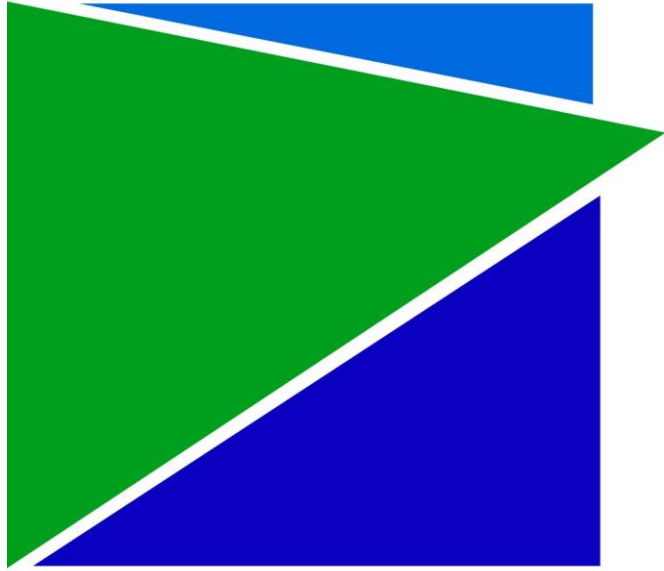


COOK COUNTY



MINNESOTA

Treaties and Tribal Sovereignty Training for Cook County Officials

An Introduction

April 13, 2021

The legal information presented at this session is intended for a specific audience: Cook County Commissioners. Others viewing the presentation are advised that the information shared does not constitute legal advice. Individuals should contact their own attorney and seek out resources specific to their own situations.

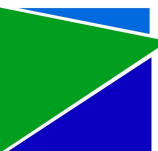
Language is important.

Ascribing the word “Indian” to people who lived on this land before it was colonized is inaccurate and generally offensive when used by non-Native people.

Yet, the law still uses terms like “Indian Child” and “Indian country,” when applying laws like the “Indian Child Welfare Act” and the “Minnesota Indian Family Preservation Act.”

Use these terms for legal accuracy, but also acknowledge the diversity of Indigenous Peoples’ cultures and call people the terms they wish us to use.

Grand Portage Band of Chippewa is used here to describe the Anishnaabe nation on the North Shore, “Native People” to describe the various groups of people indigenous to North America.



Grand Portage Tribal Government

- ▶ *Gitchi-Onigaming* is the Ojibwe name for the Grand Portage Reservation, population 684.
- ▶ Grand Portage is governed by an elected tribal council:
 - ▶ Chairman Robert "Bobby" Deschampe
 - ▶ Secretary/Treasurer April McCormick
 - ▶ Council Member John Morrin
 - ▶ Council Member Marie Spry
 - ▶ Council Member William "Bill" Meyers
- ▶ Grand Portage is part of the Minnesota Chippewa Tribe, a federally recognized tribal government which also includes the Bois Forte, Fond du Lac, Leech Lake, Mille Lacs, and White Earth reservations.
- ▶ The Revised Constitution and By-Laws of the Minnesota Chippewa Tribe govern membership, elections, authority of officers, and other topics.

REVISED CONSTITUTION AND BYLAWS OF THE MINNESOTA CHIPPEWA TRIBE, MINNESOTA

PREAMBLE

We, the Minnesota Chippewa Tribe, consisting of the Chippewa Indians of the White Earth, Leech Lake, Fond du Lac, Bois Forte (Nett Lake), and Grand Portage Reservations and the Nonremoval Mille Lac Band of Chippewa Indians, in order to form a representative Chippewa tribal organization, maintain and establish justice for our Tribe, and to conserve and develop our tribal resources and common property; to promote the general welfare of ourselves and descendants, do establish and adopt this constitution for the Chippewa Indians of Minnesota in accordance with such privilege granted the Indians by the United States under existing law.

ARTICLE I - ORGANIZATION AND PURPOSE

Section 1. The Minnesota Chippewa Tribe is hereby organized under Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended.

Sovereignty has Native origins

Prior to the colonization of America, tribes

- ▶ governed themselves,
- ▶ practiced inter-tribal diplomacy, and
- ▶ negotiated government-to-government agreements with other tribes over issues like trade and hunting.

These powers of self-governance and sovereign status were not fully extinguished when the U.S. established as a nation and subjected the tribes to federal power.

Some principles of Tribal Sovereignty

- ▶ Tribes have a special legal status derived from their status as **sovereign nations**.
- ▶ There is a significant **geographical component** to tribal sovereignty, protecting a tribe's retained sovereignty over its members and its territory.
- ▶ Sovereignty exists such that the tribal government retains the control **needed to preserve a tribe's own internal relations, customs, and social order**.
- ▶ But Indian tribes are “quasi-sovereign” in that they are incorporated into the U.S. - **no power to try non-Indian citizens of the U.S.** except to the extent allowed by Congress.

What is a treaty?

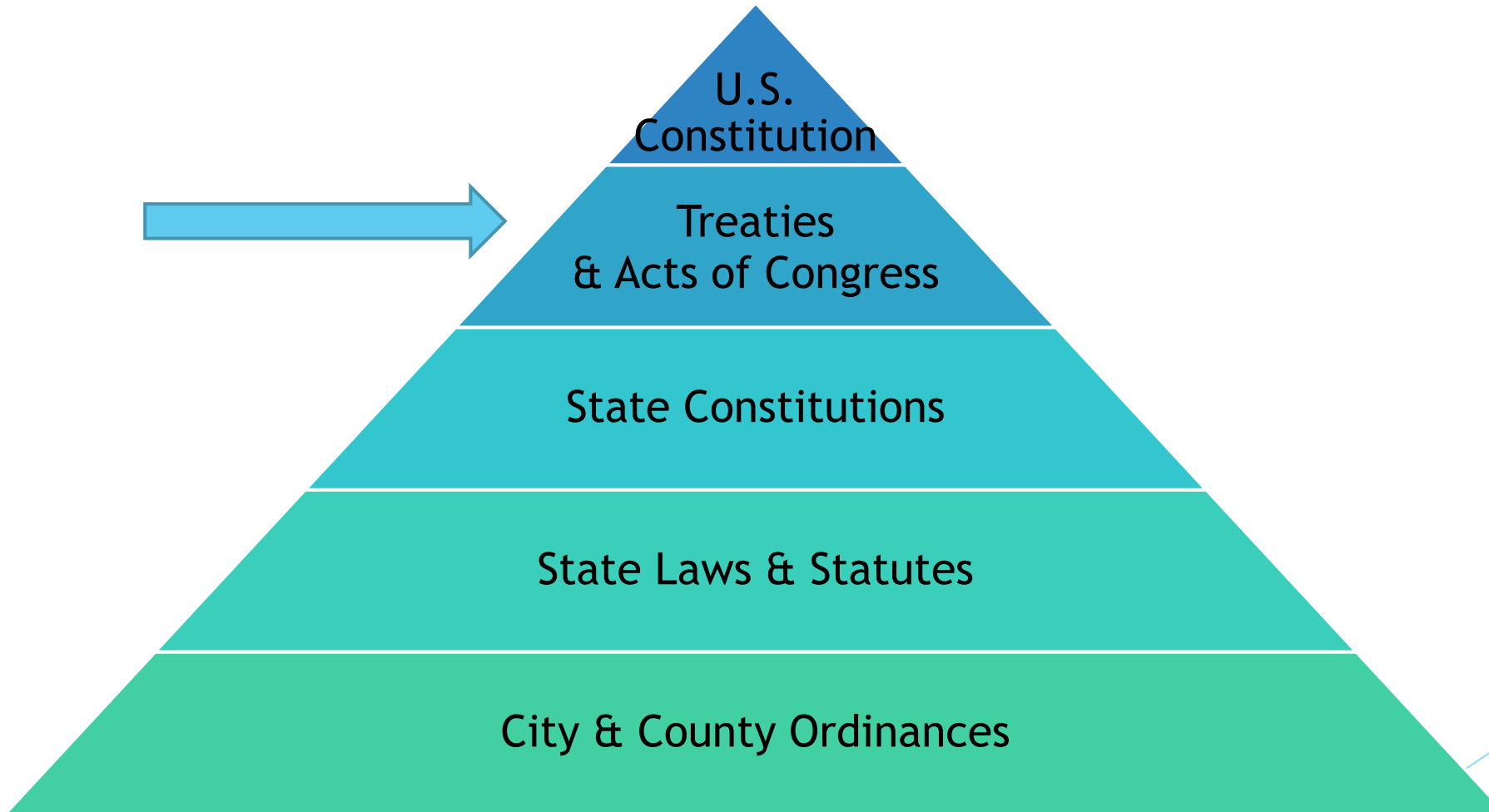
- ▶ A treaty is a binding agreement between two nations.
- ▶ The U.S. Constitution gives exclusive authority to the federal government to make treaties with other nations.

“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.” – United States Constitution, article VI, clause 2

Early use of treaties by Europeans

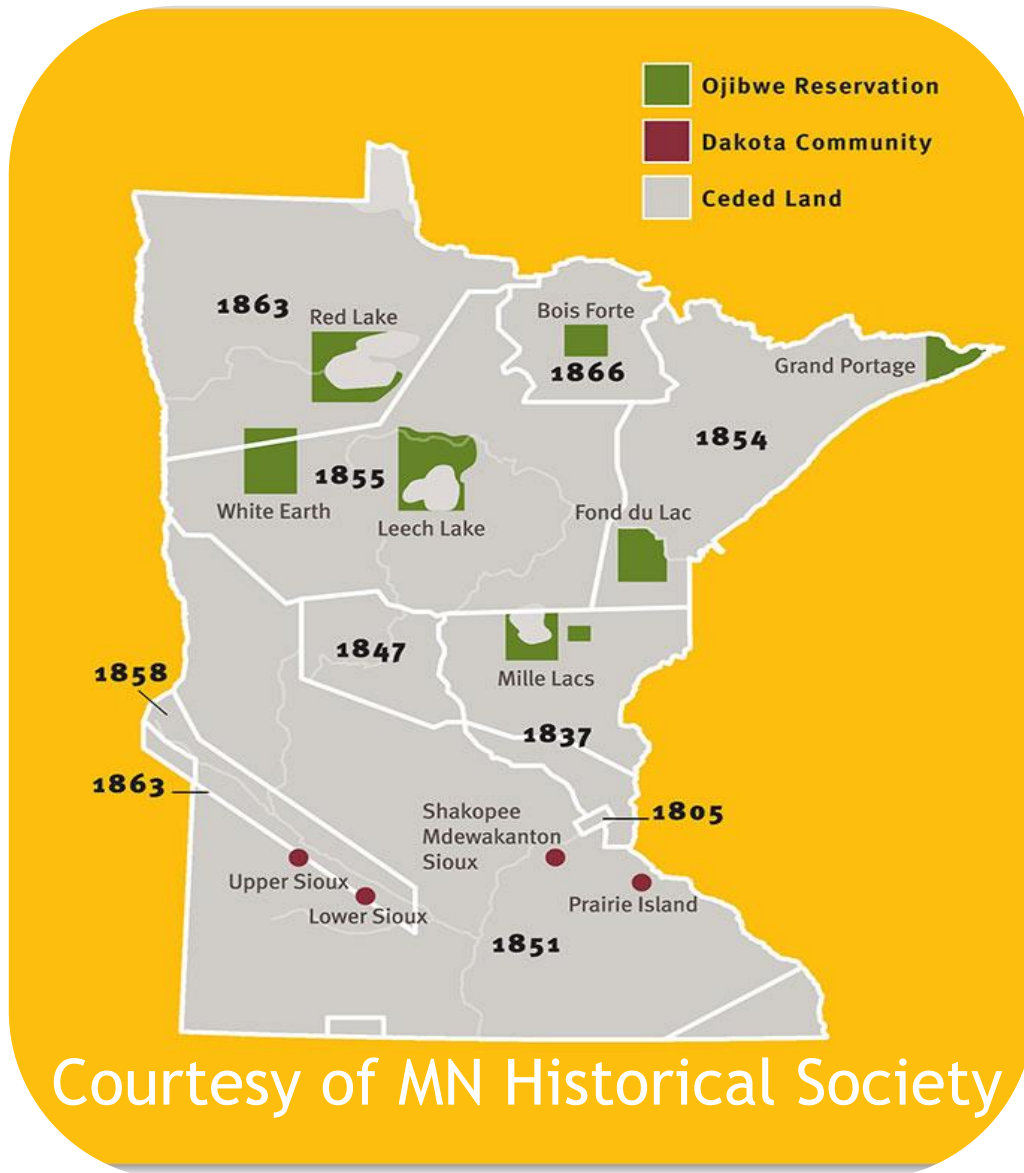
- ▶ French and British colonial officials negotiated written treaties with leaders of tribal nations.
- ▶ Treaties were the primary method for Europeans to acquire land for western expansion and to establish peace with Native nations.
- ▶ For Native peoples, treaties established peace and preserved tribal homelands.
- ▶ Beginning in 1805, the U.S. ratified 25 treaties affecting lands and Native people in Minnesota.

Hierarchy of Legal Authority



Treaty Rights

- ▶ Usufructuary rights.
- ▶ Tribal rights, not individual rights.
- ▶ Regulated through tribal codes.



The Treaty of La Pointe, 1854, reserved rights to hunt, fish, and gather, affirmed by the Supreme Court to be protected property rights under the U.S. Constitution.



1854 Treaty Authority



- ▶ Inter-tribal natural resource management organization
- ▶ Protects and implements the off-reservation hunting, fishing and gathering rights for the Grand Portage and Bois Forte bands.

Legal Jurisdiction & Public Law 280

Public Law 280 (1953) granted several states, including Minnesota, criminal jurisdiction over individual “Indians” (not tribes) in most Indian lands located within the states’ boundaries.

1968 amendments permit states to “retrocede” or grant back jurisdiction to a tribe/federal jurisdiction, so long as the state initiates the retrocession and the federal gov’t approves.

Allows limited civil jurisdiction over state laws of “general application,” but not laws of local or limited application (like a zoning ordinance). Tribe still may have civil jurisdiction over tort, contract, concurrent criminal jurisdiction.

Importantly, does not affect the supremacy of federal-tribe relationships established by treaty (like rights to hunt, trap, fish in ceded lands).

Criminal/Prohibitory vs. Civil/Regulatory & Public Law 280 Jurisdiction



Special Topic: Property Taxation

- ▶ PL 280 does not allow states to tax a Native person's property located on federal trust lands. The law did not give the states general civil regulatory power.
- ▶ Fee lands, whether owned by the tribe or an individual member, are generally taxable.



Recent Property

Contact Us



Robert Thorpe
County Assessor

Updated Market Valuation Notice

Cook County Assessor

Child Protection Response: ICWA and MIFPA

- ▶ Intent: **preserve the cultural identity of Indian children, promote stability and security of Indian tribes and families.**
- ▶ Applies to children who are **enrolled members of or eligible for enrollment** into a federally recognized Indian tribe.
- ▶ Indian Child Welfare Act (ICWA) creates **federal requirements that state courts must follow when placing Indian children outside of their home** (i.e. foster care, TPR, some delinquency placements). **“Active efforts”** must be made to keep child with parent.
- ▶ Requires **notice to tribes and Indian custodians. Tribal court may take the case. Tribe may intervene** in a matter conducted in state court.



Image of Nokoomis Nibii Equay, Grandmother Water Woman, by Anishinaabe artist Duane Goodwin, courtesy: University of Minnesota Morris.

Human Services Response: Cook County/Grand Portage Protocol



- ▶ 2001-2002 - Commissioners and the Grand Portage Tribal Government set out to reach an agreement as to how county workers might provide services on the Reservation while respecting tribal sovereignty and the customs and culture of Reservation residents.
- ▶ They agreed on a special protocol for social workers to use when responding to calls in Grand Portage, documented in a letter to commissioners in 2002.
- ▶ The protocol includes the following additional steps when responding to the Reservation:
 - ▶ Immediately contact a GPHS representative when they receive a call about the health, safety, welfare of any person on the Reservation, assist with the investigation/response if so requested.
 - ▶ Enter Reservation to follow-up on reports only if accompanied by a GPHS representative.

Conclusion

County board endorses Indigenous Peoples' Day

October 17, 2015

What should our goals be, as a local government who represents constituents living on the Reservation, descendants of the original inhabitants of this land, and which partner with the sovereign nation of the Grand Portage Chippewa?

- ▶ **Understand** and follow the laws which limit our authority, respect the history behind them.
- ▶ **Honor our current commitments** as a local government (protocol, Indigenous Peoples Day proclamation).
- ▶ Gain and **build trust** through our relationship with the Grand Portage Tribal Government because it will only teach us **to better govern and serve our entire population.**



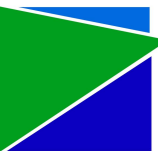
Before entering the Cook County courthouse for a special meeting of the Cook County Board of Commissioners, about 25 people gathered under the old pine on the courthouse lawn to listen to the drum song of the Stonebridge Singers. The gathering was a statement of support for an earlier request by Grand Portage youths to declare the second Monday in October Indigenous Peoples' Day instead of Columbus Day.

Sources

- ▶ The Ojibwe Peoples Dictionary at ojibwe.lib.umn.edu
- ▶ 1854 Treaty Authority at 1854treatyauthority.org
- ▶ Treuer, D. (2012). *Rez Life: An Indian's Journey Through Reservation Life*. New York: Atlantic Monthly Press.
- ▶ Droulliard, S. (2019). *Walking the Old Road: a people's history of Chippewa City and the Grand Marais Anishinaabe*. Minneapolis: University of Minnesota Press.
- ▶ *Why Treaties Matter* online exhibit at treatiesmatter.org.
- ▶ Mazina'igan, A Chronicle of the Lake Superior Ojibwe
- ▶ Minnesota Chippewa Tribe at mnchippewatribe.org
- ▶ State of Minnesota Indian Affairs Council at mn.gov/indianaffairs/grandportage-iac.html
- ▶ Native Governance Center at nativegov.org
- ▶ All My Relations podcast at allmyrelationspodcast.com
- ▶ Minnesota House Research (February 2020) *American Indians, Indian Tribes, and State Government*

THANK YOU.

COOK COUNTY



MINNESOTA