

SPEECH ON WISCONSIN TREATIES, HO-CHUNK LAND LOSSES
EXCLUSIVE TO MONROE COUNTY, WISCONSIN

For the La Crosse School District, Social Studies Teachers

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WHAT IS A TREATY?

Generally speaking, a treaty is a contract or agreement between two sovereign nations, usually in reference to peace or trade. This is the legal form of how Nations deal with one another. The British were the first to utilize treaties to obtain land owned by Indians. It was the British courts that ruled that we held ownership to our original territories by Aboriginal Title.

This method of dealing with Indians was adopted by the American government when they took political control of the area now known as the United States. Until 1871, every tribe that the American government dealt with, was done through a treaty.

LEGAL IMPLICATIONS

The fact that Indian Tribes entered into treaties is very important. Thus, the treaties are proof of a Nation's sovereignty. Just the fact that they entered into treaties, exhibits their sovereign status. The American government not only considered them to be sovereign nations, but also powerful enough to be dealt with *as equals*. This is due to the fact tribal Nations had well-established systems of management/government, a court system, and a culture.

LEGAL STANDING OF TREATIES

According to the Constitution of the United States of America; Article VI states that: “This constitution, and the Laws of the United States which shall be made in Pursuance thereof; and 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, any Thing in the constitution or Laws of any State to the Contrary notwithstanding.”

This means that the various treaties tribes, as Native Nations, entered into and have the same legal standing as the Constitution of the United States of America. When the tribes entered into the various treaties, they basically formalized a contract with the Federal Government that supersedes the laws of any State in the Union.

From previously ruled treaty cases, the Courts have ruled that treaties are to be interpreted by the "Cannons of Treaty Construction." Such cannons are:

1. Treaties must be liberally construed to favor Indians,
2. ambiguous expressions in treaties must be resolved in favor to the Indians,
3. treaties must be construed as the Indians would have understood them at the time they were negotiated; and
4. treaty rights legally enforceable against the United States should not be extinguished by mere implication, but rather explicit action must be taken and ‘clear and plain’ language used to end them.

This was established due to the method in which treaties were negotiated with Indian Nations. The Nations were at a drawback because of language obstacles, odd and unfamiliar procedures, misinterpretation with the interpreters and traitors. Thus, tribes were often at the mercy of treaty negotiators or even interpreters.

HISTORICAL SIGNIFICANCE

The very land that you and I are both standing on lies within the Ho-Chunk aboriginal territory and has special historical significance to the Nation because the Nation sustained devastating losses of land.

Pursuant to the 1825 Treaty of Peace¹, the Ho-Chunk of Wisconsin² were recognized by the United States government to have held title to 10,500,000 acres in southern Wisconsin and northern Illinois. In the Treaty, the government promised that Ho-Chunk lands would not be invaded by white settlers without their permission. Less than two years after the Treaty of Prairie du Chien, the Ho-Chunk were forced into war to defend their lands. The resistance, known as the Winnebago War of 1827, was led by the White Cloud and the Red Bird. Thereafter, the Ho-Chunk ceded northern Illinois for \$540,000 in Green Bay in 1828.

By 1829, the promise in the Treaty of Peace was not kept as immigrant settlers moved into the lead regions near Mineral Point, Wisconsin. During the next 15 years the Ho-Chunk would be forced to surrender most of their homelands. The first target was the lead deposits in northwest Illinois, and in what can be described as the first (and last) "lead rush" where Americans rushed in to stake their claims. Government agents described these people as

¹ Treaty of 1825 (referred to as the Treaty of Peace).

"lawless" but did nothing to prevent encroachment into the Ho-Chunk territories³. Three years later, the Treaty of 1832 was signed requiring the Ho-Chunk to move to their remaining 3,700,000 acres in the Black River Falls area (north of the Wisconsin River).⁴ The Treaty of 1832, negotiated by General Winfield Scott at Fort Armstrong, forced the Ho-Chunk to cede their lands east of the Mississippi and agreed to move to Neutral Ground in northeast Iowa.⁵ Around this time, the Ho-Chunk population decreased significantly and by 1836, one out of four Ho-Chunk died during a smallpox epidemic.

After many conflicts, land cessions and removals, the Ho-Chunk were removed from their remaining aboriginal territories in Wisconsin via to the Treaty of 1837. In this Treaty, the government translators intentionally told the Ho-Chunk that the terms of the cession would have to be vacated in eight years when the treaty actually specified only eight months.⁶ Thus began the wars and consecutive removals of the Ho-Chunk out of Wisconsin and other tribe's territories. It was the Treaty of 1837 that not only severely diminished the size of the landholdings and neutral territory, it forced the Ho-Chunk to compensate the costs of its own removal from Wisconsin.

Due to the stubbornness of the Ho-Chunk forefathers and their "undaunting will" to remain within their homelands that their ancestors had entrusted to them, the continued removals

² Formerly known as the Wisconsin Winnebago. In 1994 the tribe changed its name to Ho-Chunk Nation, which is what they have always referred to themselves as.

³ Throughout the winter of 1831-32, the war chief Black Hawk remained in eastern Iowa with the Winnebago White Cloud sided with the British against the Americans and by 1832, the Blackhawk War began. He was later captured and turned in by the Winnebago of Chief Spoon Decorah (Chou-gee-ka), a friend of the Americans, who delivered him to the Indian Agent at Prairie du Chien.

⁴ At this time, a smallpox epidemic devastated the Ho-Chunk. Recorded by Mrs. John Kinzie, Wau Bun, National Society of Colonial Dames, Portage, WI, 1975, pp. 363-365, 380-383.

⁵ They were to receive \$270,000 (\$10,000/year for 27 years).

⁶ Nancy Lurie, Winnebago, p. 607-705; Mark Diedrich, Winnebago Oratory, Coyote Books, Rochester, MN, 1990 pp. 54-61.

from the Ho-Chunk homelands proved to be a lose-lose situation for the government and for the Ho-Chunk.

In 1865, the government finally accepted the Ho-Chunk's self-relocation and purchased 40,000 acres from the Omaha to provide the Ho-Chunk with its own reservation.⁷ Throughout the years to come, many Ho-Chunk in Wisconsin were arrested and returned to the Nebraska reservation. Regardless of the removals to Nebraska, within a month, they were usually back in Wisconsin—illegally.

Once again, the Ho-Chunk, who loved their ancestral homelands, kept returning to their Wisconsin lands. They traveled on foot and lived as refugees being chased out periodically by the U.S. Army, supporting themselves by working in cranberry bogs, making baskets, and helping farmers with harvests. Those who refused to leave Wisconsin lived in this manner until approximately 1871, when the U.S. Army temporarily retired from chasing the Ho-Chunk out of Wisconsin. By 1875, the government gave up on the Ho-Chunk removal policies and finally allowed the Ho-Chunk to remain in their homeland. After over ten years of removals and returns, the government changed its policy and purchased homestead lands for the Ho-Chunk in Wisconsin.

Throughout the 1880s, over half of the Nebraska Winnebago returned home to Wisconsin where they have remained ever since, scattered across sixteen counties. The remaining half reorganized as a separate tribe, known as the Nebraska Band of Winnebago Indians.

The 1887 Dawes Act⁸ shifted federal policy to the “assimilation of tribes” using the plan to break up the few tribal land holdings to diminish the tribal estates. Indians were to become

⁷ Nebraska Winnebago Indian Reservation.

⁸ The General Allotment Act of 1887.

self-sufficient farmers to assist them with “fitting in” to white society. Consequently, several statutes authorized the allotment of federal lands to individual Indians.⁹

The Ho-Chunk received allotments under the Acts dated January 18, 1881 and July 4, 1884. Generally, the particular allotments were subject to the restrictions of conditions contained in the treaty act that authorized them. Congress had extended the provisions of the Dawes Act in 1923 to all Indian allotments, “unless otherwise specifically provided, the provisions of the Act of February 8, 1887, as amended, be and they are hereby, extended to all lands heretofore purchased for the use and benefit of and individual Indian.”

The tribal members were given trust allotments of small 40 and 80 acre tracts of federal land throughout 16 Wisconsin counties and one Minnesota county. The allotted land was held in “trust” for a specific time which prohibited it from being taxed or sold, without Secretarial (Secretary of Interior) approval. Note that the Act of 1881 provided that the allotments acquired under its provisions were to be inalienable and free from taxation for a period of twenty years, explicitly stating,

That the titles acquired by the said Winnebagoes of Wisconsin in and to the lands heretofore or hereafter entered by them under the provisions of said act of March third, eighteen hundred seventy-five, shall not be subject to alienation or incumbrance, either by voluntary conveyance or by the judgment, decree, or order of any court, or subject to taxation of any character, but shall remain inalienable for the period of twenty years from the date of the patent issued therefor.

⁹ See, e.g., 25 U.S.C.A. s. 334 (Indians not residing on reservations); 25 U.S.C.A. s. 336 (Indians settling on public domain); 25 U.S.C.A. s. 337 (Indians occupying national forests); 43 U.S.C.A. s. 189 (repealed 1976) (Indians

Other Ho-Chunk lands were required under the Act of 1884, which provided a 25 year tax-free period. The Act of 1881 provided for the conveyance of a “restricted fee allotment” and the 1884 Act provided for a “trust allotment”. BIA records show that approximately 650 trust allotments were given to Ho-Chunk tribal members in 1905. The status of each of these allotments is unknown as of the publishing of this document. Title 25 U.S.C. § 412(h) addresses the exemption from taxation of lands subject to restrictions against alienation and the determination of a homestead. It explicitly states,

All homesteads, heretofore purchased out of the trust or restricted funds of individual Indians, are hereby declared to be instrumentalities of the Federal Government and shall be nontaxable until otherwise directed by Congress: Provided that the title to such homesteads shall be held subject to restrictions against alienation or encumbrance except with the approval of the Secretary of the Interior.

In addition, there were two additional documents further endorsing that the Ho-Chunk lands were nontaxable: the Federal Internal Revenue Code (IRC) addresses tribal status in regards to taxation by providing that Indian tribes are not among the taxable entities and that their exemption from income taxation is not at issue and the Indian Tribal Governmental Tax Status Act of 1982 which provides tribes a tax status similar to those of state and local governments.

abandoning tribal relations).

¹⁰ In general, the ?restricted fee allotments? and the ?trust allotments? were treated as identical.

¹¹ Indian Tribal Governmental Tax Status Act of 1982, Pub.L. No. 97-473 (codified as amended at 26 U.S.C.A.

After the 25 year restricted period ran out, the Ho-Chunk tribal members who had established the homesteads began to lose the homesteads. Most of such land losses were attributed to Ho-Chunks not being able to comprehend English and therefore not being able to read. Even worse yet, most tribal members did not understand the payment of taxes and had no money to pay the taxes. The expiration of the tax restriction period meant that many of the nontaxable trust allotments were taxed by the local units of government. Unfortunately, even by this stage, some nontaxable lands were already being taxed and foreclosed on.

Many tribal members contend that there was a definite breach of the fiduciary duty of the United States Government for willful inaction and negligence after having written knowledge that taxation on non-taxable properties was occurring. Other feel that the breach occurred when land was permitted to be seized by local units of governments and then allowed to be resold, absent Secretarial approval. For instance, the Tomah Indian Agency requested the BIA in Washington to approve sufficient funds to pay the taxes assessed to the restricted fee and trust lands. Unfortunately, in this case, the Ho-Chunks were told to pay the taxes on the land *in protest* until the legal questions could be resolved. To date, the legal questions have never been addressed. Ergo, the properties were placed on tax rolls within the counties.

Specifically to Monroe County, erroneous taxation by the local units of government resulted in the loss of over 1,000 acres.¹² In a document from BIA Superintendent E.J. Riley, Riley states that he had been repeatedly asked to answer why the lands purchased for the Ho-Chunk with trust funds and subsequently lost to them for nonpayment of taxes have not been restored or returned for their use or enjoyment. Riley replies to the issue by stating that the BIA records show conclusively that the Ho-Chunk were informed that these lands would not be

s.7871).

¹² See letter of correspondence from Secretary of Interior dated October 9, 1963 from Superintendent E. J. Riley.

subject to taxation because of the restrictive clause in the deeds. Riley further went on to comment on how some of the counties, specifically Monroe and Juneau, refused to consider the lands as non-taxable and continued to make tax assessments. For the majority of these particular cases, the tribal members were unaware that their properties were going to be seized until the day of the public tax-deed sale. Because they did not have sufficient funds to pay the taxes, the property was sold. The Superintendent went on to further recommend that although the Ho-Chunk most likely could not reacquire the properties, the BIA should take “whatever action would be necessary to obtain funds to compensate the purchasers, or their heirs, for the loss of their lands.”¹³

As of 2001, the Ho-Chunk land holdings have increased to only approximately 824 acres, a mere fraction of the former recognized estate of 10,500,000 acres in the Treaty of 1825.

ARCHAEOLOGICAL EVIDENCE

A. Natural springs. Through religious and ceremonial traditions, the Ho-Chunk tribal members consider natural spring sites sacred. On the Monroe County and LaCrosse parcels, now owned by the Ho-Chunk Nation, a natural spring forms a creek which runs through the northern part of the parcel of land in Monroe County, Township of Leon, and ends through the 40 acre tract that is adjacent to the Monroe County parcel, in La Crosse County, Township of Bangor. The Ho-Chunk believe that natural springs are blessed by the creator of all living things. Natural springs were used for ceremonial and personal use. Within this parcel, known as the Rockland parcel, one of many Ho-Chunk “trails” passed through this area and served as an

¹³ Riley correspondence at 2.

access to the springs. From 1832-1865¹⁴, this spring was an oasis used by the seasonal Ho-Chunk travelers, primarily used by the “disaffected bands” or “stray Winnebago”¹⁵ who split up into small groups with minor chiefs who acted on behalf of the Tribal chief, who went village to village. These minor chiefs were known as Blue Wing, Buzzard Decorra, One-Eyed Decorra, Washington Decorra, Caramoni, and Red Bird. The springs were also used by the Tribal chief, “Mau Wau La Gah” Winneshiek, small hunting parties and individuals who completed their vision quest. Even today, the sacred spring water is still used by the Ho-Chunk for traditional ceremonial use.¹⁶

B. Former aboriginal territory. The Ho-Chunk lived in permanent villages along the Mississippi, Black, and LaCrosse Rivers in LaCrosse County. They also lived in permanent villages along the LaCrosse, Kickapoo, and Lemonweir Rivers in Monroe County. These rivers and waterways provided mussels, waterfowl, clams and spawning fish. The deer, elk, bison and other animals provided the meat and clothing for the Ho-Chunk people. Some of the buckskins and other animal hides were used to trade with local traders. The Ho-Chunk people also wove textiles to be used for trade. The Nation’s Rockland Property lies within areas that were traditionally populated by various Ho-Chunk villages that were actively trading with French,

¹⁴ See Bieder, Robert E. “*Native American Communities in Wisconsin 1600-1960: A Study of Tradition and Change.*” The University of Wisconsin Press. 1995., page 100., Map 5. Epidemics among Indians, c. 1630-1889. Drawn from a portion of map 32 in the *Atlas of Great Lakes Indian History*, edited by Helen Hornbeck Tanner, University of Oklahoma Press, 1987.

See, Lurie, Nancy O. A Check List of (Winnebago) Treaty Signers by Clan Affiliation. *Journal of the Wisconsin Indians Research Institute* 2(1):50-73.

See, Lurie, Nancy O. “Winnebago”. In Bruce G. Trigger, ed., Handbook of North American Indians, vol. 15: Northeast, 690-707. William C. Sturtevant, general editor. Fig. 1. Territory, land cessions, and removal 1829-1934. Detail of Nebraska lands shows most recent sales and modern reservation. William Sturtevant, general editor. Washington, D.C.: Smithsonian Institution Press, 1978.

¹⁵ See, Gudinas, Ruth A. Dissertation. Wisconsin Winnebago Political Organization Structure/Culture Incompatibility and Organizational Effectiveness. Chicago, IL August 1971.

See, Treaty With The Winnebago, 1937.

¹⁶ See, Radin, Paul. The Winnebago People. Chapter IX.-Social Organization-Specific Clans. The Wolf Clan. Page 190. The Water-Spirit Clan. Page 194. University of Nebraska Press. 1990.

British, and American traders which traveled along the Wisconsin River and Mississippi River during the fur-trading era, all the way up to the turn of the century.