International Municipal Lawyers Association
2021 Annual Conference
Minneapolis, Minnesota

Tribal Law and Cities

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Tribal Law
and
Cities

Tadd Johnson
Joseph Bauerkemper

"Quiz" #1

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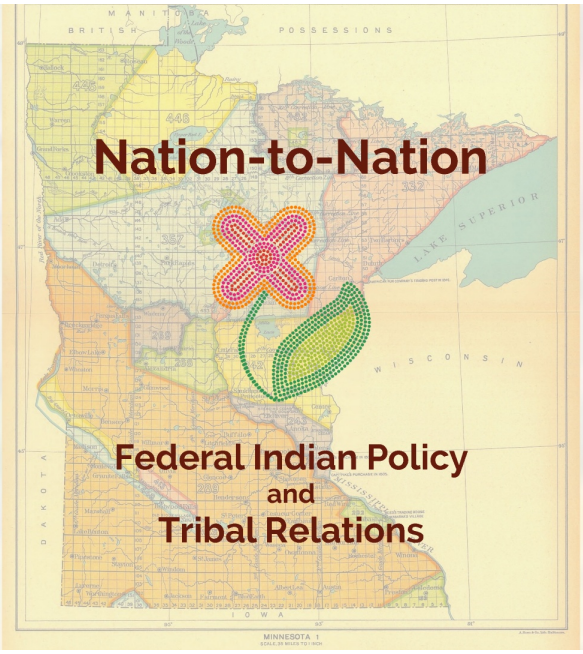
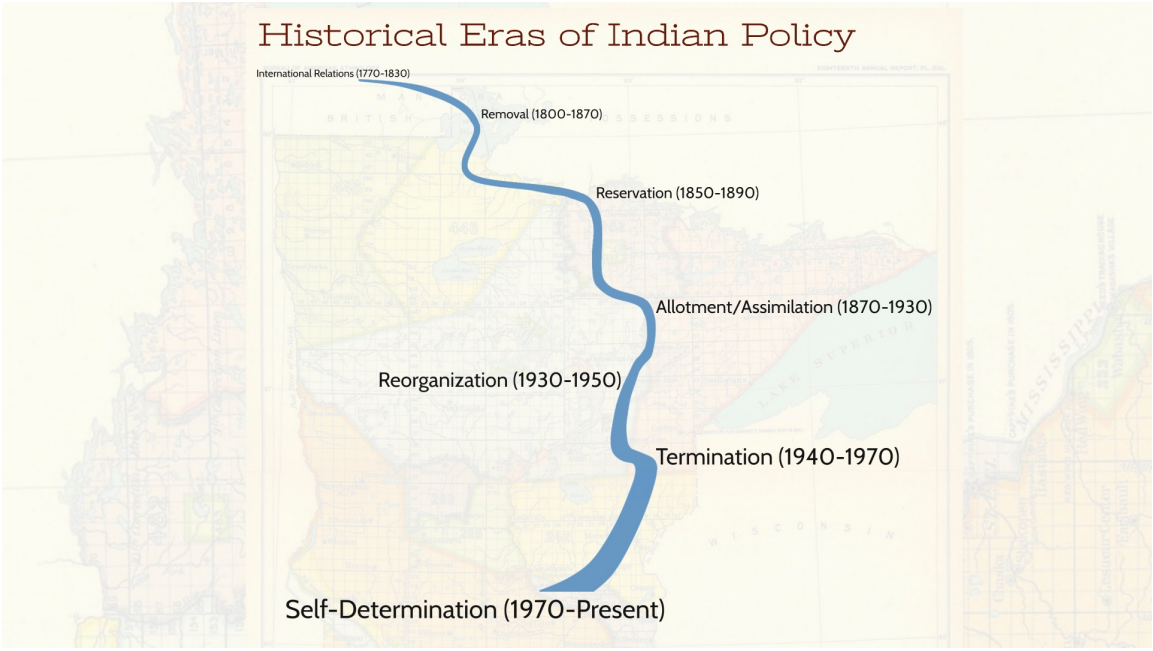

Nation-to-Nation
Federal Indian Policy
and
Tribal Relations


Historical Eras of Indian Policy
International Relations (1770-1830)
Removal (1800-1870)
Reservation (1850-1890)
Allotment/Assimilation (1870-1930)
Reorganization (1930-1950)
Termination (1940-1970)
Self-Determination (1970-Present)

Fundamental Principles

Sovereignty

the right of a people to determine their own destiny and governance

Trust Responsibility

obligations owed by the United States to Indian tribes as established by treaties, statutes, and the course of dealing

1930)

International Relations (1770-1830)

Pre-1789: Pre-Constitutional Period



1789: U.S. Constitution

- recognizes foreign nations, states, and Indian tribes as sovereign entities
- establishes federal treaty making authority

Case Law Contexts: "The Marshall Trilogy"

Johnson vs. M'Intosh (1823)
- Indian land title/occupancy
- Exclusive federal negotiation authority

Cherokee Nation vs. Georgia (1831)
- "Guardian/Ward" relationship
- "Domestic Dependent Nations"

Worcester vs. Georgia (1832)
- "The laws of Georgia shall have no force..."
- State law generally not applicable in Indian Country

Analytical Tool

1) Has Congress expressly acted to limit tribal authority?

2) If not, ***tribes retain inherent sovereignty****.*

"Perhaps the most basic principle of all Indian law ... is the principle that those powers which are lawfully vested in an Indian tribe are ... inherent powers."

"What is not expressly limited [by Congress] remains within the domain of tribal sovereignty"

- Felix S. Cohen, Handbook of Federal Indian Law

Removal (1800-1870)

- Jefferson's Debt Scheme
- Jackson's Indian Removal Act and the Trail of Tears



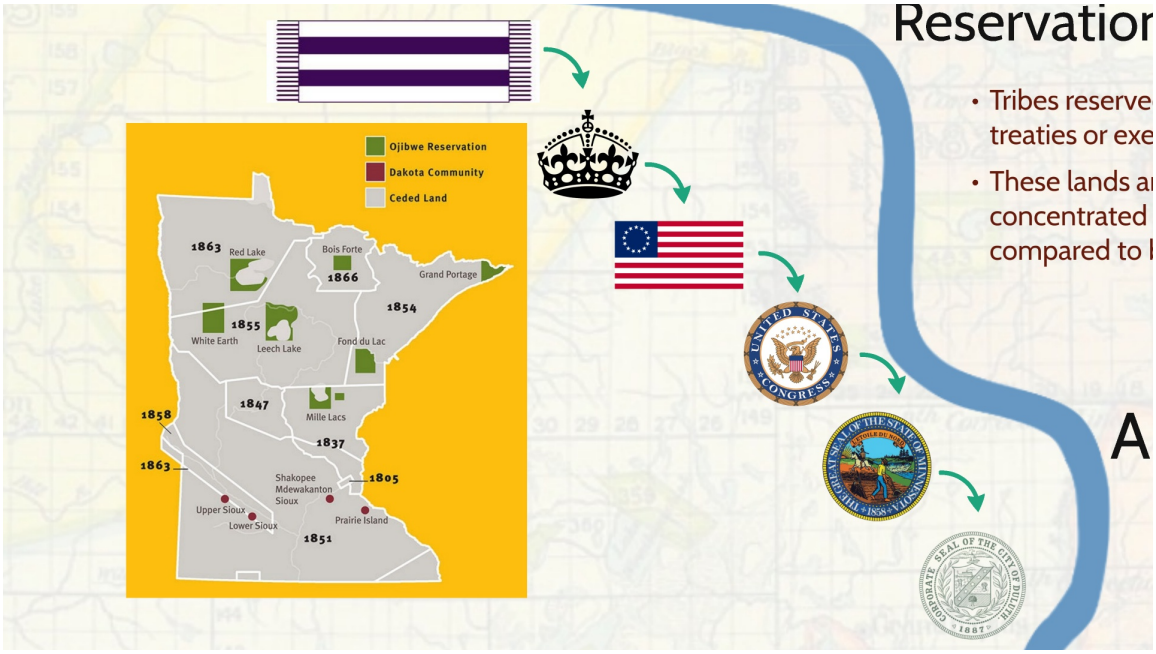




- Dakota Exile

Reservation (1850-1890)

- Tribes reserved territories through treaties or executive orders.
- These lands are significantly concentrated and diminished when compared to broader homelands.


Reservatior
• Tribes reserve
treaties or exe
• These lands a
concentrated
compared to
A
Ojibwe Reservation
Dakota Community
Ceded Land
1863
Red Lake
Bois Forte
1866
Grand Portage
1854
1855
White Earth
Leech Lake
Fond du Lac
1847
Mille Lacs
1858
1837
1863
1805
Shakopee
Mdewakanton
Sioux
Upper Sioux
Lower Sioux
Prairie Island
1851
UNITED STATES
CONGRESS


treaty rights → treaty obligations
• reserved inherent Indigenous rights
• enumerated settler rights
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Treaty Rights &
Obligations
Ojibwe Reservation
Dakota Community
Ceded Land
"Wenji-bimaadiziyaang" Maghegabo (1837)
"The treaty was not a grant of rights to the Indians, but a grant of rights from them -- a reservation of those not granted." US v. Winans (1905)
The utmost priority of any settler government must be to mind its treaty obligations.

1854 TREATY AUTHORITY



CEDED TERRITORY CONSERVATION CODE

"Wenji-bimaadiziyaang" Maghegabo (1837)

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The utmost priority of any settler government must be to mind its treaty obligations.

Fond du Lac Band of Lake Superior Chippewa
Reservation Business Committee

1720 Big Lake Rd.
Cloquet, MN 55720
Phone (218) 879-4593
Fax (218) 879-4146

Chairman
Kevin R. Dupuis, Sr.

Secretary/Treasurer
Ferdinand Martineau, Jr.

Dist. I Representative
Vanessa L. Northrup

Dist. II Representative
Bruce M. Savage

Dist. III Representative
Roger M. Smith, Sr.

Executive Director, Tribal Programs
Miyah M. Danielson

RESOLUTION #1374/17

To Amend the Band's Harvest Management Plan for the 1854 Ceded Territory,
To Approve the Memorandum of Understanding with Minnesota for Communication and Coordination Regarding the Band's 1854 Treaty Rights, and
To Approve the Stipulation to be Filed with the Federal Court in the Band's 1854 Treaty Rights Case

The Fond du Lac Reservation Business Committee, on behalf of the Fond du Lac Band of Lake Superior Chippewa, hereby enacts the following Resolution:

WHEREAS, the Fond du Lac Band of Lake Superior Chippewa are a sovereign people who occupy the Fond du Lac Reservation and retain their aboriginal rights of self-government and self-determination pursuant to the Treaty of LaPointe of September 30, 1854, 10 Stat. 1109; the Indian Reorganization Act of 1934, 25 U.S.C. §461 et seq., the common law of the United States; and as recognized by the United States Declaration on the Rights of Indigenous Peoples of September 13, 2007; and

WHEREAS, it is the sovereign obligation of the Fond du Lac Reservation Business Committee, as the duly-constituted governing body of the Fond du Lac Band, to exercise the responsibilities of self-government and management of the Band's affairs; and

Treaty Relations

- recognizes foreign nations, states, and Indian tribes as sovereign entities
- establishes federal treaty making authority

treaty rights → treaty obligations
- reserved inherent Indigenous rights
- enumerated settler rights

z.umn.edu/treaties

Treaty Rights & Obligations

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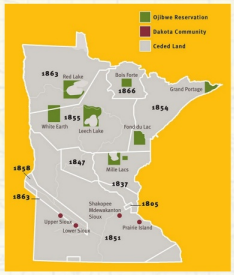
- Jackson's Indian Removal Act and the Trail of Tears
- Dakota Exile



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- Tribes treati
- These conce comp

Reorganization (1930-1950)

Allotment/Assimilation (1870-1930)

1871: End of Treaty Making
- Congress asserts unilateral authority



1879: Rise of Boarding Schools
- family/community/cultural disruption & trauma

1883: *Ex Parte Crow Dog*
- Who has criminal jurisdiction in Indian Country?





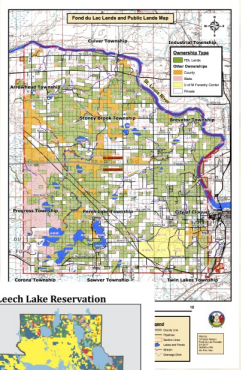
1885: Major Crimes Act
- Asserts federal criminal jurisdiction in Indian Country.

1886: *U.S. vs. Kagama*
- Affirms congressional authority in Indian Country.

Termination (1940-1970)



Allotment/Assimilation (1870-1930)

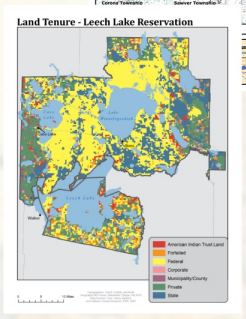


1887: General Allotment Act
- attempted socio-economic assimilation
- 2/3 of reservation lands lost





1889: Nelson Act
- allotment in Minnesota
- push to White Earth





Allotment/Assimilation (1870-1930)

1903: *Lone Wolf vs. Hitchcock*

- Plenary Power Doctrine



1924: Indian Citizenship Act

- Granted or Imposed(?)

Reorganization (1930-1950)

1928: Meriam Report

1934: Indian Reorganization Act

- Tribal constitutions
- Secretarial Elections
- Minnesota Chippewa Tribe



Termination (1940-1970)

1953: Termination Resolution 108 & Public Law 280

1956: Indian Relocation Act

1968: Indian Civil Rights Act

- Background: *Talton vs. Mayes* (1896)
- Limitations: *Santa Clara Pueblo vs. Martinez* (1978)
- Reflects the Bill of Rights, yet is distinct.

Self-Determination (1970-Present)

1970: Nixon's Message to Congress
1974: *Morton v. Mancari*
1975: Indian Self-Determination Act
1978: Tribally Controlled Community College Act
1978: Indian Child Welfare Act
1988, 1994, 2000: Self-Governance Amendments



Ceremonial Traditions

Gaming

Law Enforcement

Environmental Regulation

1988, 1994, 2000: Self-Gov

Ceremonial Traditions

1978: Indian Religious Freedom Act
1990: Native American Graves Protection and Repatriation Act

Environmental Regulatio

Gaming

1988: Indian Gaming Regulatory Act (IGRA)

- Background:
  - *Bryan vs. Itasca*
  - Big Bucks BINGO
  - *California v. Cabazon*
- Regulatory Authorities
  - Interior, Justice, Treasury, NIGC
  - State Government
  - Tribal Government

Law Enf

on

Repatriation Act

Environmental Regulation

1984: EPA Policy Statement
1986-1990: TAS Amendments

Law Enforcement

2010: Tribal Law and Order Act
2013: Violence Against Women Act Reauthorization

Building Partnerships

- humility
- do your homework
- don't fear or mystify
- bring opportunities, not predetermined outcomes
- don't wait for a crisis
- don't ignore a crisis
- find your counterpart
- understand existing relationships and frameworks
- foster and mobilize organizational commitment *(e.g., hire someone)*

"Quiz" Again

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