



Federal Indian Law



Multiple Choice

How many Native Americans were in MN according to the 2020 United States Census?

- a. 55,000
- b. 107,000
- c. 378,000

Multiple Choice

What percentage of the ~80,000* Native Americans now living in MN reside on Tribal Reservations?

- a. Less than 25%
- b. 50%
- c. More than 50%

* Based on US Census July 2022 Estimates

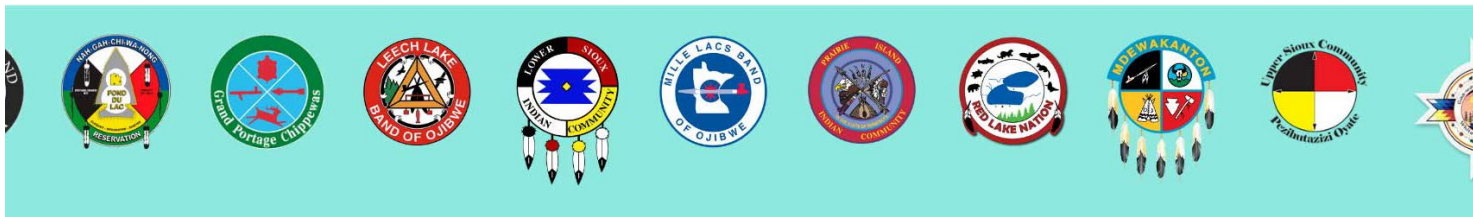
True or False

In Minnesota, the top leaders of the Tribes sign up to run for their positions during a campaign and are directly elected by their tribal member citizens through a polling system with onsite and absentee voting.

True or False

The Federal Government publishes a list of federally-recognized tribes.

For Minnesota, there are 11 separate Tribes listed in that publication.



11 Separate Sovereign Nations

Ojibwe

- Bois Forte Band of Chippewa
- Fond du Lac Band of Lake Superior Chippewa
- Grand Portage Band of Lake Superior Chippewa
- Leech Lake Band of Ojibwe
- Mille Lacs Band of Ojibwe
- Red Lake nation
- White Earth Nation

Dakota

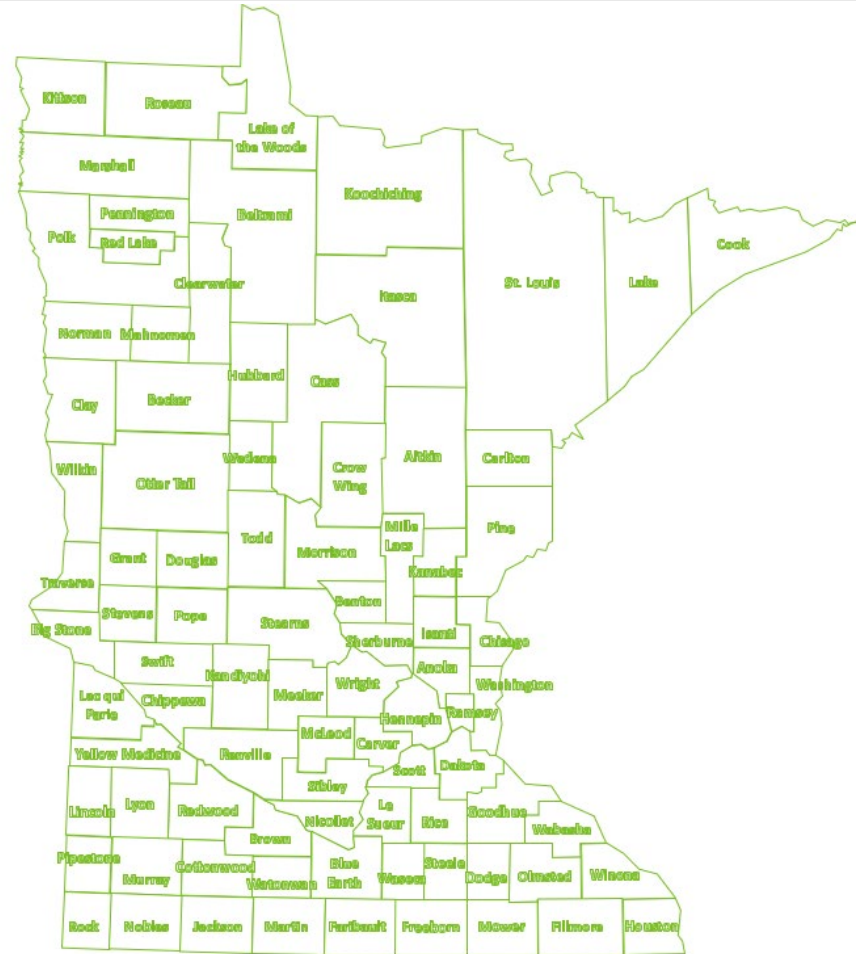
- Lower Sioux Indian community
- Prairie Island Indian Community
- Shakopee Mdewakanton Sioux community
- Upper Sioux community

“When you talk together [about] which state is doing this right, I want people to say Minnesota.”

Governor Walz at the National Congress of American Indians in June 2023 speaking about Tribal/State Relations.

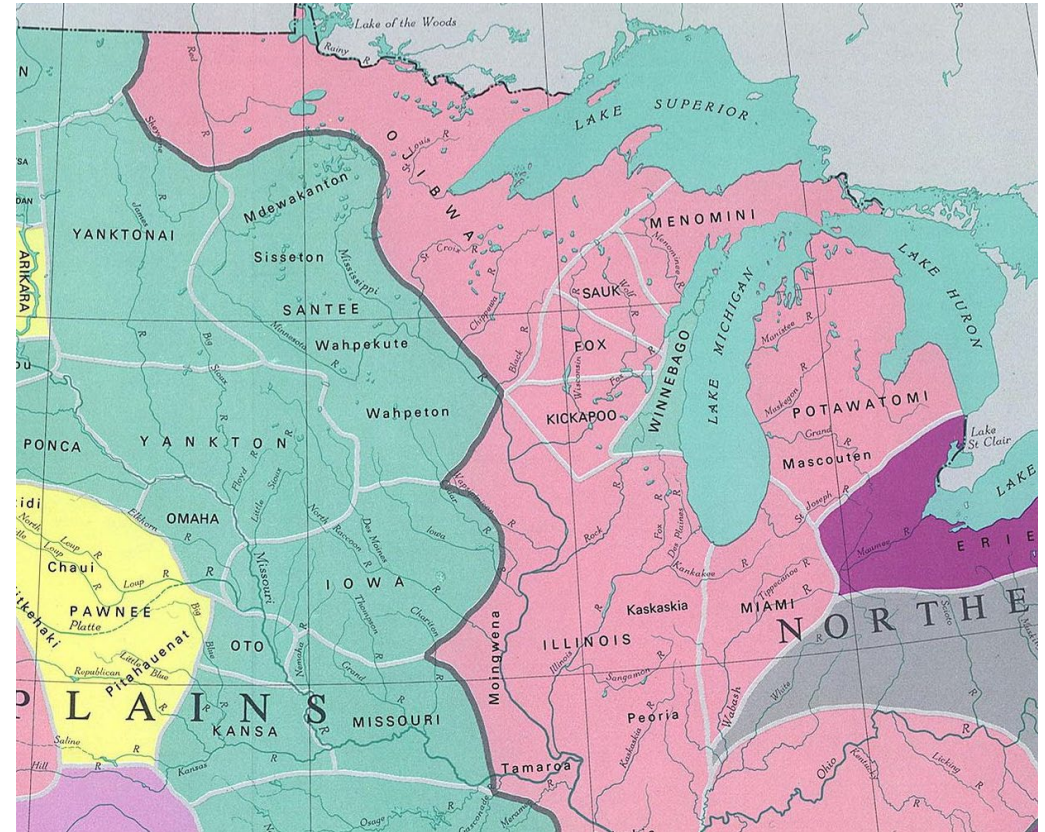
Tribal Sovereignty

**Why don't we
treat Tribes like
states or
counties in the
state?**



Tribal Sovereignty

**Simple Answer –
Tribes have been
here for
hundreds and
thousands of
years**



Complicated Answer

1492 - 1789

Colonization & Confederation

1789 - 1825

Trade and Intercourse

1825 - 1850s

Removal Era

1850 - 1887

Reservations

1887 - 1928

Allotments & Assimilation

1928 - 1945

Indian Reorganization

1945 - 1961

Termination

1961 - Present

Self Determination



COME TO DENVER
THE CHANCE OF YOUR LIFETIME!

Good Jobs

Retail Trade
Manufacturing
Government - Federal, State, Local
Wholesale Trade
Construction of Buildings, Etc.



Happy Homes

Beautiful Homes
Many Churches
Exciting Community Life
Over Half of Homes Owned by Residents
Convenient Stores - Shopping Centers



Training

Vocational Training
Nursing, Beauty Shop, Dressing,
Accounting, Book Binding, Bookbinding,
Adult Education
Evening High School, Arts and Crafts
and Employment, Home-making



INDIAN LAND FOR SALE

GET A HOME
OF
YOUR OWN

EASY PAYMENTS

FINE LANDS IN THE WEST

IRRIGATED
IRRIGABLE

GRAZING

AGRICULTURAL
DRY FARMING

PERFECT TITLE

POSSESSION
WITHIN
THIRTY DAYS

IN 1910 THE DEPARTMENT OF THE INTERIOR SOLD UNDER SEALED BIDS ALLOTTED INDIAN LAND AS FOLLOWS:

In the beginning...



United States Constitution

Art. I Sec. 2 & Amendment XIV

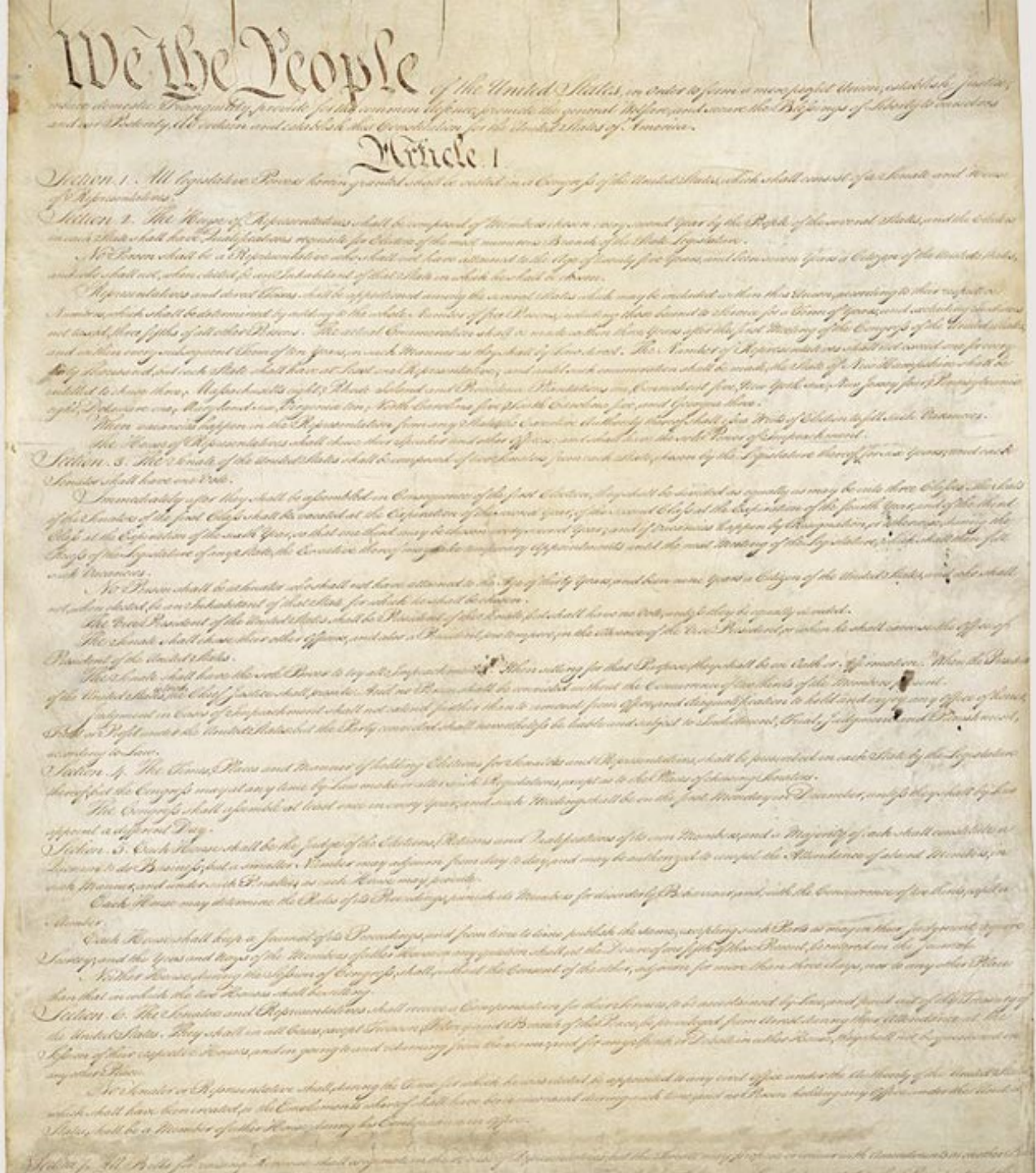
“excluding Indians not taxed”

Art. I Sec. 8

To regulate commerce with foreign nations, and among the several states, and with the Indian Tribes;

Art. VI

“... and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land”





Treaties

Agreements between sovereigns

Common threads: peace, conveyance of land, boundaries, hunting and fishing rights, authority of the United States, trade

Overreaching: treaties written in English, conveyance of land an odd concept, selected tribal leaders

Supremacy clause of the Constitution – treaties and treaty rights trump state laws

Between 1837 and 1867, the Dakota and Ojibwe negotiated 16 different treaties with the Federal Government



Tribal Sovereignty

**What is
Sovereignty?**



Tribal Sovereignty – Where we were / Where we are going

- Marshall Trilogy 1823-1832
- Indian Appropriations Act 1851 and 1871
- Public Law 280 1953
- Iron Crow v. Oglala Sioux Tribe 1956
- Bryan v. Itasca County 1976
- California vs. Cabazon Band of Mission Indians 1987

- Minnesota vs. Stone 1997
- Minnesota vs. Mille Lacs Band 1999
- Minnesota vs. Southwest School of Dance, (nonprecedential opinion), Minnesota Court of Appeals, July 6, 2021
- McGirt v. Oklahoma 2022 / Oklahoma vs. Castro-Huerta 2022

Federal Relationship with the Tribes



Trust Responsibility –

- The federal Indian trust responsibility is a legally enforceable fiduciary obligation on the part of the United States to protect tribal treaty rights, lands, assets, and resources
- Duty to carry out the mandates of federal law with respect to American Indian and Alaska Native tribes and villages.

Government-to-Government

- Relationship between federally recognized tribes and the United States is one between sovereigns

State Relationship with the Tribes

- Constitution vested the Federal Legislative Branch with plenary power over Indian Affairs, states have no authority over tribal governments unless expressly authorized by Congress
- Federally recognized tribes generally are not subordinate to states, but they can have a government-to-government relationship with these other sovereigns
- Federally recognized tribes possess both the right and the authority to regulate activities on their lands independently from state government control
- Tribes frequently collaborate and cooperate with states through compacts or other agreements on matters of mutual concern such as environmental protection and law enforcement

Minnesota Governors Executive Orders – Collaboration with the Tribes



Minnesota Governors Executive Orders



Governor Pawlenty
EO 3-05
April 2003



Governor Dayton
EO 13-10
August 2013



Governor Walz
EO 19-24
April 2019

Issues of Shared Interest → Potential Conflicts?

- Business
- Health
- Economic Development
- Housing
- Education
- Jobs

- Public safety
- Environment
- Energy
- Commerce
- Transportation
- Taxes
- Many many more

Where did the Action take place

- Federal, State or Tribal land
- Private land
- Leased land
- Who has the authority to regulate behavior
 - Criminal/Prohibitory – Criminal laws
 - Civil/Regulatory – Permitting, Licensing, Regulating

Who acted or failed to act in the behavior at issue

- Indian or non-Indian
- Member or non-Member Indian

Who was impacted

- Indian or non-Indian
- Member or non-Member Indian

Public Law 280 State or Not

Issues of Shared Interest → 2 Examples



- California vs. Cabazon Band of Mission Indians, 480 U.S. 202 (1987)
- Indian Gaming Regulatory Act of 1988, 25 U.S.C. section 2701, et seq.
- Minnesota tribes were the first in the nation to negotiate and sign gaming compacts with a state government
 - The state government and Tribes also agreed that compacts should be effective in perpetuity
 - <https://dps.mn.gov/divisions/age/gambling/Pages/tribal-state-gaming-compacts.aspx>

Current Hot Issues:

- Sports Betting
- Electronic Pull-Tabs
- Interblock Dealer Assist Technology
- Historical Race Games

Minnesota Statutes, Section 3.9228

Subdivision 2:

- a) The State of Minnesota acknowledges the sovereign right of Minnesota Tribal Governments to regulate the cannabis industry and address other matters of cannabis regulation related to the internal affairs of Minnesota Tribal governments or otherwise within their jurisdiction, without regard to whether such Tribal government has entered a compact authorized by this section...

Subdivision 3:

- a) ... Indian Tribes are not required to enter into compacts pursuant to this section in order to: regulate the cannabis industry, or engage in cannabis businesses or activities on Tribally regulated lands; or participate as a licensee in the state's legal cannabis market.

Current Hot Issues:

- Compacting
 - Collective vs. Individual
 - Detailed vs. General
 - What Issues to Cover
- Access to Product for Tribes who want to participate in market
- Medical vs. Recreational
- Role of the Office of Cannabis Management

Bonus Cases 8th Circuit Cases

- Scalia vs. Red Lake Nation Fisheries, Inc.,
982 F.3rd 533 (2020)
- Northern States Power Company vs. Prairie Island Indian
Community,
991 F.2d 458 (1993)
- SMSC, Edith Crooks vs. City of Prior Lake,
771 F.2d 1153 (1985)

Questions?

Thank You Pilamayaye

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