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MINNESOTA'S CHIPPEWAS: TREATIES AND TRENDS

The problem of the American Indian and his role in the political, economic and cultural life of the state and nation has become of increasing concern in recent years both to the Indian and his tribe, and to governmental units as well as much of the non-Indian population.

The Federal Government has moved rapidly within the last half-decade to integrate the Indian into the rest of the population, or at least begin that integration, and steps are being taken further to divest the United States of the responsibility for his activities and welfare. This reverses the situation existing for more than a century during which the Indian remaining on the reservation has looked to Washington for financial assistance, advice, protection, and, in a sense, some degree of isolation.

The Hoover Commission in 1949 proposed to turn the responsibility for the Indian social programs over to the states, terminate tax exemption for Indian lands, and transfer tribal property to

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1. The policy of Congress is said to be an early end to the trust relationship with the tribes and the integration of them as first class citizens, bearing the same privileges and subject to the same laws as all other citizens. See 2 U. S. Code Cong. & Ad. News, 83d Cong., 2d Sess. 3120 (1954).
Indian-owned corporations. This has only added to the confusion, fear and distrust which is part of the daily existence of many of our Indians. Some of these steps already taken to integrate the Indian and to remove some of the stigma of what he sees as second-class citizenship, such as the repeal of the restriction on sale of intoxicating liquor on reservations, have his whole-hearted support. Others demand careful study and education, running both to the Indian and those with whom he will be in contact in the administration of any new programs. These plans for the Indian must take into account both his needs and his wishes.

This Note will attempt to deal basically with the Minnesota Chippewa treaties, what they contain as well as their effect today, and then to consider some of the problems attendant upon withdrawal of federal supervision. It cannot, however, touch on many of the complex problems of the Indian which are demanding of solution, such as Indian claims and tax exemption for Indian lands, for these and others embrace a wide legal, economic and political area within which exploration has only begun.

The relationships of the Chippewas with the federal and state governments can be divided into three large areas or historical periods. The same is true of all other Indian tribes and bands in the United States. The first period produced both treaties and treaty-like agreements. The second covers the transition period culminating in the Indian Reorganization Act of 1934, during which restrictions on Indian land-holding were relaxed and the tribes finally given a large degree of self-government. The third period, at least for the Minnesota Chippewas, has just begun. It involves the surrender of federal criminal and civil jurisdiction over all but the Red Lake Reservation to the state of Minnesota. There is still a fourth era which logically lies just ahead for the Chippewas, although it may be delayed for the Red Lake group: that of complete federal withdrawal looking toward integration of the Indian population and perhaps the breakup of the reservations.

BACKGROUND OF INDIAN TREATIES

Until 1871, relationships were established with the various Indian tribes through treaties, the power stemming from the Constitution as in the case of treaties with a foreign nation. Approval also took the same course — a two-thirds vote of the Senate. After the making of Indian treaties was abolished in 1871, the United States concluded “agreements” with the various tribes which were then ratified by both houses of Congress. This permitted the House to have a voice in Indian affairs. It was expressly provided by statute that the obligations already incurred would not be lessened and the treaties then in existence were to remain in force.

This ban on treaty-making with the tribes has created considerable confusion, much of it semantic. To many the word “treaty” imparts greater obligation than an “agreement” embodied in an act of Congress. In practice, the Indians continued to call every written agreement a treaty whether it was in fact or not. There was no change in the method of negotiation. Both before and after 1871 representatives of the United States would meet with the chiefs of a tribe, work out a satisfactory arrangement, put it in writing, sign it, and send it to Washington. In fact, there appears no difference in effect between a “treaty” or an “agreement,” since either can be abrogated, revised or renegotiated by Congress, with or without the consent of the Indian tribes.

However, the argument has been made that in the treaties the United States treated the tribes as international nations, which it was receiving into its guardianship. The idea of the Federal Government acting as guardian of the Indians is said to stem from a phrase in a 1784 treaty with the Six Nations in which the United States received the tribes “into their protection.” In this treaty, as well as in subsequent ones, the United States did appear to accord the Indians an international status, one of the treaties containing a type of extradition arrangement whereby the tribes promised to deliver any Indian robbing or murdering a white to the nearest military

8. Ibid.
10. Ibid.
post to be punished by the laws of the United States. An amendment to that same treaty in 1789 contained a type of mutual assistance agreement whereby the United States and each tribe promised to inform the other if information were received of an uprising being plotted, the Indians agreeing to deny passage through their lands to hostile bands. One further article permitted the Indians to punish as they saw fit whites settling on lands confined to the Indians, and such whites were to be "out of the protection of the United States."

Much as this would indicate a conclusion that the Indian tribes were dealt with as having an international status, no validity can attach to it. Congress can abrogate unilaterally a treaty with any foreign government as it can abrogate a treaty with any Indian tribe, or an agreement which does not bear the meaningless designation of "treaty." The real explanation is that the Federal Government in its dealings with the Indians followed a realistic course. Its goal was peace with the tribes, and, later, the securing of land for white settlement. As the power of the tribes waned so did the reflection of bilateral negotiation in both treaties and agreements. The path of federal activity to date appears conclusive against attaching any significance to the treaty status, shattering an idea which lingers on in the minds of many Indians.

CHIPPEWAS AND THEIR TREATIES

The Chippewas, according to legend and tradition, are brothers of the Ottawa and Potawatomi tribes, and are thus grouped under the Algonquian body. Because they were remote from the frontier, they had little or no contact with the Colonial wars and little or no historical role in the early days of the United States. In their advance in the 17th and 18th centuries they pushed the Foxes out of Wisconsin and the Sioux from large areas of Minnesota and North Dakota, while other bodies of Chippewa occupied the areas be-
tween Lakes Huron and Erie. When the Minnesota territory became a part of the United States in 1804, the Chippewas occupied the lands north of a line drawn from Clay County through Otter Tail and Douglas Counties into Stearns County and then to the Wisconsin border.

Beginning with a treaty in 1820, treaties with the Chippewas or to which the Chippewas were a party trace vividly the pattern of surrender of Great Lakes and Northwest lands to the United States. In 1825 the Federal Government negotiated a treaty between the Chippewas and the Sioux which established a boundary between them running approximately from Stillwater to Moorhead, the United States agreeing to "recognize" such boundary. While no land was ceded through this treaty, it may sharply affect Chippewa claims to aboriginal title. The treaty pattern made its full effect felt in Minnesota in 1837, beginning an era of negotiation, cession and reservation which lasted until roughly 1889.

Minnesota today has seven so-called reservation areas: Red Lake, Fond du Lac, Grand Portage, Greater Leech Lake, Mille Lacs, Nett Lake and White Earth. These seven are grouped into two administrative classes: the Red Lake Reservation in one and the other six in what is called the Consolidated Chippewa Agency. Each of the seven results from a treaty or agreement between the Chippewas and the United States. It is for that reason, among others, that it is important to understand each treaty in terms of what lands were ceded, what reservations were created, and what important provisions each contained.

It is only through the treaties that it is possible to understand the basis of Indian claims, evaluate any Indian land problem or controversy, and discuss steps in federal withdrawal.

Through the treaty of 1837 the Chippewas ceded to the United States the territory between the St. Croix and Mississippi Rivers,

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17. 1 Handbook of American Indians 277-280 (1907). Also see Murdock, Ethnographic Bibliography of North America 101 (1941).
20. 7 Stat. 272 (1825), 2 Kappler, Indian Affairs, Law and Treaties 250.
21. In a recent case, the United States Supreme Court said there was no compensable aboriginal Indian title based on any period of possession unless Congress has recognized such title by appropriate action, a treaty being one of those. The Court went on to say that any payment to the Indians for the taking of land is a matter of grace unless Congress has recognized Indian title in that land. See Tee-Hit-Ton Indians v. United States, 348 U. S. 272, 279-291 (1955). This raises the question whether Congress through the Senate recognized Indian title by recognizing the boundary between the Sioux and the Chippewa. The answer is probably no.
22. 7 Stat. 536 (1837), 2 Kappler, Indian Affairs, Laws and Treaties 491.
and between the boundary line established by the 1825 Sioux-Chippewa treaty north to a line running almost east and west from the Crow Wing River.\textsuperscript{23} Payments in both cash and goods over a period of 20 years were provided for as well as a grant to the Chippewas to hunt and fish and gather wild rice on the lands, rivers and lakes of the territory ceded during the pleasure of the president of the United States.\textsuperscript{24} No reservations were created out of this ceded land.

Two further treaties, both in 1847, resulted in the surrender of a large land area in central Minnesota by the Chippewas of the Mississippi and Lake Superior\textsuperscript{25} and a roughly adjoining area to the west by the Pillager band.\textsuperscript{26} Both treaties provided for payments, although the Pillagers were to receive goods only.

In 1854 the Chippewas of Lake Superior signed a treaty with the United States whereby they gave up the huge triangle north of Lake Superior, extending to the Swan River on one side and Vermilion River on the other.\textsuperscript{27} From this ceded land the Federal Government set apart the first Minnesota Chippewa reservations. Created by the 1854 treaty were the Fond du Lac Reservation, situated along the St. Louis River near Duluth, the Grand Portage Reservation on the Pigeon River near Canada on the northern shore of Lake Superior, and the Boise Fort Reservation on Vermilion Lake. The Boise Fort band was given the right to select their own reservation, in the event they did not wish to occupy the land set aside at Vermilion Lake. This second Boise Fort Reservation was finally established at what is called Boise Fort or Nett Lake by a supplementary treaty with the band in 1866\textsuperscript{28} wherein the band surrendered all claims against the United States and the lands reserved at Vermilion Lake. The President reserved the right in the 1854 treaty to set conditions on the sale and inheritance of lands within the reservations created and in the event minerals were found on lands patented to an Indian, such Indian could be required to exchange his land for another tract. The treaty forbade the making, sale or use of liquor on the reservations as well as the sale of it on the ceded lands and provided for rights of way for necessary roads, highways and railroads.

\textsuperscript{23} Ibid.

\textsuperscript{24} See notes 85, 88, 89, 90, 91, \textit{infra} and text thereto.

\textsuperscript{25} Treaty with the Chippewas of the Mississippi and Lake Superior, 9 Stat. 904 (1847), 2 Kappler, \textit{Indian Affairs, Laws and Treaties} 567.

\textsuperscript{26} Treaty with the Pillager Band, 9 Stat. 908 (1847), 2 Kappler, \textit{Indian Affairs, Laws and Treaties} 569.

\textsuperscript{27} 10 Stat. 1109 (1854), 2 Kappler, \textit{Indian Affairs, Laws and Treaties} 648.

\textsuperscript{28} 14 Stat. 765 (1866), 2 Kappler, \textit{Indian Affairs, Laws and Treaties} 916. The Vermilion Lake Reservation was later re-established by executive order in 1881. 1 Kappler, \textit{Indian Affairs, Laws and Treaties} 853.
Another article of the treaty provided the Chippewas of Lake Superior should have the right to hunt and fish on the ceded lands until the President of the United States should order otherwise.

The next great land surrender took place only a year later through the signing of a treaty in 1855 with the Chippewas of the Mississippi and the Pillager and Winnibigoshish bands. They ceded to the United States a great tract of land in central Minnesota extending from the Swan River to the Red River and from the mouth of the Crow Wing River to Rainy River. Through this 1855 treaty the Mississippi bands got reservations on Mille Lacs, Rabbit Lake, Gull Lake, Sandy Lake, Rice Lake and Lake Pokagomin. The Pillager and Winnibigoshish bands got areas on Cass Lake, Leech Lake and Lake Winnibigoshish. Of these, the Rice Lake Reservation was never in fact established since it fell within the limits of the Sandy Lake Reservation. The only present-day reservation areas directly traceable to this 1855 treaty are Mille Lacs and Leech Lake. The reservations followed the same pattern of creation: cession of the entire land area to the United States and then the setting aside by the government of a portion of it for a reservation. This becomes important later in considering the contrary methods by which the Red Lake Reservation was created.

A further treaty in 1863 resulted in the surrender of the reserved reservation areas at Mille Lacs, Rabbit Lake, Gull Lake, Sandy Lake and Lake Pokagomin for a single reservation surrounding three reservations at Cass Lake, Leech Lake and Lake Winnibigoshish. By this treaty the United States hoped to consolidate all of the bands in what today is the Greater Leech Lake Reservation. The Indians were reluctant to honor this consolidation treaty so in 1864 the United States negotiated another arrangement. As added incentives this treaty permitted the Mississippi bands to remain on their old reservations until 300 acres of land had been cleared and prepared for planting, and also added a large piece of land to the Greater Leech Lake Reservation. Further, the Mille Lacs band was expressly not required to make the move.

But most of the Indians on these scattered reservations were still hesitant to move. This led to the treaty of 1867 whereby the

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30. Id. at 1166, 2 Kappler at 686.
32. 13 Stat. 693 (1864), 2 Kappler, Indian Affairs, Laws and Treaties 862.
33. 16 Stat. 719 (1867), 2 Kappler, Indian Affairs, Laws and Treaties 974.
bands of the Chippewas of the Mississippi ceded much of the land around Leech Lake and other smaller reservations for a larger area comprising what is now part of White Earth Reservation. An interesting provision of this treaty set out that "... in case of the commission by any of the said Indians of crimes against life or property, the person charged with such crimes may be arrested, upon the demand of the agent [Indian agent], by the sheriff of the county of Minnesota in which said reservation may be located, and when so arrested may be tried, and if convicted, punished in the same manner as if he were not a member of an Indian tribe." 34

This provision apparently appears nowhere else in the treaties with the Chippewas and as far as can be determined with no other tribe or band. No information can be found as to any enforcement attempted under it, although it would achieve the same result as today's surrender of federal criminal jurisdiction to the states.

The intention of the Federal Government, reflected in this series of treaties, came to be the creation of a reservation at White Earth for all Minnesota Chippewas, including the Red Lake and Pembina bands. In 1886, after treaties could no longer be made with the Indians, Congress authorized negotiations with the Minnesota Chippewa tribes to bring about this move to White Earth, for all but the Red Lake and Pembina bands. The commission secured the consent of the majority of all but the Mille Lacs group. However, it did not visit the Grand Portage Reservation and the Fond du Lac group was doing so well on its own that it was not advised to make the move. These agreements were signed, plus another with the Red Lake band by which they would cede two million of their three million acres, the government agreeing to sell the ceded land for them. The remaining land was also to be ceded to the United States to hold it in trust for the Red Lake and Pembina bands. However, these agreements were never approved by Congress and died without taking effect. 35

This was the status of the Minnesota Chippewas in 1886, except for the Red Lake-Pembina group. Separate treatment of this problem is required because of the distinct way in which the Red Lake Reservation was created. In the case of all other Minnesota Chippewa reservations, past and present, the Indians surrendered all their lands to the United States and received back an area out of

34. Id. at 721, 2 Kappler at 976. This is a patent contradiction to federal jurisdiction over major crimes and crimes on reservations. But such inconsistency would be important only in application, and no instances of it have been found.

35. 4 Folwell, A History of Minnesota 198-219 (1930).
the ceded land as a reservation. The Red Lake group never ceded what is now their reservation.

The treaty with the Red Lake-Pembinas was negotiated in 1863. Through it they surrendered almost 6,000 sections of land between the Red River and roughly their present reservation. The usual payments, both in cash and goods, were set out in the treaty. Nowhere in the treaty is there mention of a reservation to be created except in a provision that a board of visitors, charged with administering the annuities to be paid, was to report the deportment "...of all persons residing upon the reservation under the authority of law...."

This would seem in no way to affect the peculiar status of Red Lake as a reservation.

Thus these treaties provide the foundation or starting point for Indian rights and relations, as well as providing the historical setting for any discussion of any new approach to the Indian problem. Basically they serve to indicate the lands ceded and the reservations created. But they also supply the basis for Indian claims of inadequate payment or failure to pay the full treaty amounts. Further, provisions in several of the treaties reserving fish and game rights loom important in the light of the surrender of federal civil and criminal jurisdiction to the state of Minnesota, a problem which will be considered at some length later in this Note.

**LAND ALLOTMENT AND INDIAN REORGANIZATION**

As stated earlier, Congress in 1886 was determined to concentrate all of the Minnesota Chippewas except the Red Lake-Pembina group on White Earth Reservation. But this policy underwent a complete reversal in 1887 in the General Allotment Act. This statute, sometimes called the Dawes bill, authorized the President to allot or grant lands on Indian reservations to individual Indians and permitted Indians not residing on reservations to select allotments on the public domain. It provided that title to the allotments was to be held in trust by the United States for 25 years, at the end of which time patents in fee were to issue to the allottees. Also Indians who established permanent homes on allotments and became civilized were to receive citizenship.

36. 13 Stat. 667 (1863), 2 Kappler, Indian Affairs, Laws and Treaties 853. There is nothing to indicate that any copies of any of these treaties were given to the tribes, in any form. Perhaps this has resulted in much misunderstanding of their exact terms. The treaties were signed by the chiefs with their marks in the presence of interpreters.


38. See note 21, supra.

But the consolidation attempt did not die easily. Shortly afterward, Congress passed the Nelson Act of 1889\(^{40}\) which provided that all of the reservations were to be ceded except White Earth and Red Lake, although surrender would require a two-thirds vote of the male adults on the various reservations. It further required that all of the Minnesota Chippewas, except those at Red Lake, go to White Earth and take allotments as specified in the abortive 1886 agreements,\(^{41}\) the Red Lake group to take allotments on their own reserve. However, a proviso attached to the bill completely destroyed the consolidation goal embodied in the Nelson Act. This amendment permitted Indians to take these allotments of 160 acres on their old reservations. The result was that few moved to White Earth, most of the Indians choosing to take allotments on their old reservations. The White Earth Reservation itself is an unhappy chapter in Minnesota Chippewa history, with much of the valuable land slipping from Indian hands.\(^{42}\)

The General Allotment Act, as applied to Minnesota Chippewas through the Nelson Act, underwent revision and relaxation during the years succeeding 1887. An amendment in 1906\(^{43}\) authorized the issuing of fee simple patents to the allottees who, in the discretion of the Secretary of the Interior, were judged capable of managing their own affairs, i.e., “competent” Indians, and to heirs of allottees who died previous to the expiration of the 25-year trust period. Other changes wrought by amendments allowed the leasing of the allotments under certain conditions\(^{44}\) and conveyances of inherited trust allotted lands with the approval of the Secretary of the Interior.\(^{45}\) After 1910, it was possible to dispose of the trust allotments by will,\(^{46}\) provided the Secretary of the Interior and the Commissioner of Indian Affairs gave their approval. These changes trace the beginnings of a new confidence on the part of the United States in the Indian tribes. They provide the background for the Indian Reorganization Act of 1934.\(^{47}\)

But the 1887 Allotment Act also has played a large role in the uniqueness of the Red Lake Reservation, other than the fact that it alone has never been ceded. Prior to the Allotment Act, all Indian lands were tribally or collectively owned. The Minnesota Indian

\(^{40}\) 25 Stat. 642 (1889).
\(^{41}\) See note 35 supra and text thereto.
\(^{42}\) 4 Folwell, A History of Minnesota 261-283 (1930).
\(^{43}\) 34 Stat. 182 (1906).
\(^{44}\) 26 Stat. 795 (1891).
\(^{45}\) 32 Stat. 275 (1902).
\(^{46}\) 36 Stat. 856 (1910).
lands, under the implementing Nelson Act, were divided into 40 and 80 acre tracts for distribution. All of the Minnesota bands, except those on Red Lake Reservation, elected to allot these tracts to individuals. The Red Lake-Pembina group decided to retain the land in tribal ownership. In the case of the reservations outside Red Lake, this permitted much of the Indian lands in Minnesota to pass into non-Indian hands. Thus, while there are about 168,429 acres of trust allotted lands in Minnesota, only 284 acres are within Red Lake Reservation. Conversely, of the 665,850 acres of tribal trust land within this state, all but 92,610 acres are within Red Lake Reservation. The result is that Red Lake alone remains as a virtually solid block of Indian land, while the other reservations are permeated with non-Indian landholders.

As to the trust allotted lands, the equitable or beneficial title is inheritable. But often, when the descendants become too numerous, either the Federal Government or the tribe will purchase the land from those descendants and turn it into tribally owned property. While tribal land is generally operated by the tribe as an entity, it may be assigned to an individual for life and then, upon the death of the first occupant, reassigned to a new beneficial owner, who must pay the estate of the deceased occupant for the improvements he may have made. Title to both tribal land as well as trust allotted land is in the government.

Sharply affecting this Indian land tenure program was the Indian Reorganization Act of 1934, which prohibited any further allotments in severality to individual Indians and extended indefinitely both the trust period on trust allotted lands and the restrictions on alienation. Further effects of the act were: to authorize the Secretary of the Interior to restore remaining surplus lands not yet allotted on reservations to tribal ownership; to prohibit the sale or transfer of restricted Indian lands except to the tribe or the Secretary of the Interior; to authorize the Secretary to acquire new lands for Indians, such lands to be exempt from state and local taxation.
and title to be held in trust by the United States; and to authorize
the Secretary to proclaim new reservations on lands to be acquired
as well as to add newly acquired lands to existing reservations. The
effect of this part of the Reorganization Act was to halt the breakup
of reservations by the whites and provide a method of restoring lands
to the reservation.

But more than merely affecting Indian lands and titles, the
Reorganization Act granted to the tribes a rather large degree of
self government by authorizing the adoption of constitutions and
by-laws by Indians on the same reservations and the issuance of
federal corporate charters to such groups. The Red Lake band
and the Minnesota Chippewa Tribe, the latter including the White
Earth, Leech Lake, Mille Lacs, Fond du Lac, Nett Lake and Grand
Portage Reservations grouped under the Consolidated Chippewa
Agency, have adopted constitutions and have been granted charters
by the United States. Both the Red Lake band
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Earth, Leech Lake, Mille Lacs, Fond du Lac, Nett Lake and Grand
Portage Reservations grouped under the Consolidated Chippewa
Agency, have adopted constitutions and have been granted charters
by the United States. The Minnesota Chippewa Tribe has also
adopted a set of by-laws. The Red Lake band, however, was organ-
ized prior to the 1934 act. There is little difference between the
constitutions of the two Chippewa units, although tribal ordinances
are said to vary with the particular status or needs of each. Also,
the charters grant similar free reign to the tribal councils or com-
mittees in managing their lands and providing for the keeping of
law and order on the reservations. However, some powers re-
sembling supervision are retained with the Secretary of the In-
terior.

The constitution and by-laws of the Minnesota Chippewa Tribe
were approved in 1936. The management of Indian affairs for the
reservation is therein vested in a tribal executive committee which
is granted powers, among others, to: administer and assign tribal
lands, manage all the business affairs of the tribe, employ legal
counsel, prevent the sale or lease of any interest in tribal lands,

57. Minnesota Legislative Research Committee Publication No. 27, Min-
nesota Indians 49 (1950).
59. See note 57 supra.
60. See note 57 supra.
61. See note 57 supra. The secretary has, among others, power to re-
view the administration and tribal lands, approve the selection of any attorney
retained by the tribe and the fee to be paid, and approve rules governing
qualifications for admittance to tribal roles. Constitution and By-laws of the
Minnesota Chippewa Tribe of Minnesota 2, 3 (U.S. Dep't Interior 1936).
62. Constitution and By-laws of the Minnesota Chippewa Tribe of
Minnesota 9 (U.S. Dep't Interior 1936). The certification of adoption attached
to the constitution and by-laws sets out the referendum procedure by which
the tribe approved the document.
63. See note 61 supra.
organize and charter tribal associations, and spend tribal funds. Such a tribal constitution is to remain effective indefinitely unless revoked as provided for in the Reorganization Act. 64

A federal corporate charter for the Minnesota Chippewa Tribe was ratified in 1937,65 and cannot be revoked or surrendered except by act of Congress. Among the numerous corporate powers granted to the tribe are: the right to take, hold and dispose of both real and personal property by purchase, gift or bequest, subject, however, to some limitations on sale, mortgage or lease; the right to engage in any kind of business; the ability to make and perform some contracts with either private persons or the state of Minnesota, a county thereof or other political subdivisions, some supervisory control being retained on contracts above a determined amount; and the ability both to sue and be sued in federal courts.

Some of the provisions of this typical constitution and charter have been set out to indicate the degree of self-government already possessed by the tribes. This may offer a course of action for turning allotted and tribal trust land responsibility over to the corporate tribe in the event of federal withdrawal.

**THE BEGINNING OF FEDERAL WITHDRAWAL**

Certainly the most important piece of recent legislation affecting the Minnesota Chippewas was adopted in 1953,66 by which federal criminal and civil jurisdiction over Indians on reservations was transferred to Minnesota and four other states.67 This would appear to be one of the preliminary steps to the complete federal withdrawal contemplated by the Hoover Commission in 1949.68 This act transferring jurisdiction to the states involved, known as Public Law 280, excepted certain reservations in Minnesota, Oregon and Wisconsin from its sweeping provisions. In Minnesota, the Red Lake Reservation is specifically excluded.

As to the other reservations, the state of Minnesota is given "... jurisdiction over offenses committed by or against Indians in

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64. The statute provides that both the adoption and revocation of the constitution and by-laws are effected by approval through a majority vote of the adult members. 48 Stat. 987 (1934), 25 U. S. C. § 476 (1952).


67. Other states had previously been given specific jurisdiction in limited criminal areas. When a crime is committed within a reservation, New York, Kansas, Iowa, California and North Dakota have jurisdiction, although in the case of Iowa, California and North Dakota it is limited to certain reservations. See H. R. Rep. No. 2503, 82d Cong., 2d Sess. 16 (1952).

68. See note 2 supra and text thereto.
the areas of Indian country . . . to the same extent that such State has jurisdiction over offenses committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country as they have elsewhere within the State . . . ." The statute goes on: "Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof." The motivation behind this transfer of criminal jurisdiction to the states involved was clearly the complex and confused division of power between the United States, the state governments, and local subdivisions. In the words of the legislative committee: "As a practical matter, the enforcement of law and order among the Indians in the Indian country has been left largely to the Indian groups themselves. In many States, tribes are not adequately organized to perform that function; consequently, there has been created a hiatus in law-enforcement authority that could best be

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70. For a complete discussion of Indian civil liberties, their rights to self government and their property interests see Cohen, Indian Rights and the Federal Courts, 24 Minn. L. Rev. 145 (1940). A general treatment of the taxation problems may be found in Brown, The Taxation of Indian Property, 15 Minn. L. Rev. 182 (1931).


72. Report of the House Committee on Interior and Insular Affairs, H. R. No. 848, 83d Cong., 1st Sess. S-6 (1953). Said the Committee: "These States lack jurisdiction to prosecute Indians for most offenses committed on Indian reservations or other Indian country, with limited exceptions. The applicability of Federal criminal laws in States having reservations is also limited." Id. at 5.

73. It appears that only on the Red Lake Reservation has there been organized a tribal court to meet the problems of enforcing law on the reservation. See Minnesota Legislative Research Committee Publication No. 27 Minnesota Indians 49 (1950). This court was not organized under the Indian Reorganization Act of 1934 since the Red Lake band did not adopt that means of self government, but rather under the General Council of the Red Lake Band of Chippewa organized on April 13, 1918. See Subcommittee on Indian Affairs of the House Committee on Public Lands, 81st Cong., 2d Sess. Compilation of Material Relating to the Indians 1065 (1950).
remedied by conferring criminal jurisdiction on States indicating an ability and willingness to accept such responsibility.”

The grant of jurisdiction over civil causes of action to the five states involved is in the same words, with the additional provision that it shall not “... confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.” Further: “Any tribal ordinance or custom heretofore or hereafter adopted by any Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.” As to this transfer of civil jurisdiction, the same legislative committee, the House Committee on Interior and Insular Affairs, said such a step was possible because of the “... stage of acculturation and development...” reached by the tribes involved.

The exclusion of the Red Lake band from the provisions of these statutes resulted from their opposition to such a transfer of jurisdiction. Their unanimous sentiment was said to rest on their observation “... that State law would not be of any benefit to tribal members and that the tribal members should be given an opportunity by referendum election to accept or reject the extension of State jurisdiction.” However, the Red Lake Reservation still remain subject to federal criminal jurisdiction, established as to Indian country in 1817, which provides that the so-called ten major crimes are federal offenses when committed by Indians against Indians and extends federal criminal jurisdiction to crimes committed by

76. Ibid. The Reorganization Act of 1934, by permitting the Indians to adopt ordinances and laws based on tribal custom, has apparently created a difficult problem for the state in the area of marriage, divorce and illegitimacy. See Minnesota Legislative Research Committee Publication No. 27, Minnesota Indians 54 (1950). The requirement of consistency with state civil laws may perhaps obviate this problem, although not the difficulty of application.
77. See H. R. Rep. No. 848, 83d Cong., 1st Sess. 6 (1953). Unanimous opposition by the tribes to such transfer was indicated in Montana and South Dakota, South Dakota and North Dakota being among those states having constitutional impediments to such transfer of jurisdiction. Id. at 8.
78. This process of consultation with the tribes is an indication of the new approach which considers the Indians’ wishes as well as their needs.
80. 3 Stat. 383 (1817).
81. 18 U. S. C. § 1153 (1952). The crimes set out are murder, manslaughter, rape, incest, assault with intent to kill, assault with a dangerous weapon, arson, burglary, robbery and larceny.
Indians against non-Indians and non-Indians against Indians on reservation lands. 82

Another area of federal activity is scheduled to end July 1, 1955—this in the field of hospital and health services. Legislation effective on that date transfers the Indian health and hospital facilities, and responsibility for them, from the Department of the Interior and the Bureau of Indian Affairs to the Surgeon General of the United States Public Health Service, under the supervision of the Secretary of Health, Education, and Welfare, and permits relinquishing these hospitals and other health facilities to the states, their subdivisions, or private institutions or agencies. However, any such transfer to the states or other units must reserve priority for the health needs of the Indians and if a hospital is maintained for a specific tribe it may not be closed before July, 1956, or transferred to a non-Indian agency, without the consent of the Indians. 83

Among the many complex problems which have been and will continue to be raised as more federal functions are transferred to the states and withdrawal takes its course is one that is pressing for the Minnesota Chippewa: fish and game rights.

The widely-held view, at least until very recently, was that Indians may hunt and fish on their own lands subject only to tribal ordinances. 84 Once again, treaties play an important role in any determination of this problem. As noted previously, two of the Minnesota Chippewa treaties, 85 with the Chippewa Nation in 1837, and with the Chippewas of Lake Superior in 1854, reserved to them the privilege of hunting, fishing and taking wild rice 86 on the lands, rivers and lakes in the territory ceded during the pleasure of the President of the United States. In seeming contradiction, the state

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82. 18 U.S.C. § 1152 (1952). Excepted are crimes punished by tribal law or cases where jurisdiction is lodged with the tribe by treaty.
83. 68 Stat. 674, 42 U.S.C. §§ 2001, 2002 (1954). The reasons said to lie at the base of this measure are the ones noted previously in other connections: a desire to end federal responsibility and permit the states to step in where they can adequately assume control, plus the continuing inability to staff these clinics and hospitals. See 2 U.S. Code Cong. & Ad. News, 83d Cong., 2d Sess. 2918-2921 (1954).
84. This view is expressed in Minnesota Legislative Research Committee Publication No. 27, Minnesota Indians 55 (1950).
86. By statute Minnesota has declared a policy to discharge in part "a moral obligation" to the Indians by regulating wild rice harvesting upon state public waters and granting them the exclusive right to harvest the wild rice crop upon all public waters within the original boundaries of the White Earth, Leech Lake, Nett Lake, Vermilion, Grand Portage, Fond du Lac and Mille Lacs Reservations. Minn. Stat. § 84.09 (1953).
has declared by statute that ownership of all wild animals and wild rice is in the state.\(^8\) Thus has arisen the strained situation of state game wardens often attempting to enforce state game laws on some Indian reservations, resulting in a number of Minnesota Supreme Court decisions, three of which bear noting in some detail.

In an early case, an Indian living on White Earth reservation acquired by barter a number of deer which she intended to barter to other Indians on the reservation. In a replevin suit by the state, the court ruled that since the state had permitted the tribal government to exist within its borders it could not do any act to destroy that government. The court said that this tradition and acquiescence between the state and tribal government had sufficient force to give the tribes the right to hunt and fish within the reservation, since this right was vital to the tribe.\(^8\) The result reached in this case appears to work a type of estoppel against the state.

Later, a member of the Leech Lake band was convicted of trapping a muskrat out of season on trust allotted land. There the court held that land held in trust by the United States for an individual Indian or tribe is Indian country, that Indians living on their allotments or reservations are wards of the United States and thus the state could not punish an Indian for violations of state game laws committed on reservations or trust allotted lands.\(^8\)

The most recent important decision on this problem came in 1944, when a member of the Leech Lake band was convicted of shooting partridges out of season on the trust allotted land of another. In that case the court reversed the conviction, saying that it made no difference whether the right to hunt and fish was reserved to a particular tribe in a treaty, since the treaties were only grants of rights from the Indians to the Federal Government and those rights remained in the Indians unless granted away.\(^9\) This conclusion has the support of the United States Supreme Court.\(^9\)

The entire problem is focused by the grant of civil and criminal jurisdiction to the state through Public Law 280 which expressly reserves any right, privilege or immunity afforded under federal treaty, agreement, or statute with respect to hunting, trapping or fishing.\(^8\) If the argument is sound that the treaties are only grants of rights from the Indians to the Federal Government and such

\(^{87}\) Minn. Stat. § 97.42 (1953).
\(^{88}\) State v. Cooney, 77 Minn. 518, 80 N. W. 696 (1899).
\(^{89}\) State v. Cloud, 179 Minn. 180, 228 N. W. 611 (1930).
\(^{90}\) State v. Jackson, 218 Minn. 429, 16 N. W. 2d 752 (1944).
\(^{91}\) See U. S. v. Winans, 198 U. S. 371, 381 (1905).
\(^{92}\) See note 71 supra and text thereto.
rights remain in the Indians unless granted away, it would seem that Public Law 280 cannot affect Indian fish and game rights, even though the language appears to make special provision for such tribes only if their treaties reserved such rights.

Even if this argument is rejected, two additional ones are suggested by the Minnesota cases discussed. The first would be that the state is estopped from enforcing state game laws after more than 100 years of permitting the Indians free reign on game and fish. The second is that the wardship of the Indian is linked with his land tenure, not civil and criminal jurisdiction over him, and that so long as the United States holds his lands in trust he is entitled to fish and hunt subject only to tribal regulation.

Whatever validity there may be to any of these arguments, or to the opposing suggestion that today few Indians are able to supply any large amount of food through fish and game, the solution should look more to a workable arrangement between the tribes and the state. For the Indians, these hunting and fishing rights are important symbolically and their loss would be a psychological blow, another example of a breach of faith by the United States and the white man. But the state also has an interest in conserving these resources. Perhaps the best solution would be cooperation between the state and the tribal or reservation councils whereby some special privileges might be preserved under a sound code of tribal regulation.

**FUTURE OF MINNESOTA'S CHIPPEWAS**

While the relinquishment of civil and criminal jurisdiction to the state represents an enormous and challenging first step toward integration, both for the Indian and the State of Minnesota, it still does not represent the complete federal withdrawal that has taken place in some other states. Three instances of termination of federal supervision bear noting as indicative of what this state’s Chippewas may expect in the future, at least those on reservations other than Red Lake. These involve the Klamath group in Oregon, the Western Oregon Indians and the Paiute Indians of Utah.

These measures severing those tribes from federal control and federal help generally provide, among other things, for:

1. Preparation of a final tribal role.
2. Transfer of individual trust land in fee.
3. Transfer of tribal trust property to either a corporation formed by the Indians or tribal trustees designated by the

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93. See notes 90, 91 supra and text thereto.
Indians themselves, sale of the property and distribution of the proceeds pro rata to tribal members on the final role, or division of the land into parcels and individual grants in fee.

(4) Revocation of corporate charters, tribal constitutions and by-laws.

(5) Subjection of the Indians to all state taxes.\(^97\)

(6) Ending of all federal services.

(7) Subjection of all distributed property and income from it to all state and federal taxes, whether the property is held by an individual, a corporation or other legal entity, but providing that none of such property shall be subject to federal or state income tax at the time of distribution.

(8) Leaving Indian claims unaffected.\(^98\)

An entirely different approach was adopted in terminating federal supervision over the Alabama and Coushatta Indians of Texas.\(^99\)

There trust lands were conveyed to the state of Texas to be held in trust for the tribes. Eventual disposition of the property was reserved for later agreements between the state and the Indian tribes. Other provisions similar to those embodied in what might be termed complete termination arrangements were included in the Texas approach.\(^100\)

The experience and arrangements in other states is important since they indicate a willingness on the part of the Federal Government to achieve the soundest and most workable result. This will require the state of Minnesota to explore carefully and thoroughly the problems of trust land, tax exemption and the like and be prepared to negotiate an agreement which will achieve solution satisfactory to the United States, the state, and the Chippewas.

It is to this time of eventual complete withdrawal of the Federal Government and ultimate integration that the state of Minnesota

\(^97\) Indians are required to pay federal and state income and excise taxes, as well as property taxes on land not held in trust and personal property taxes on goods purchased with funds derived from land free of any trust arrangement. See Minnesota Legislative Research Committee Publication No. 27, Minnesota Indians 27 (1950).


\(^100\) Id., at 769, 25 U. S. C. A. at § 726. The solution in Texas may not be as indicative as the three instances of complete withdrawal cited earlier because of peculiar circumstances in Texas. There part of the reservation consisted of land purchased by the state for the Indians and given to them in fee. This land the tribe conveyed in trust to the state by the terms of the withdrawal statute. The remainder of the reservation land is a contiguous area purchased by the United States, which took the title in trust. Perhaps the real explanation is the interest of the state in the tribe's problem and the
and its Indian population must address their energies.\textsuperscript{101} This promises to provide a challenge for both. The Indian is reluctant to leave the reservation, perhaps partly because of emotional and cultural attachment, and partly because of the limited employment opportunities away from it. Yet on the reservation the Minnesota Chippewa has one basic resource, the land and its trees, since much of the reservation area is unadaptable to farming.\textsuperscript{102} At present the reservation Indian contributes little or nothing in tax revenues to the state of Minnesota.\textsuperscript{103} At this present economic level,\textsuperscript{104} he could contribute little, if anything, more under a system of full state and local taxation. Thus the state would be faced with the problem of establishing and financing with its present revenues the type of Indian program now required.

It would appear that now is the most opportune moment for a forward looking, cooperative effort to raise the economic level of Minnesota's Chippewas through employment, education, conservation and diversification programs. Success to any degree would be of inestimable value, both economical and psychologically, to both the Indians and the state. If such a program were realized, federal withdrawal might then be seen as a bright opportunity rather than a dark threat to both.


\textsuperscript{101} It would appear that the withdrawal period is fast approaching for the Minnesota Chipewas, excluding the Red Lake Band. A 1947 report by William Zimmerman, Acting Commissioner of Indian Affairs, classified all the American tribes into three groups: those which could be released from federal supervision at once; another which would require another 10 years of federal control; and a third which it was expected could not be readied for withdrawal for an indefinite time. The Consolidated Chipewa, which includes all Minnesota Chipewa bands except those on Red Lake Reservation, were placed in the class which could be released in 10 years. But the Red Lake group was listed in the indefinite class. H. R. Rep. No. 2503, 82d Cong., 2d Sess. 164, 165 (1953).

\textsuperscript{102} Minnesota Legislative Research Committee Report No. 27, Minnesota Indians 11-15 (1950).

\textsuperscript{103} Id. at 27.

\textsuperscript{104} For an account of Chipewa tribal funds and income-producing assets as of June 30, 1951, see H. R. Rep. No. 2503, 82d Cong., 2d Sess. 304-306 (1952).