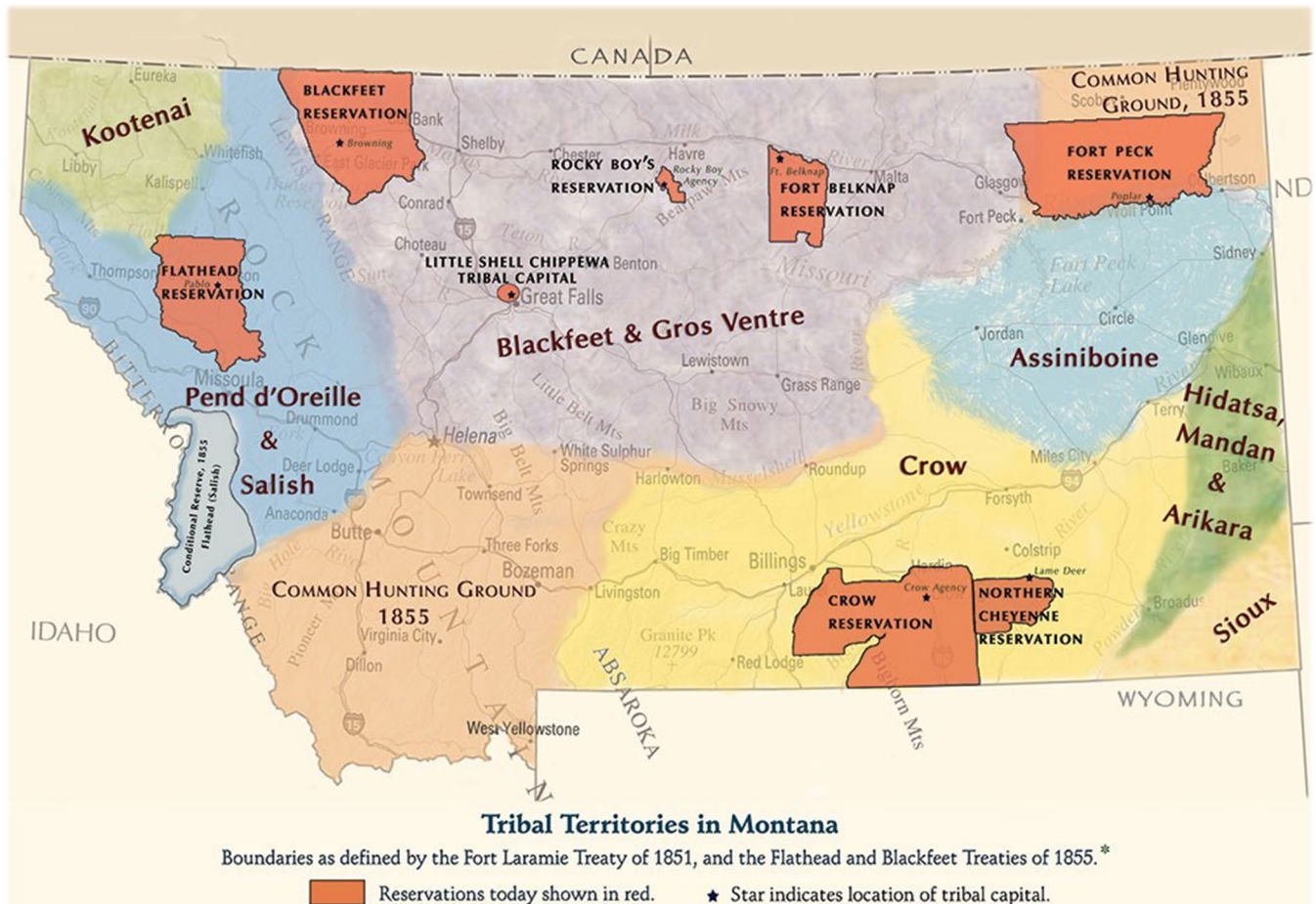


## The Treaty Period – American Indian Perspectives



\*Tribal territories defined by non-Indian officials at treaty time

### Fast Facts

Curriculum Area: Social Studies  
Grade Level: High School  
Suggested Duration: 4-5 class periods

### Stage 1 Desired Results

#### Established Goals

- (1) The civics and government content standards for ninth through twelfth grade are that each student will:
  - (a) analyze and evaluate the ideas and principles contained in the foundational documents of the United States, and explain how they establish a system of government that has powers, responsibilities, and limits;
  - (b) analyze the impact of constitutions, laws, treaties, and international agreements on the maintenance of domestic and international relationships;



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(g) explain the foundations and complexity of sovereignty for federally recognized tribes in Montana;  
(e) evaluate the impact of human settlement activities on the environmental, political, and cultural characteristics of specific places and regions.

(4) The history content standards for ninth through twelfth grade are that each student will:  
(d) analyze multiple and complex causal factors that have shaped major events in US and world history, including American Indian history;  
(e) explain events in relation to both their intended and unintended consequences, including governmental policies impacting American Indians;  
(j) analyze perspectives of American Indians in US history.

### Understandings

- Reservations are lands that have been reserved by or for the tribes for their own exclusive use as permanent homelands and some reservations were created through treaties. (EU 4)
- Understand how the federal Indian policy period of treaty-making and removal affected Indian people in the past and continues to shape who they are today. (EU 5)
- American Indian tribal nations are inherent sovereign nations and they possess sovereign powers, separate and independent from the federal and state governments. (EU 7)

### Essential Questions

- To what extent do historical documents such as treaties influence the current relationships between the U.S. and Tribal Nations?
- What was historical context during the treaty period?
- Why is it important to understand the historical basis for the legal and political relationship between tribes and the U.S. government?

### Students will be able to...

- understand and explain the basis for treaty making.

### Students will know...

- the historical context in which treaties were made and how they are still relevant documents today.

## Stage 2 Assessment Evidence

### Performance Tasks

1. Students will analyze issues and events associated with the treaty making period.
2. Students will gather evidence and present their findings in multiple formats.

## Stage 3 Learning Plan

### Overview

The recognition of American Indian tribes as independent sovereigns laid the foundation for the federal government's relationship with tribes and the ensuing years of Federal Indian Policy. The treaty period spanned almost 100 years of the colonial period of US History, lasting from 1789 to 1871.

Article I, Section 8 of The US Constitution frames the exclusive relationship between the federal government and American Indian tribes:

The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

The constitutional assertion that treaty law is the supreme Law of the Land situates the 367 ratified treaties with Indian tribes above state law and jurisdiction. This legal framework would be referenced in courtrooms and congressional hearings for hundreds of years following the first treaty that was made in 1778 with the Delewares.

Article VI. – Debts, Supremacy, Oaths

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Treaty making was an official way to establish formal relationships between the US Government and Indian tribes. The teacher can highlight the nature of treaties (as the supreme law of the land), the importance of treaties (their purpose of making peace, land cessions, compensation), three canons of treaty construction, the number of treaties (between 1778 and 1871), and the abrogation of treaties.

The Indian reservation system, in conjunction with treaty-making, 1) drastically changed the way of life for many Indian people, 2) created a systematic way of managing the "Indian Problem," and 3) eroded the land base for Indian tribes.

### Activities or Procedures

#### Lesson One

Share this opening [video clip about treaties](#) from the National Museum of the American Indian and use a 3 – 2 – 1 prompt to review the film.

Write down three things in the video that caught your attention, two questions about the information presented in the video, and one thing you really enjoyed.

Facilitate a class discussion based upon their notes and have students share at least one question they have about information put forth in the video.

Share the definitions for "Sovereign" and "Treaty" and then display Essential Understanding 4. Have students write down four or five words that stick out in their mind and write a short statement about why they chose those words and what this means to them. Have them discuss their ideas with a partner and ask each pair to share their reactions with the rest of the class.

Sovereign – a government that has independent and supreme authority over its citizens and territory; a self-governing entity; an independent political body; a nation; a country.

Treaty – a formal agreement between nations; an international agreement outlining commerce, peace, or other relationships.

#### *Essential Understanding 4*

Though there have been tribal peoples living successfully on the North American lands for millennia, reservations are lands that have been reserved by or for the tribes for their own exclusive use as permanent homelands. Some were created through treaties, while others were created by statutes and executive orders. The principle that land should be acquired from the Indians only through their consent with treaties involved three assumptions:

- I. Both parties to treaties were sovereign powers.
- II. Indian tribes had some form of transferable title to the land.
- III. Acquisition of Indian lands was solely a government matter not to be left to individual colonists.

#### KEY CONCEPTS

- Reservations are lands that have been reserved by tribes or for tribes for their exclusive use as permanent homelands.
- Some reservations are the remnants of a tribe's original land base while others were created by Congressional statute or executive order for the resettling of Indian people forcibly relocated from their homelands.
- Original Indian title to land was acknowledged by tribes and European nations, as well as the United States.
- Indian tribes fought to protect their lands and resources including actively utilizing American courts and the Indian Claims Commission.
- Today, there are 326 reservations in the United States, seven of which are located in Montana.
- There are two main treaties that affected Montana tribal lands:
  - The Fort Laramie Treaty, 1851, 1868
  - The Hellgate Treaty of 1855
- After Congress officially ended treaty-making with tribes in 1871, the federal government used other means to further reduce Indian landholdings on reservations.

In order to help put things in historical context, close out the class period by sharing this [video clip](#) from the National Museum of the American Indian. Once again use a 3 – 2 – 1 prompt to review the film. Summarize key concepts from both films and Essential Understanding 4.

#### Lesson Two Montana Context

Display the [Map of Tribal Territories in Montana](#) and utilize a Visual Thinking Strategy to analyze it using these three questions and facilitate a class discussion.

- What is going on in this image?
- What do you see that makes you say that?
- What more can we find?

Remind students of this key concept from Essential Understanding 4: Reservations are lands that have been reserved by or for tribes for their exclusive use as permanent homelands.

Next, have students read through the 1825 “Friendship Treaty” with the Crow Tribe. See the appendix for the full text of the treaty. This read through could be done via a class read aloud or possibly a jigsaw activity where various articles/sections of the treaty are cut out and students are given a section to read out-loud and after all of the sections are read they put the treaty in order and discuss. This may be the first time students have read a treaty so allow ample time for discussion. (Note: Depending on your student population; i.e. if you have students from the Crow tribe, you could also see if they have any direct ancestors who signed the treaty).

Ask students to write out a brief response to the following questions and have them include a list of potential resources they could utilize to help them answer these questions.

- ✓ To what extent do historical documents such as treaties influence the relationships between the US government and tribal nations?
- ✓ Why is it important to understand the historical basis for the legal and political relationship between tribes and the US government?

Treaty Timeline: As a potential activity to provide an historical context, have students develop a chronology of significant events that impacted relations between tribal nations and the US government; e.g., making the first Indian Reservation (1832), the establishment of the Department of Indian Affairs under the War Department (1824) and later under the Department of Interior (1849), the Cherokee Trail of Tears (1830), Fort Laramie Treaties (1851 & 1855), Treaty of Hellgate (1855). Their timeline could be used to discuss topics such as the impact of railroad construction, westward expansion, Manifest Destiny, the discovery of gold, Indian Wars, and cultural clash and change. For additional topics have them refer to the Westward Expansion section of their history textbook. Consider assigning students to work in pairs or small groups and assign them a specific topic to research, have them identify key dates along with a summary of the topic’s importance and relevance to relations between tribal nations and the US government. The teacher can place a physical timeline on a wall with space and a label for each event. The timeline can begin in 1778 and end in 1871. Each student group should have 1-2 events on the timeline to research. The research should include information on the event (follow a Who, What, When, Where, Why, How protocol). Ask students to provide a picture or historical quote to go on the physical timeline. Once students have completed the research, they can reenact the timeline by presenting their information verbally in chronological order.

Allow ample class time for research.

Students' participation in the discussion and their completed timelines should demonstrate how well they are making connections between treaties and the relationships between tribal nations and the US government. Perhaps a talking circle technique can be used to generate student opinion about the events that shaped the policy of this era. The assignment should include specific examples of the impacts on individual tribes, people, or communities.

An excellent resource to help provide a historical context is this recent film from Wyoming PBS called, *The Bozeman Trail - A Rush to Montana’s Gold*. This [brief clip from the film](#) is about the Native American tribes that lived on the land through which the Bozeman Trail passed and the impact the trail and westward expansion had on their way of life.

### Lesson Three: Treaty Analysis

Begin the lesson by showing this [video clip of Vernon Finley](#) (Kootenai) discussing his perspective regarding the 1855 Hellgate Treaty. Facilitate a class discussion regarding the information shared by Vernon.

Assign small groups/pairs of students a different tribal group from Montana to research a treaty made between their tribal nation and the US Government. Students will be asked to research and present the following information from the tribe and treaty researched. A brief report and presentation will be required.

What is the name of the treaty?

When was the treaty signed?

What were the main points agreed upon in the treaty?

What tribes signed the treaty?

What did tribes give up in the treaty?

How much land did the tribes reserve for their use in the treaty?

What were the main reasons the US Government wanted the treaty signed?

Evaluation will be based upon students answering all the suggested questions, how well they demonstrate a basic understanding regarding treaties, and the quality of their presentation to their classmates.

### Background Information

#### Essential Understanding 5

There were many federal policies put into place throughout American history that have affected Indian people in the past and continue to shape who they are today. Many of these policies conflicted with one another. Much of Indian history can be related through several major federal policy periods: Colonization/Colonial Period (1492 - 1800s), Treaty-Making and Removal Period (1778 – 1871), Reservation Period - Allotment and Assimilation (1887 – 1934), Tribal Reorganization Period (1934 – 1953), Termination and Relocation Period (1953 – 1968), Self-Determination Period (1975 - Present)

#### KEY CONCEPTS

- The complexity of contemporary American Indian rights and sovereignty can be difficult to decipher; however, this history can be easier to understand when it is divided into major federal policy periods.
- Early in American history, Congress exerted extensive power over Indians and since has enacted over four hundred treaties and statutes dealing with Native Americans. Regulations and guidelines implementing these laws are even more numerous, making American Indians the most regulated population in the US.
- Federal Indian policies have fluctuated between respecting tribal sovereignty and terminating tribes' sovereign status altogether.



- Although the history of federal Indian policy is long and complex, understanding its main legislative pieces and outcomes helps provide context for the contemporary experiences of Indian students and communities.

### Essential Understanding 7

American Indian tribal nations are inherent sovereign nations and they possess sovereign powers, separate and independent from the federal and state governments. However, under the American legal system, the extent and breadth of self-governing powers are not the same for each tribe.

### KEY CONCEPTS

- Tribal sovereignty stems directly from the fact that tribal nations constitute distinct political communities that have the right to determine their own laws and form of government.
- Tribal self-governing powers predate the existence of the United States and are not delegated powers granted by Congress or any other entity; they are inherent powers of sovereign nations that have never been extinguished.
- Some limitations have been placed on tribal sovereignty throughout the past two centuries by Supreme Court rulings and Congressional statutes, which is why tribes are sometimes referred to as “limited” sovereigns today.
- In general, tribes are free to exercise any of their sovereign powers unless Congress has specifically limited or modified them in some way.
- The extent and breadth of self-governing powers is not the same for every tribe.
- Despite the complex evolution of tribal sovereignty in America, it remains one of the most important attributes of tribal independence.

## More Treaty Lesson Plans

[Montana Tribal Histories: Educators Resource Guide](#) has several lesson plans about treaties. The Companion [DVD](#) has numerous primary source documents including several treaties.

The National Archives has an activity for examining the [1868 Ft. Laramie Treaty](#). See the suggested activities for further teaching ideas regarding treaties.

[Northern Plains Treaties: Is a Treaty Intended to Be Forever?](#) Treaty lesson plan from the National Museum of the American Indian

## Materials/Resources Needed

[History and Foundation of American Indian Education](#) (See chapter 2 for treaty background)

[Montana Indian Law Portal](#) This site has treaty documents for the Montana tribes.

[Nation to Nation: Treaties Between the United States and American Indians](#). National Museum of the American Indian.

[2008 Interview with Dan Decker](#), Legal Expert on Hellgate Treaty

[Indian Affairs: Laws and Treaties - Oklahoma State University Library Website](#)

[Treaty videos from the Montana Tribes Digital Archives](#)

[American Indian History Timeline](#) from the [Indian Land Tenure Foundation](#)

[Transcript of Treaty of Fort Laramie \(1868\)](#)

[The Bozeman Trail - A Rush to Montana's Gold](#)

For examples of contemporary issues relating to treaties refer to the following resources:

[100 Years: One Woman's Fight for Justice - Movie Trailer](#)

[Contemporary American Indian Issues](#)

[Preserving the Sacredness of the Badger-Two Medicine](#)

[COURT DECISION PROTECTS THE BADGER-TWO MEDICINE AREA](#)

The Crow tribe recently had legal cases before the US Supreme court related to treaty rights. See the articles below for background information. One case ruled in favor of the tribe and the other case is still under review.

[US SUPREME COURT AFFIRMS CROW TRIBE TREATY RIGHTS](#)

[CROW TRIBE SEEKS TO VACATE OUTDATED HUNTING RIGHTS JUDGMENT](#)

[U.S. Supreme Court sets oral argument in 'bad men' treaty rights case.](#)

[Supreme Court hears another sovereignty case](#)



## Appendix A

(Grammar and spelling reflect writing style from that historical time-period)

### 1825 "Friendship Treaty" with Crow Tribe

For the purpose of perpetuating the friendship which has heretofore existed, as also to remove all future cause of discussion or dissension, as it respects trade and friendship between the United States and their citizens, and the Crow tribe of Indians, the President of the United States of America, by Brigadier-General Henry Atkinson, of the United States' army, and Major Benjamin O'Fallon, Indian agent, with full powers and authority, specially appointed and commissioned for that purpose, of the one part, and the undersigned Chiefs, Head men and Warriors, of the said Crow tribe of Indians, on behalf of their tribe, of the other part, have made and entered into the following Articles and Conditions; which, when ratified by the President of the United States, by and with the advice and consent of the Senate, shall be binding on both parties - to wit:

#### Article 1.

It is admitted by the Crow tribe of Indians, that they reside within the territorial limits of the United States, acknowledge their supremacy, and claim their protection. - The said tribe also admits the right of the United States to regulate all trade and intercourse with them.

#### Article 2.

The United States agree to receive the Crow tribe of Indians into their friendship, and under their protection, and to extend to them, from time to time, such benefits and acts of kindness as may be convenient, and seem just and proper to the President of the United States.

#### Article 3.

All trade and intercourse with the Crow tribe shall be transacted at such place or places as may be designated and pointed out by the President of the United States, through his agents; and none but American citizens, duly authorized by the United States, shall be admitted to trade or hold intercourse with said tribe of Indians.

#### Article 4.

That the Crow tribe may be accommodated with such articles of merchandise, . as their necessities may demand, the United States agree to admit and license traders to hold intercourse with said tribe, under mild and equitable regulations: in consideration of which, the Crow tribe bind themselves to extend protection to the persons and the property of the traders, and the persons legally employed under them, whilst they remain within the limits of their district of country. And the said Crow tribe further agree, that if any foreigner or other person, not legally authorized by the United States, shall come into their district of country, for the purposes of trade or other views, they will apprehend such person or persons, and deliver him or them to some United States' Superintendent or Agent of Indian Affairs, or to the commandant of the nearest military post, to be dealt with according to law.

And they further agree to give safe conduct to all persons who may be legally authorized by the United States to pass through their country, and to protect in their persons and property all agents or other persons sent by the United States to reside temporarily among them; and that they will not, whilst on

their distant excursions, molest or interrupt any American citizen or citizens, who may be passing from the United States to New Mexico, or returning from thence to the United States.

#### Article 5.

That the friendship which is now established between the United States and the Crow tribe, should not be interrupted by the misconduct of individuals, it is hereby agreed, that for injuries done by individuals, no private revenge or retaliation shall take place, but instead thereof, complaints shall be made, by the party injured, to the superintendent or agent of Indian affairs, or other person appointed by the President; and it shall be the duty of said Chiefs, upon complaint being made as aforesaid, to deliver up the person or persons against whom the complaint is made, to the end that he or they may be punished, agreeably to the laws of the United States. And, in like manner, if any robbery, violence, or murder, shall be committed on any Indian or Indians belonging to the said tribe, the person or persons so offending shall be tried, and, if found guilty, shall be punished in like manner as if the injury had been done to a white man. And it is agreed, that the Chiefs of said Crow tribe shall, to the utmost of their power, exert themselves to recover horses or other property, which may be stolen or taken from any citizen or citizens of the United States, by any individual or individuals of said tribe; and the property so recovered shall be forthwith delivered to the agents or other person authorized to receive it, that it may be restored to the proper owner. And the United States hereby guaranty to any Indian or Indians of said tribe, a full indemnification for any horses or other property which may be stolen from them by any of their citizens:

Provided, That the property stolen cannot be recovered, and that sufficient proof is produced that it was actually stolen by a citizen of the United States. And the said tribe engage, on the requisition or demand of the President of the United States, or of the agents, to deliver up any white man resident among them.

#### Article 6.

And the Chiefs and Warriors, as aforesaid, promise and engage that their tribe will never, by sale, exchange, or as presents, supply any nation, tribe, or band of Indians, not in amity with the United States, with guns, ammunition, or other implements of war.

Done at the Mandan Village, this fourth day of August, A. D. 1825, and of the independence of the United States the fiftieth.

In testimony whereof, the said commissioners, Henry Atkinson and Benjamin O'Fallon, and the chiefs and warriors of the said tribe, have hereunto set their hands and affixed their seals.

H. Atkinson, brigadier-general U. S. Army, [L. S.]

Benj. O'Fallon, U. S. agent Indian Affairs, [L. S.]

Chiefs:

E-she-huns-ka, or the long hair, his x mark, [L. S.]

She-wo-cub-bish, one that sings bad, his x mark, [L. S.]

Har-rar-shash, one that rains, his x mark, [L. S.]

Chay-ta-pah-ha, wolf's paunch, his x mark, [L. S.]  
Huch-che-rach, little black dog, his x mark, [L. S.]  
Mah-pitch, bare shoulder, his x mark, [L. S.]  
Esh-ca-ca-mah-hoo, the standing lance, his x mark, [L. S.]  
Che-rep-con-nes-ta-chea, the little white bull, his x mark, [L. S.]  
Ah-mah-shay-she-ra, the yellow big belly, his x mark, [L. S.]  
Co-tah-bah-sah, the one that runs, his x mark, [L. S.]  
Bah-cha-na-mach, the one that sits in the pine, his x mark, [L. S.]  
He-ran-dah-pah, the one that ties his hair before, his x mark, [L. S.]  
Bes-ca-bar-ru-sha, the dog that eats, his x mark, [L. S.]  
Nah-puch-kia, the little one that holds the stick in his mouth, his x mark, [L. S.]  
Bah-da-ah-chan-dah, the one that jumps over every person, his x mark, [L. S.]  
Mash-pah-hash, the one that is not right, [L. S.]

In presence of -

A. L. Langham, secretary to the commission,  
H. Leavenworth, colonel U. S. Army,  
S. W. Kearny, brevet major First Infantry,  
D. Ketchum, major U. S. Army,  
R. B. Mason, captain First Infantry,  
G. C. Spencer, captain First Infantry,  
John Gantt, captain Sixth Infantry,  
Tos. P. Gwynne, lieutenant First Infantry,  
S. MacRee, lieutenant and aid-de-camp,  
Tomas Noel, lieutenant Sixth Infantry,  
William L. Harris, First Infantry,  
John Gale, surgeon U. S. Army,  
J. V. Swearingen, lieutenant First Infantry,  
R. Holmes, lieutenant Sixth Infantry,  
M. W. Batman, lieutenant Sixth Infantry,  
R. M. Coleman, U. S. Army,  
J. Rogers, lieutenant Sixth Infantry,

Wm. Day, lieutenant First Infantry,  
G. H. Kennerly, U. S. Indian agent,  
B. Riley, captain Sixth Infantry,  
Wm. S. Harney, lieutenant First Infantry,  
James W. Kingsbury, lieutenant First Regiment Infantry,  
George C. Hutter, lieutenant Sixth Infantry,  
Wm. Armstrong, captain Sixth Regiment Infantry.