokee land
- Cherokee sued GA for disallowing their tribal courts and dividing up their lands--they had violated Cherokee sovereignty
- Motion for an injunction to prevent the execution of certain acts of the Legislature of the State of Georgia in the territory of the Cherokee Nation, on behalf of the Cherokee Nation

# Article 3, Section 2, Clause 1

*The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;-- between a State and Citizens of another State; -- between Citizens of different States, --between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.*

# Marshall's decision

- Tribes are “*domestic dependent*” nations
- “Their relations to the United States resemble that of a ward to his guardian.”
- Indian tribes were “*a distinct political society, separate from others, capable of managing [their] own affairs and governing [themselves].*”

# Worcester v. Georgia (1832)

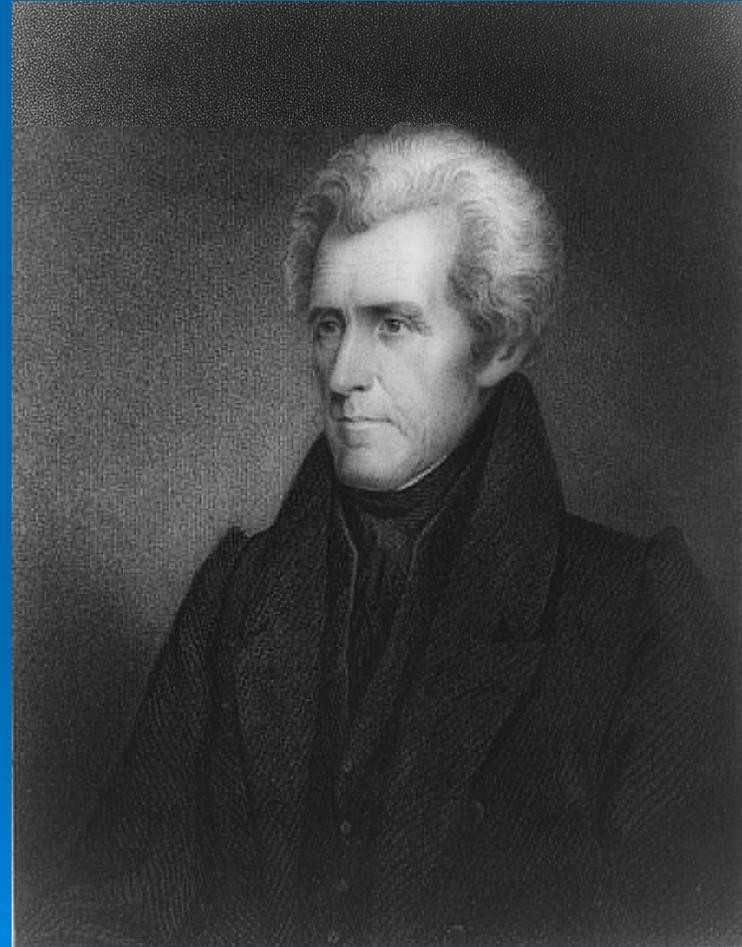
*“For residing, on the 15th July, 1831, in that part of the Cherokee Nation attached by the laws of the State of Georgia to that County, without a license or permit from the Governor of the State, or from anyone authorized to grant it, and without having taken the oath to support and defend the Constitution and laws of the State of Georgia, and uprightly to demean himself as a citizen thereof, contrary to the laws of the said State.”*

# Marshall's Decision

- Cherokee laws are the supreme law of the land (in *Cherokee Nation*.)
  - *Indian nations had always been considered distinct, independent political communities retaining their original natural rights as the undisputed possessors of the soil*
- The Court held that tribal sovereign powers were not relinquished when Indian tribes exchanged land for peace or protection.

# President Andrew Jackson

- *"Marshall has ruled, now let him enforce it!"*

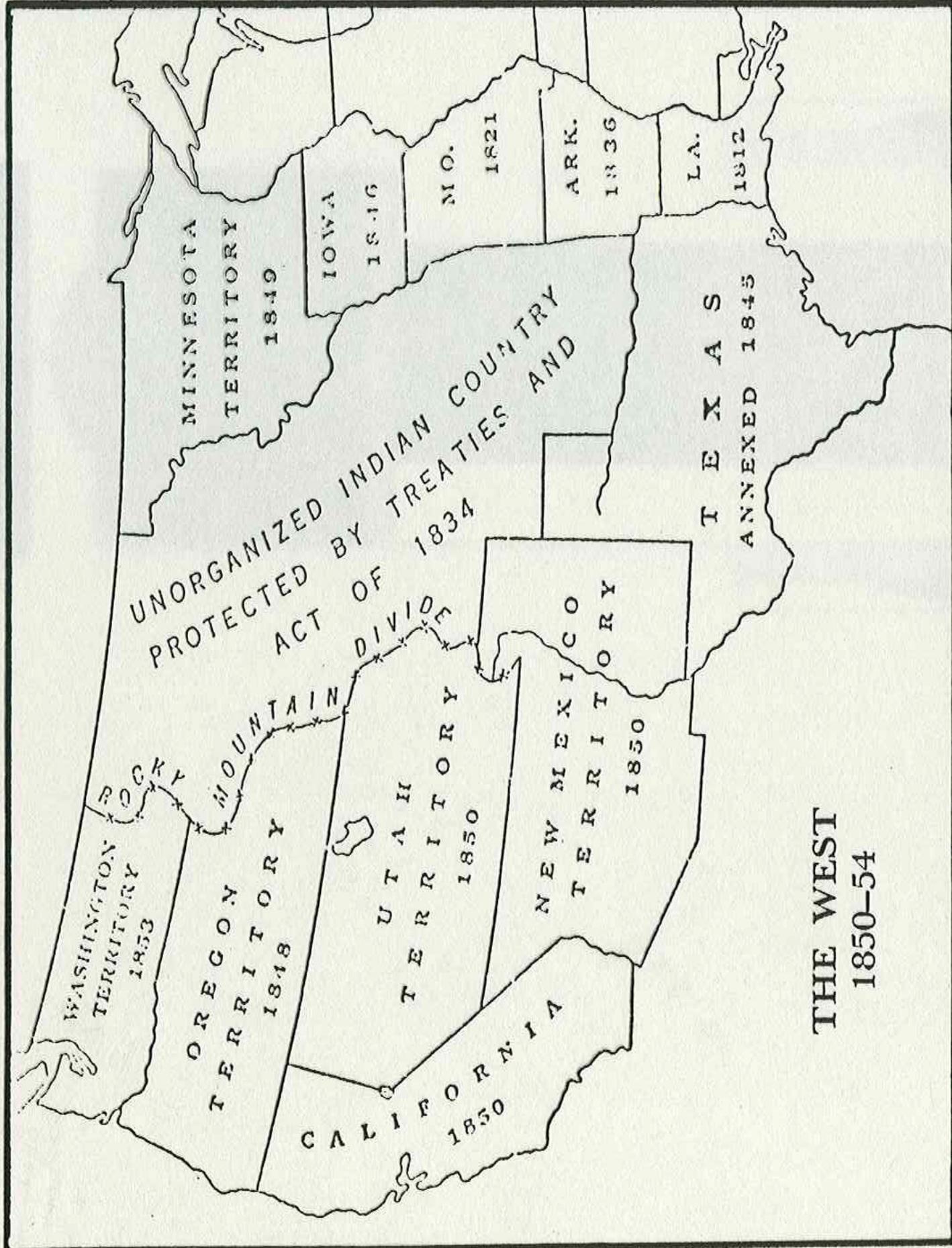


# Indian Removal

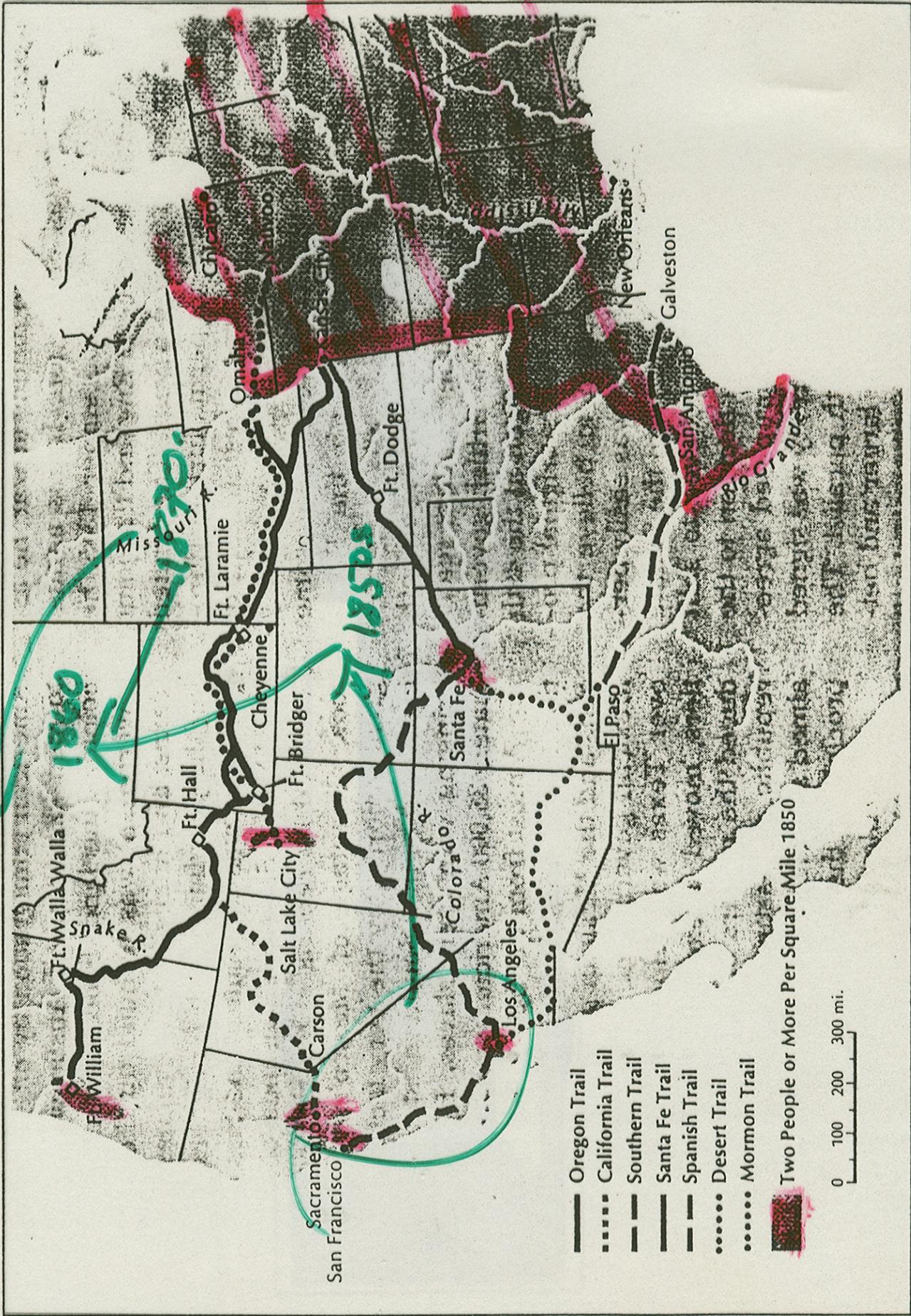


# Gold Rush changes life

- Great plains area (trans-Mississippi) used as a one large Indian reservation
- Gold Rush begins in 1849
  - white settlers migrate across plains
  - government attempts to establish “small reservations” to move Indians out of path of migration



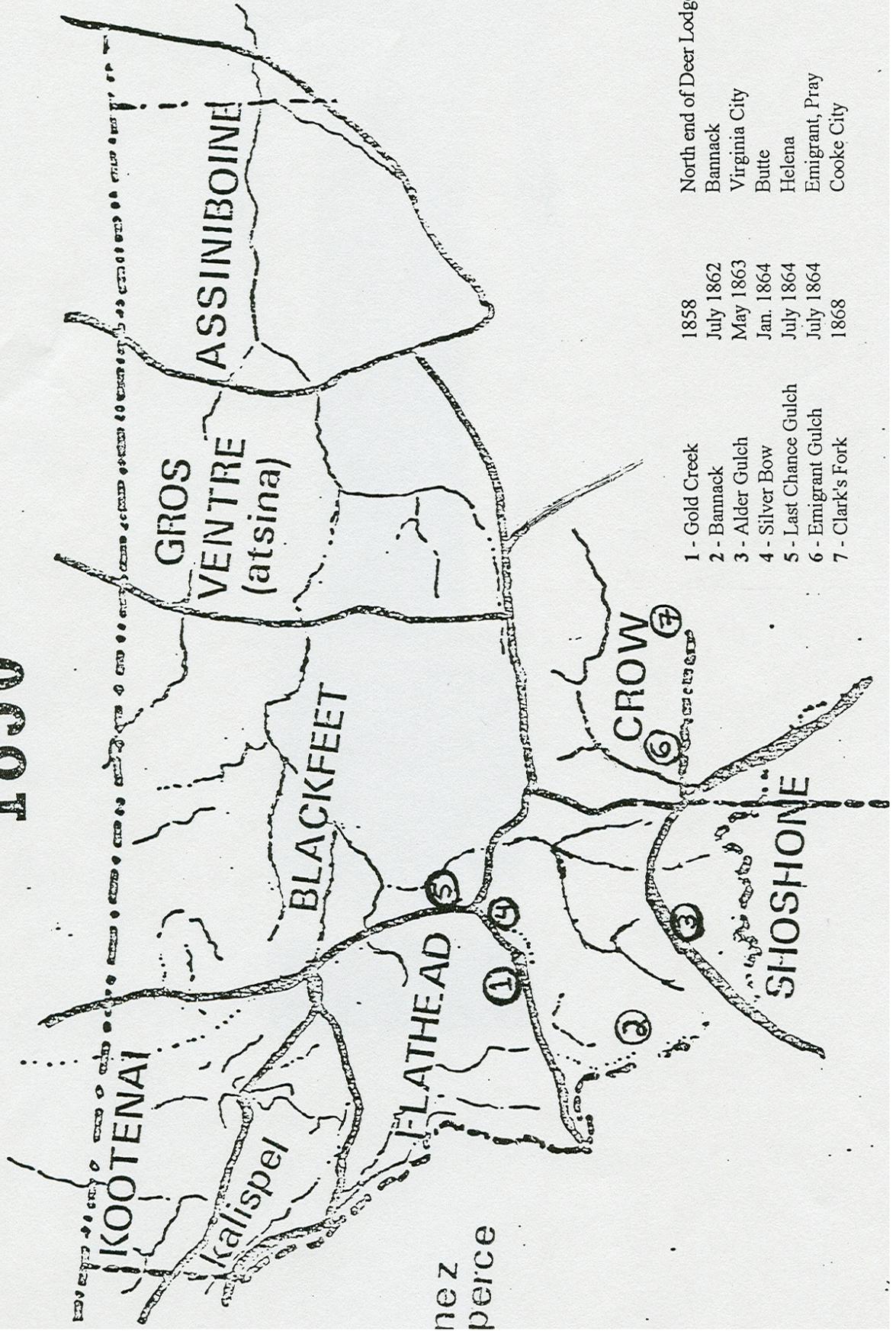
**THE WEST**  
 1850-54



**Western Trails**

# Montana Indian groups

## 1850



# Creation of reservations

The concept of reservations for the Plains Indian tribes derives from 1849, following the creation, in March of that year, of a Department of the Interior, to which the Indian Office was moved from its former spot in the War Department.

# Orlando Brown, Commissioner of Indian Affairs, 1849-50

- Reservations should be assigned to each tribes, which should consist of “a country adapted to agriculture, of limited extent and well-defined boundaries; within which all, with occasional exceptions, should be compelled constantly to remain until such time as their general improvement and good conduct may supersede the necessity of such restrictions.”

**Annual Report for 1850, Commissioner of Indian Affairs**

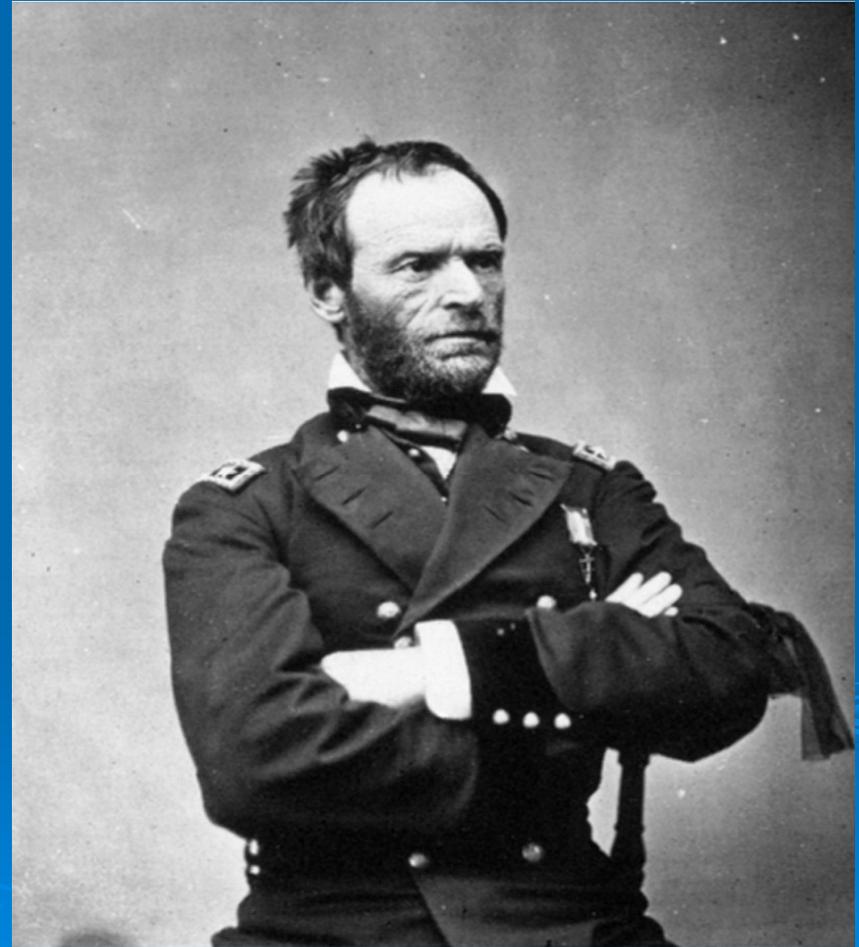
# 1851 Indian Appropriation Act

- February 27, 1851.
- \$100,000 to negotiate treaties with western tribes.
- The tribes were to be grouped on reservations and encouraged to resort to agriculture.

# Definition of an Indian Reservation

- "a parcel of land inhabited by Indians and surrounded by thieves"

General William  
Tecumseh Sherman



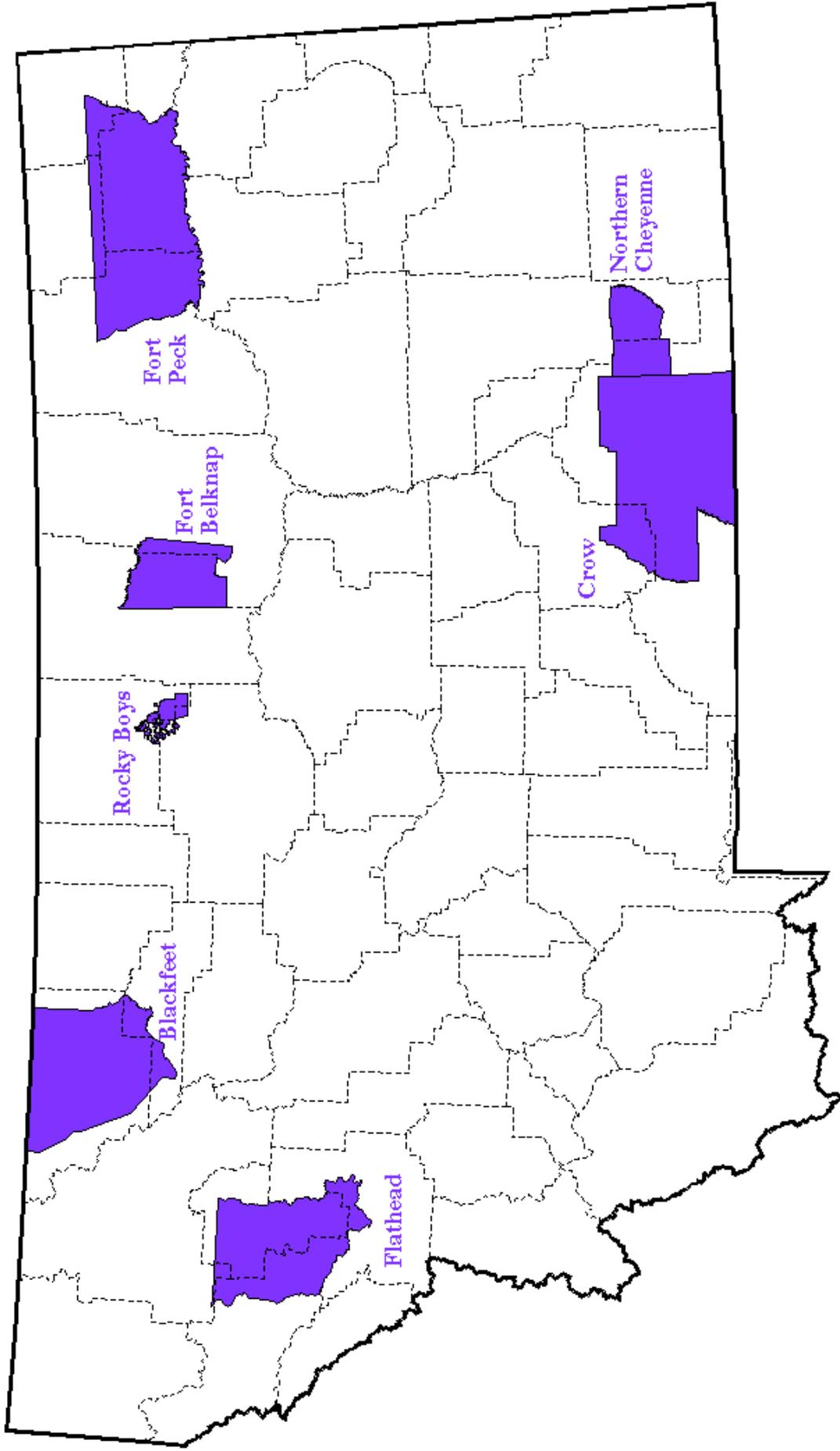
# What is an Indian Reservation?

An Indian reservation is land a tribe reserved for itself when it relinquished its other land areas to the U. S. through treaties. More recently, Congressional acts, Executive Orders and administrative acts have created reservations.

- Source: Internal Revenue Service, Department of the Treasury

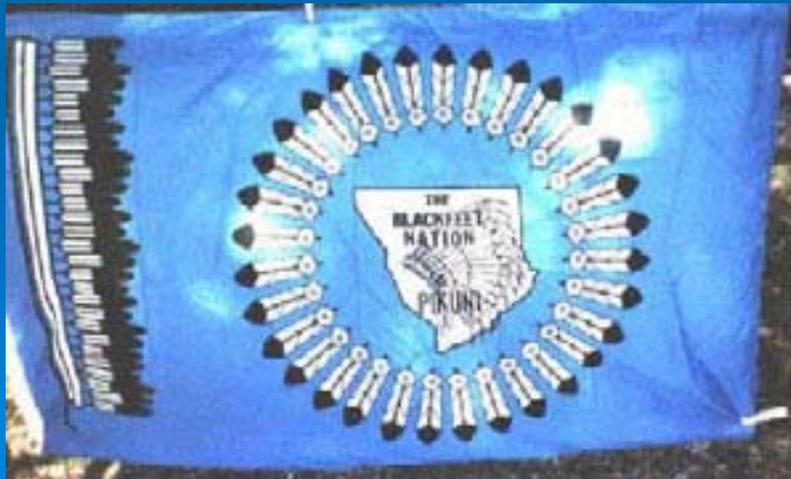
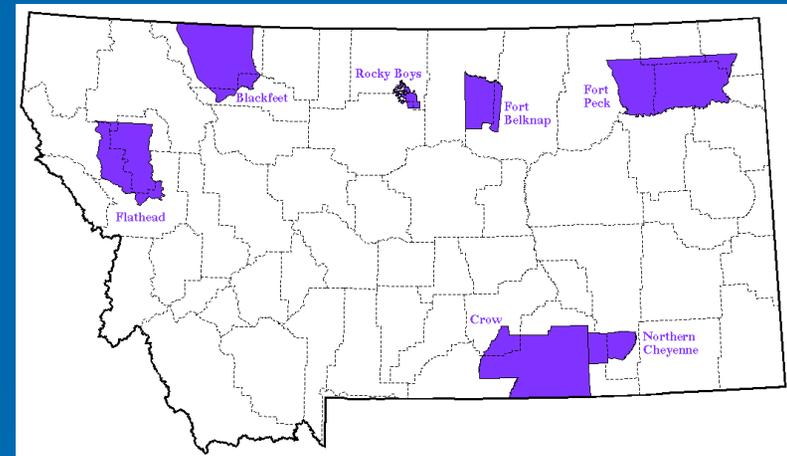
- There are approximately 275 Indian land areas in the U. S. administered as Indian reservations (reservations, pueblos, rancherias, communities, etc.). The largest is the Navajo Reservation of some 16 million acres of land in Arizona, New Mexico, and Utah. Many of the smaller reservations are less than 1,000 acres with the smallest less than 100 acres. On each reservation, the local governing authority is the tribal government.

- Approximately 56.2 million acres of land are held in trust by the United States for various Indian tribes and individuals. Much of this is reservation land; however, not all reservation land is trust land. On some reservations, a high percentage of land is owned and occupied by non-Indians. Some 140 reservations have entirely tribally owned land.



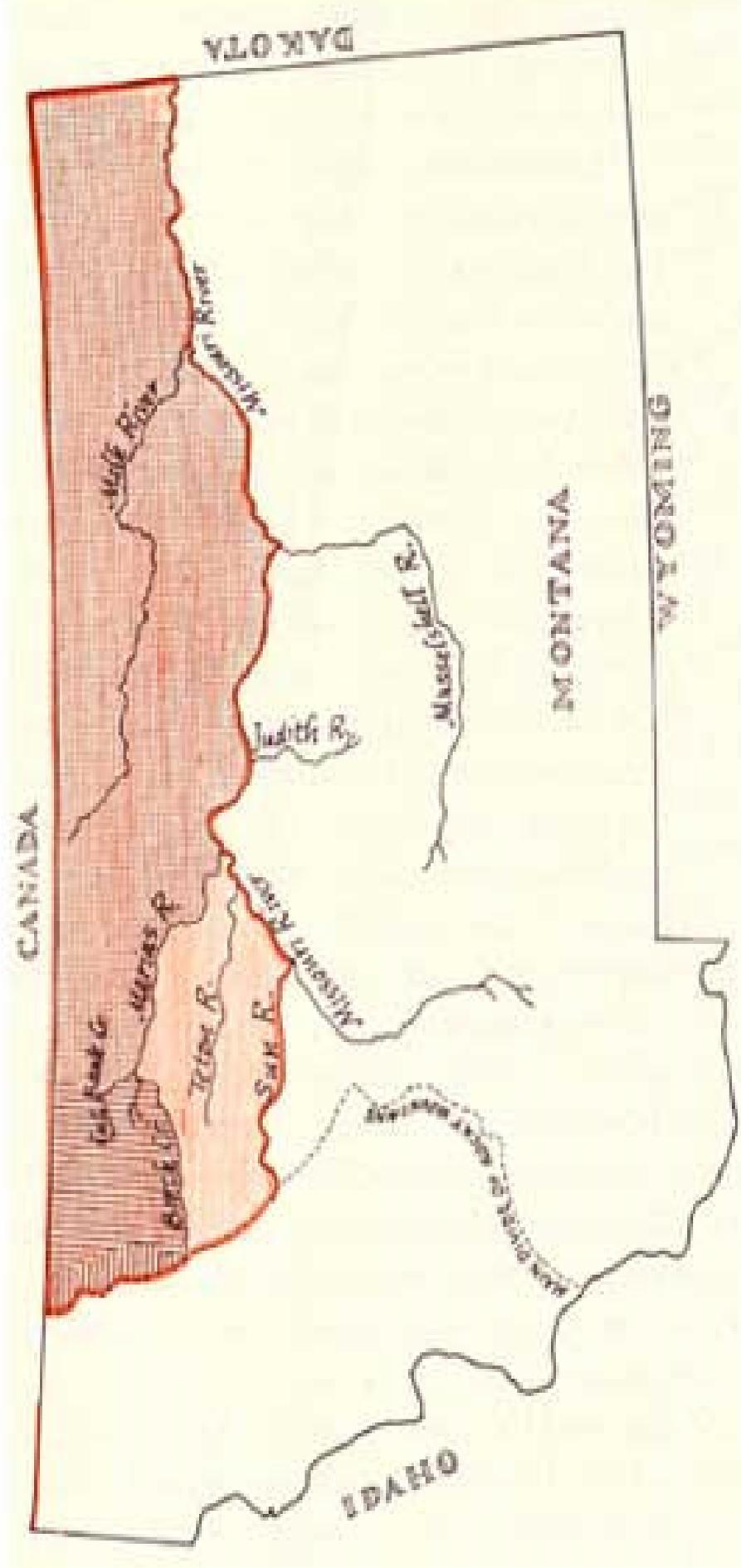
# Blackfeet Reservation

- 1887
- Established by an Act of Congress



**Executive Order**  
July 5, 1873

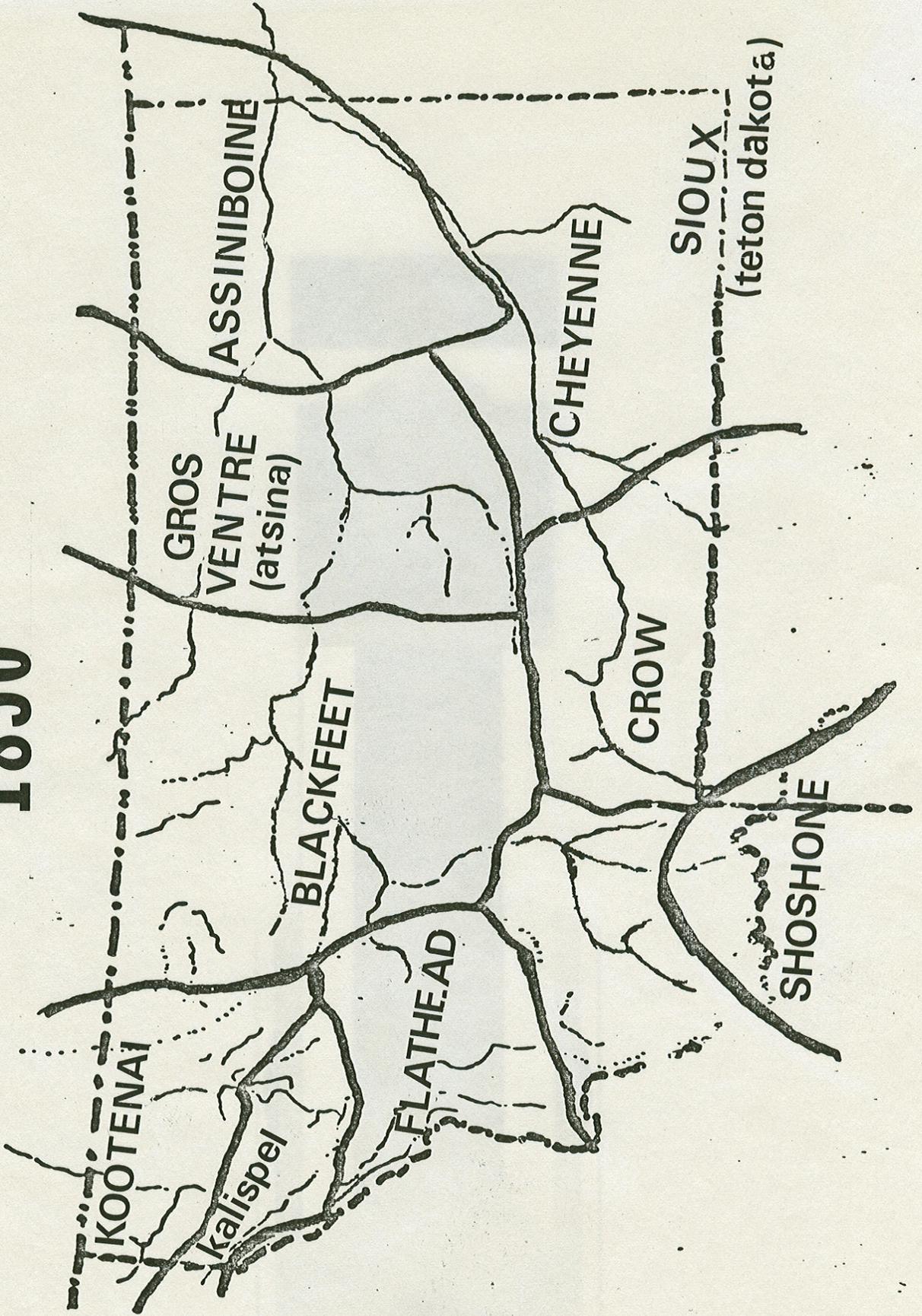
President set apart reserve for Gros Ventre, Piegan, Blood, Blackfoot, and River Crow Indians, as follows: Commencing at the NW. corner of the territory of Dakota, being the intersection of the forty-ninth parallel of N. latitude and the one hundred and fourth meridian of W. longitude; thence S. to the S. bank of the Missouri river; thence up and along the S. bank of said river to a point opposite the mouth of Medicine or Sun river; thence in a westerly direction, following the bank of said Medicine or Sun river, as far as practicable, to the summit of the main chain of the Rocky mountains; thence along said N. boundary of Montana; thence along said N. boundary to the place of the beginning, excepting and reserving therefrom existing military reservations.



Map adapted from: Ewers, 1958

# montana Indian groups

## 1850



**Keyed to TREATIES, EXECUTIVE ORDERS  
AND ACTS OF CONGRESS**

The following maps are taken from the *Bronzing  
Blackfeet Comprehensive Plan*:



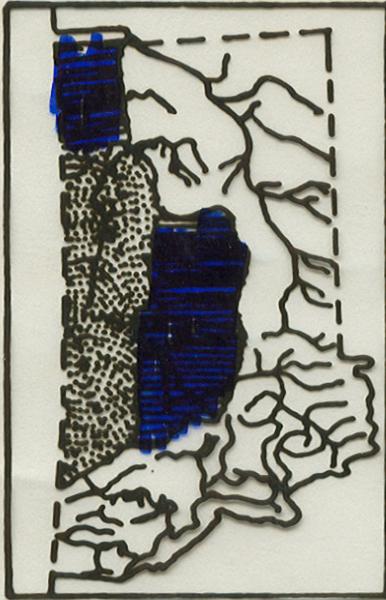
1. Blackfeet Territory - 1800 - The Blackfeet at the height of their power. The boundaries run east from a point in the summit of the Rocky Mountains west of Fort Edmonton, taking the country to the east and south including the Porcupine Hills, Cypress Mountains and Little Rocky Mountains, down to the mouth of the Yellowstone on the Missouri, to the Beaverhead; thence to the summit of the Rocky Mountains and north along them to the starting point.



2. Blackfeet Territory - 1851 - Though the Blackfeet were not represented at the treaty of Fort Laramie, their boundaries were set and limited.



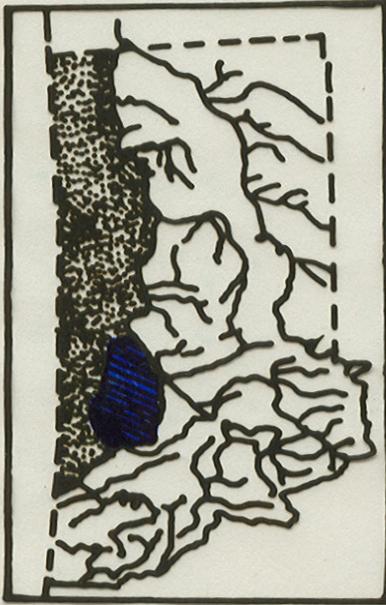
3. Blackfeet Territory - 1855 - The Blackfeet ceded lands that lay south and west of a line drawn from Hell Gate Pass on the continental divide to the source of the Musselshell River as a common hunting ground to be used by: the Blackfeet Nation consisting of Southern Piegans, Bloods, Northern Piegans, Blackfeet, and Gros Ventre; the Nez Percés; and the Flathead Nation, consisting of Flathead, Upper Pend d' Oreille and Rootenai tribes.



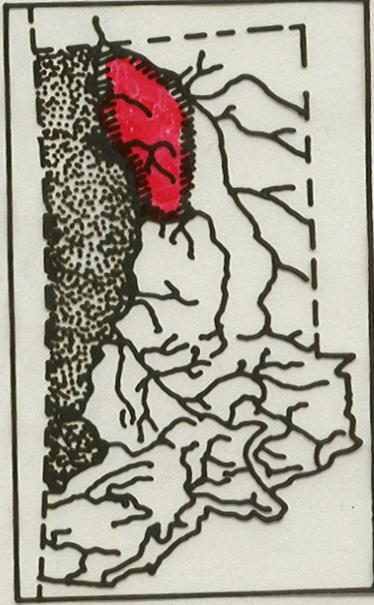
4. Blackfeet Territory - 1865 - The Blackfeet signed a treaty to cede to the United States all lands south of the Missouri River to the Teton River and east to the mouth of the Milk River. The treaty was not ratified by Congress and thus not enacted.



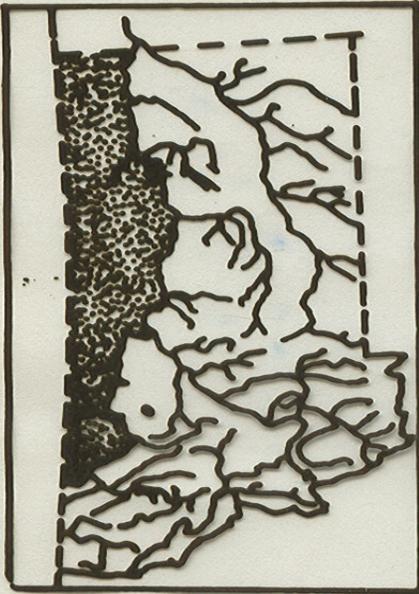
5. Blackfeet Reservation - 1873 - President Grant issued an executive order upon the recommendation of the Commissioner of Indian Affairs, that moved the southern boundary of the reservation to the Missouri and Sun Rivers and the eastern boundary to the Dakota line.



6. Blackfeet Reservation - 1874 - Under pressure from cattlemen for more grazing lands, President Grant issued a second executive order that arbitrarily moved the southern reservation boundary to the Marias River and Birch Creek. The Blackfeet complained bitterly that they had lost their prime hunting ground and that they had no right of protest in the matter.



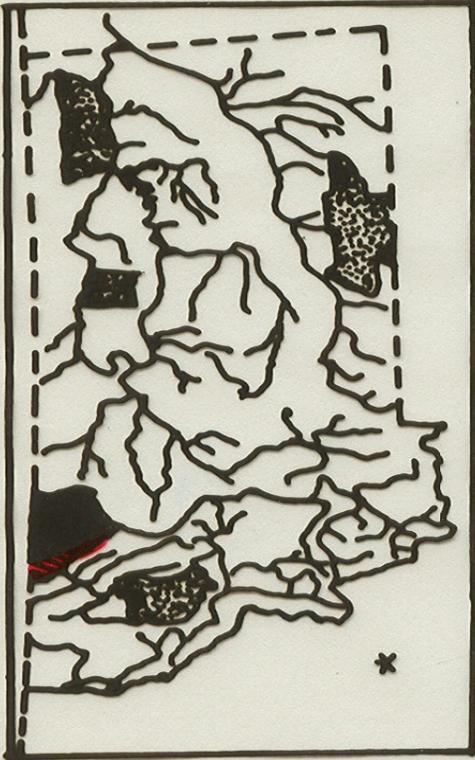
7. Blackfeet Reservation - 1875 - Yielding to congressional opinion that the Blackfeet had a just complaint about the 1874 order, President Grant issued a third executive order, restoring some of the land.



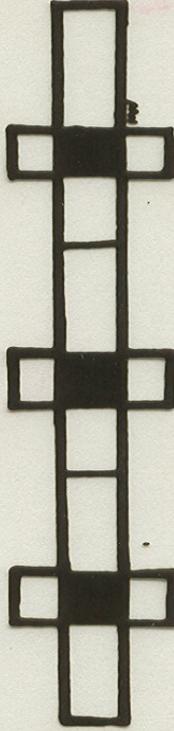
8. Blackfeet Reservation - 1880 - President Hayes signed a fourth executive order that placed the 1875 concession back in the public domain and the reservation once again conformed to the 1874 boundaries.



9. Blackfeet Reservation - 1888 - An agreement signed by the Blackfeet on February 11, 1887 was ratified by Congress and set new boundaries.



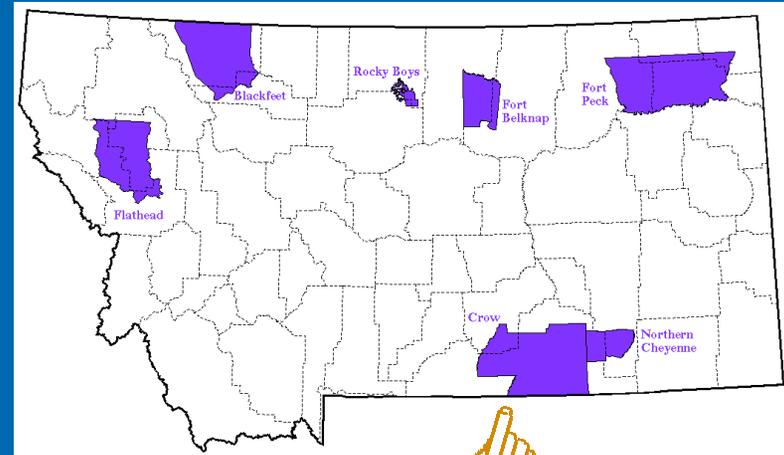
10. Blackfeet Reservation - 1896 to present - In return for a ten year continuation of the payments set forth in the 1888 agreement, the Blackfeet ceded a strip of land on the eastern slope of the continental divide to the United States. First created as a National Forest, in 1910 that land was designated as a part of Glacier National Park, which was established that year.

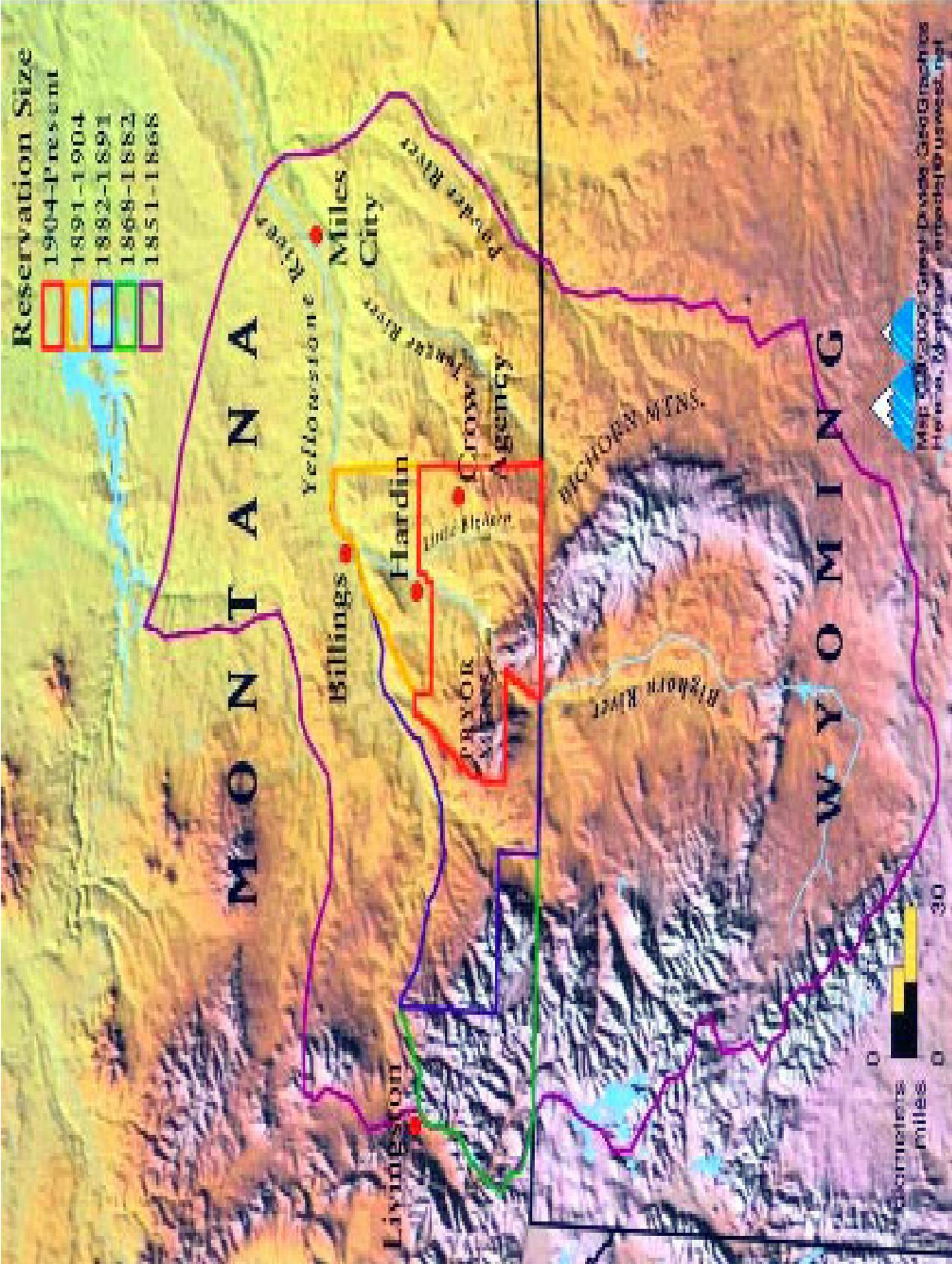


\* Key, to Maps 9 and 10  
 [White Box] Ceded Territory  
 [Black Box] Present Reservation

# Crow Reservation

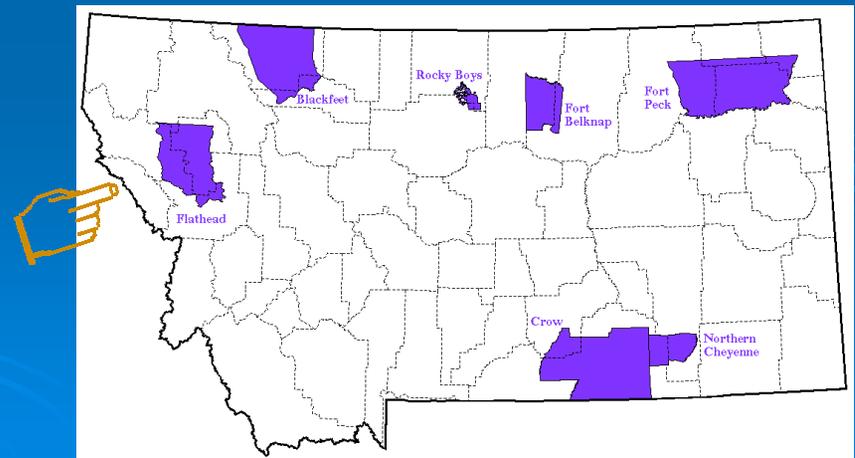
- 1851
- Treaty
  - 1<sup>st</sup> Fort Laramie





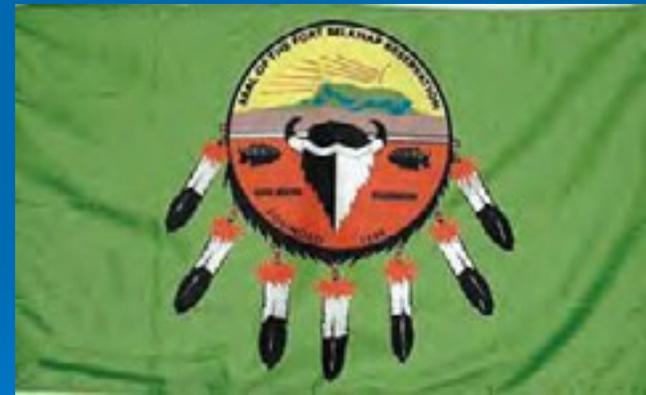
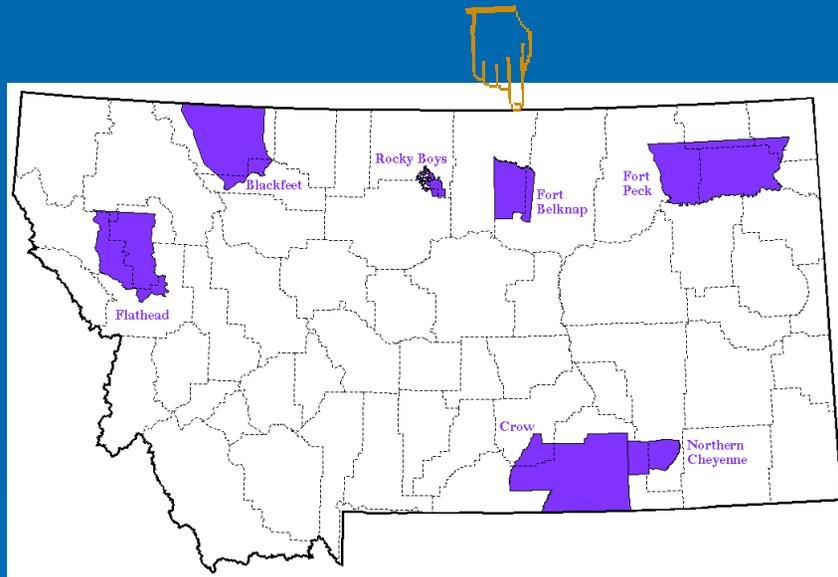
# Flathead Reservation

- 1855
- Known as “Jocko Reserve”
- Established by Treaty
  - Stevens Treaty
  - Or Hellgate Treaty



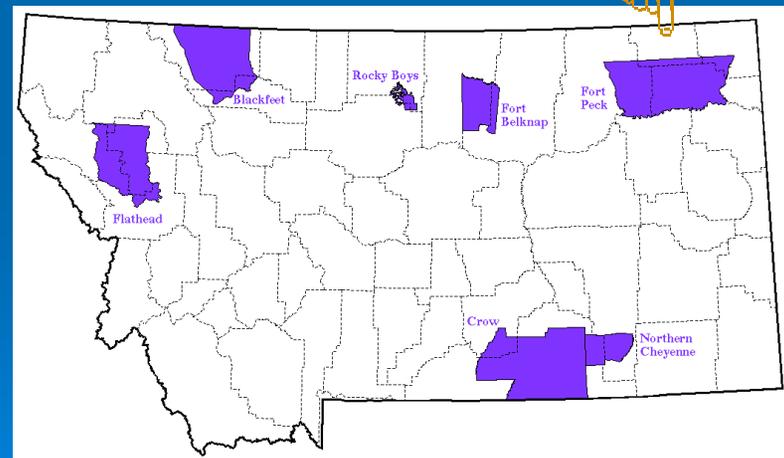
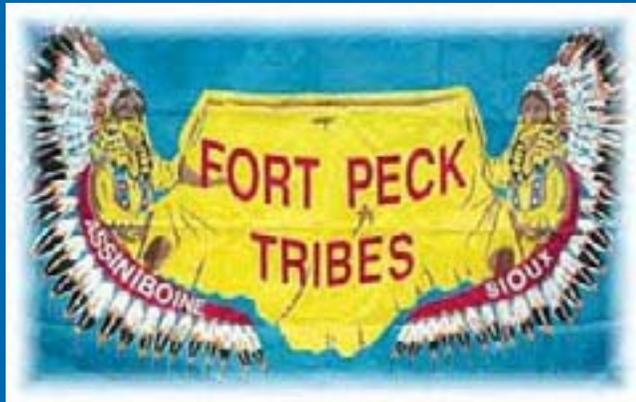
# Fort Belknap Reservation

- 1887
- Established by Act of Congress



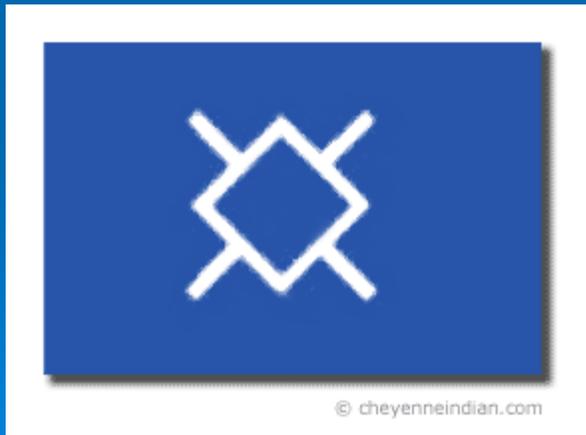
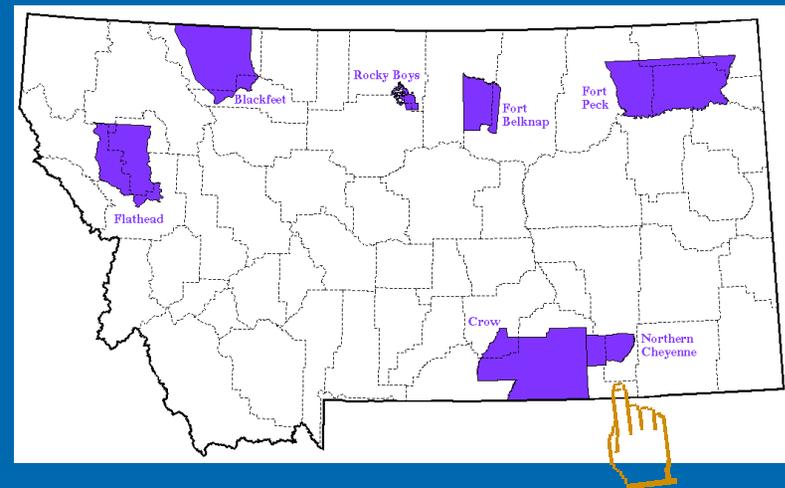
# Fort Peck Reservation

- 1887
- Established by an Act of Congress



# Northern Cheyenne Reservation

- 1884
- Executive Order
  - President Chester A. Arthur



# Rocky Boy's Reservation

- 1916
- Established by an Act of Congress

