

Federal Indian Law



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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

<u>Ojibwe</u>

- 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

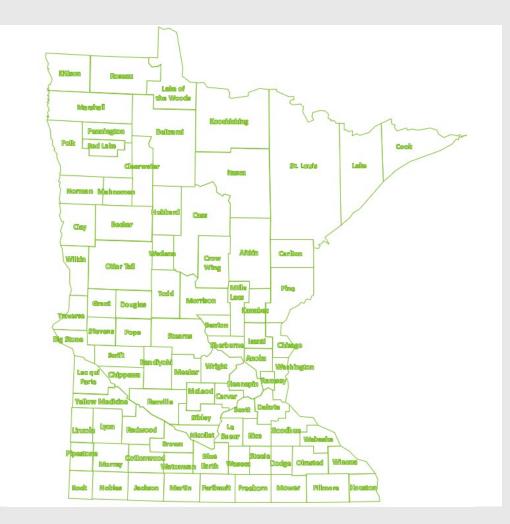
<u>Dakota</u>

- 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.

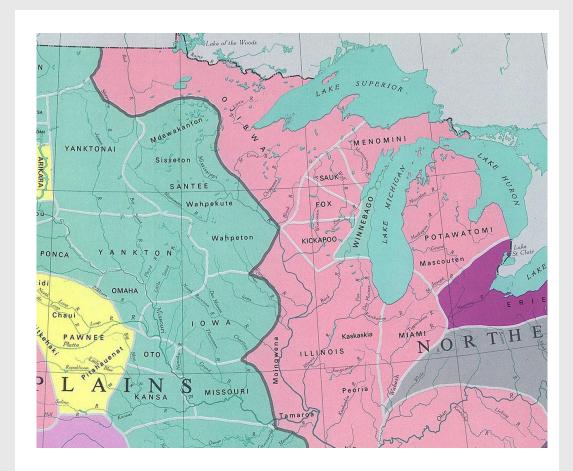
Tribal Sovereignty



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

GET A HOME

YOUR OW

EASY PAYMENTS

IRRIGATED

IRRIGABLE

IAN LAND FOR SALE

GRAZING

N 1910 THE DEPARTMENT OF THE INTERIOR SOLD UNDER SEALED BIDS ALLOTTED INDIAN LAND AS FOLLOW

PERFECT TITLE

POSSESSION

WITHIN

THIRTY DAYS

AGRICULTURAL

DRY FARMING

1492 - 1789 Colonization & Confederation

> **1789 - 1825** Trade and Intercourse

> > **1825 – 1850s** Removal Era

> > > TO DENVER

otes Community Life

CHANCE OF YOUR LIFETIME

1850 - 1887 Reservations

> 1887 - 1928 Allotments & Assimilation

> > **1928 - 1945** Indian Reorganization

> > > **1945 - 1961** Termination

> > > > **1961 - Present** Self Determination

In the beginning...



IN CONGRESS, July 4, 1776.

and fuch as now the necessity which constituins them to atta the pormet of proting of good with ene. one money of the present refurpations, all having in dired object the eftablishment of an absolute Fyranny over these States . To prove this, let Facts be for his afrent to Lows , the most wholesome and needowry for the public good . ____ - He has forbidden his Governors topage Low I in their operation till his afsent should be obtained; and when so fuspended, he has utterly neglected to attend to them ge districts of people, unless those people would relinquisk the right of Representation in the Legislature, a right in officiable to them i ether legislative bodies at places unasual, uncomfortable, and distant from the depository of this flublic Records, for the sole fluspose of le has dissolved Represtative Houses repeatedly, for opposing with manly fumnels his invalions on the rights of the fleople others to be gers converses nerales s; refusing t a offe bent to Laur has exceed a matunate of craw offices, and went hirrer pearms of It's has affected to under the Military independent of and superior to the Cert flower the bonsent of our legislatures .____ ign to our constitution, and unacknowledged by our laws; giving his aftert to their lits of prelended Sequetation : _ Por Guarkin I them, by a more Juice from flunishment for any Murders which they should commit on the In habitants of these States : -For imposing James on us with out our Consent : _ For depriving us in many cases, of the benefits of Irial by Jury : _ For tra for abolishing the free System of English Laws in a nughbouring Frommer, establishing theun an Arbitrary government, and intar influment for inhoducing thesame absolute rule into these Colonies : ____ doe taking away our Charlies , abolishing our most i overnments: - For suspending our own Segistatures, and declaring themselves invested with power to legislate for us in all ca 1. this Retestion and an and the another property us We have blow does a sur suger grand our brasts burnt our torons, and That long war to Junt. Themas Lynch Junt. George Withe Richard Henry Lee Roger Sherman Gasar Romen-Arthun Middletons The getteron Mi Millians Oliver Woliot

United States Constitution

Art. I Sec. 2 & Amendment XIV

"excluding Indians not taxed"

Art. | Sec. 8

To regulate <u>commerce</u> 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 <u>Supreme Law of the Land</u>"

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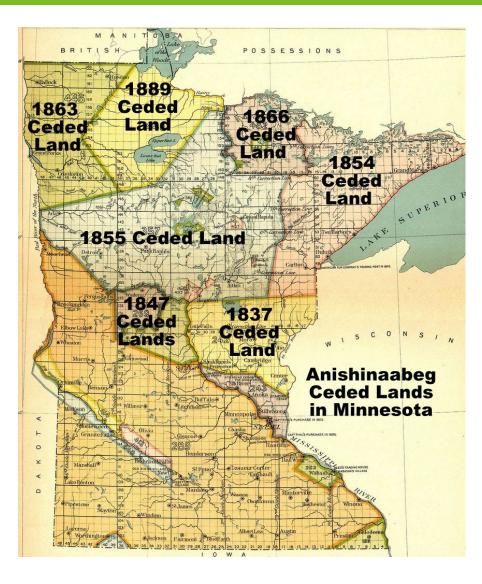
Treaties

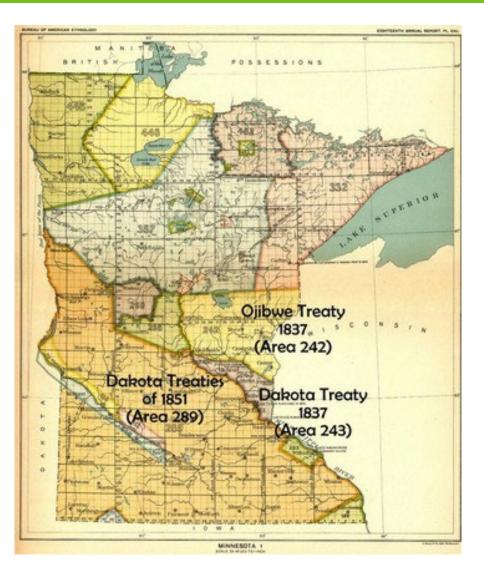
Agreements between sovereigns

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 2002 / 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.

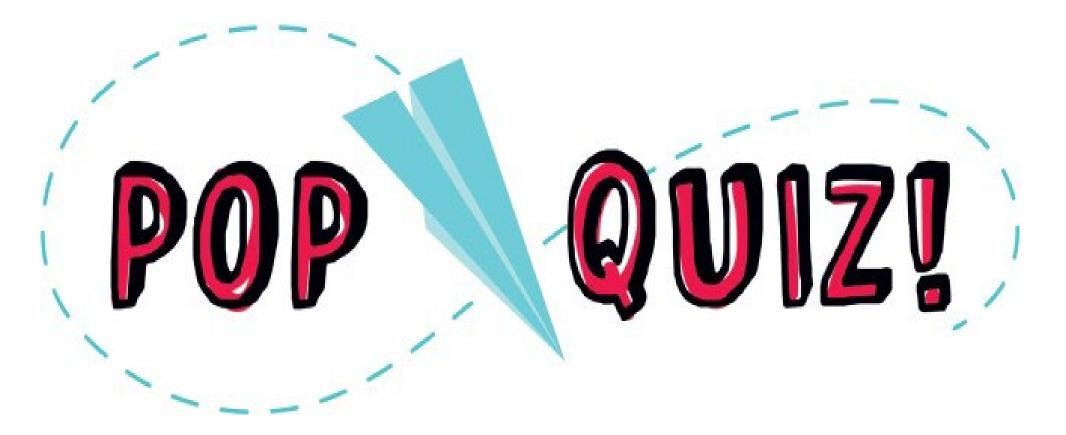
Government-to-Government

 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

Jurisdictional issues

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

Jurisdictional issues

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







- <u>California vs. Cabazon Band of Mission Indians</u>, 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
 - <u>https://dps.mn.gov/divisions/age/gambling/Pages/tribal-state-gaming-compacts.aspx</u>



Current Hot Issues:

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

Cannabis

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.

Cannabis

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

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



Questions?



Thank You Pilamayaye

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& Willie Hardacker <u>williehardacker03@gmail.com</u>