Native Treaties
Shared Rights
This booklet was prepared in conjunction with an exhibit, “Native Treaties: Shared Rights,” created by the Clarke Historical Library, Central Michigan University with the assistance of project partners the Ziibiwing Center of Anishinabe Culture & Lifeways and Central Michigan University’s Office of Native American Programs.

The exhibit has two components. One is a temporary exhibit installed in the Clarke Library from March through August 2016. The second is a companion travelling exhibit which is available to tour throughout Michigan.

In creating both exhibits, extensive use was made of the historical material regarding the Anishinabeg found within the Clarke Historical Library. The Clarke Library’s collection of material regarding the Anishinabeg is among the most comprehensive in the state.

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More detailed essays on many of these subjects can be found on the Clarke Historical Library’s web page: www.clarke.cmich.edu.
WHAT IS A TREATY?

The treaties signed by the United States government and various Tribal governments created legally binding agreements between nations. In return for privileges granted by the Tribal governments to the United States, usually transferring land ownership and granting non-Native people the privilege of settling on the land, the United States government made a variety of promises to the Tribal governments.

Many different promises were made, and the exact commitments vary from treaty to treaty. But among the things often found in a treaty were promises to respect pre-existing rights, the establishment of additional rights, reserves of land, promises to pay money, make certain goods available, or supply certain services. Some of these obligations were one-time occurrences. Others were perpetual. American Indian treaty signers, as well as all of the members of their community and all their descendants, hold these perpetual rights.

Article 1, Section 8 of the United States Constitution vested in the federal government the responsibility to develop relations with Tribal governments. Section 8 states Congress shall have the power:

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

The clause established a government-to-government relationship between the United States and the various Tribal governments. It created the legal framework for the treaties that would follow.
War was the only real alternative to treaty negotiations. The decision by the United States to negotiate with Tribal governments rather than wage war upon them was based on a mixture of morality and experience.

The United States experience with Indian wars demonstrated that the outcome was uncertain, the expense was usually greater than that created through negotiations, and the price in lives was unacceptable. In its first days, the federal government adopted the position that, as a result of the Treaty of Paris which ended the American Revolution, Native Americans were a conquered people. Native Americans, of course, rejected this idea.

In 1790 and 1791 the United States sent soldiers into the Old Northwest Territory (what would become the states of Ohio, Indiana, Illinois, Michigan, Wisconsin, and a part of Minnesota) to confront Tribal governments. Both military expeditions were defeated by warriors representing a coalition of Tribal governments. A third U.S. expedition was organized in 1793 and a year later fought a coalition of warriors near what is today Toledo, Ohio. The Battle of Fallen Timbers was a victory for the United States.

The victory resulted from the diplomatic outcome, not from the results on the battlefield. The British had encouraged Tribal governments to fight the United States and supplied arms and ammunition to a tribal military alliance. However, in the immediate aftermath of the Battle of Fallen Timbers, the British garrison in nearby Fort Miami refused temporary refuge and badly needed gun powder to the retreating Tribal warriors. This led many of the warriors and their leaders to question Britain’s commitment to them and caused the tribal alliance to shatter.

The Battle of Fallen Timbers ended large-scale, armed tribal resistance in the Old Northwest Territory until the War of 1812. However, the experiences of 1790-1794 made the cost of war against Native Americans very clear to the federal government. After this experience, war was almost never the federal government’s preferred option in resolving problems with Tribal governments.
Avoiding war was not the only reason the United States chose to negotiate with Tribal governments. There were also a legal argument and a related moral belief that the Tribes either owned the land or held at least some type of title to it. But regardless of the arguments, the United States was determined to obtain the land.

The United States endless quest for land left no room for Tribal government or society. This realization led to one of the most dramatic moments of the 1826 treaty negotiations at Fond du Lac. Shing-Gaa-Ba-W’OSin (Figured Stone) was an important tribal leader. His refusal to speak at the negotiations caused significant concern. Without his consent, it was unlikely a treaty could be successfully negotiated.

Shing-Gaa-Ba-W’OSin eventually shared his thoughts when, during a short break in the talks, he saw a United States negotiator sitting on a tree stump. He sat on the stump very close to the negotiator, practically pushing him off. The perplexed man moved to another stump. Shing-Gaa-Ba-W’OSin followed him and again did the same thing. Eventually he pushed the man onto the ground. Then he said:

> There, my Father, that is the way in which you serve your poor red children... I came and asked you for a seat... you gave it to me. Not contented with this, I urged you for more until you gave and I again demanded more until you had none left. Many moons ago, our Father crossed the Big water [Atlantic Ocean] and begged of his red children a small piece of land... it was given him; but... he again asked his red children for more. This was given, and still more, until his red children abandoned the homes and hunting grounds of their fathers to make way for the white man. Now... our Father is for sending us further west to where the sun sets and sinks into the Big Lake [Pacific Ocean].

Americans wanted the land, and tribal leaders realized soon enough that there was no end to the request.
TREATIES CONVEYING LAND THAT WOULD BECOME MICHIGAN

The following treaties between Tribal governments and the United States government conveyed land to the U.S. which became part of Michigan:

- Fort Greenville, Ohio, August 3, 1795
- Detroit, November 17, 1807
- Foot of the Rapids, September 29, 1817
- St. Mary's, Ohio, September 20, 1818
- Saginaw, September 24, 1819
- Sault Ste. Marie, June 6, 1820
- L'Arbre Croche & Michilimackinac, July 6, 1820
- Chicago, August 29, 1821
- St. Joseph, September 19, 1827
- Carey Mission, September 20, 1828
- Chicago, September 27, 1833
- Washington, March 28 & May 9, 1836
- Cedar Point, September 3, 1836
- Detroit, January 14, 1837
- La Pointe, October 4, 1842
- Detroit, July 31 & August 2 (two separate treaties), 1855
- Isabella Reservation, October 18, 1864
- Land was also conveyed by Congressional Acts in March 3, 1843 & June 22, 1874.

To read the text of these treaties please visit: clarke.cmich.edu/text_of_Michigan_related_treaties
WHO OWNED THE LAND?

At the beginning of the nineteenth century, the descendants of European settlers asked a curious question: who first owned the land?

Indigenous people had trouble understanding why the question was asked. They were here first. They owned the land. Nor were they anxious to sell it. As Saginaw Ojibway leader Ogemagigido (1795-1840) said:

*We are here to smoke the pipe of peace, but not to sell our lands. Our American Father wants them. Our English Father treats us better. He has never asked for them. Your people trespass upon our hunting ground. Our land melts like a cake of ice. Our possessions grow smaller and smaller. The warm wave of the white man rolls in upon us and melts us away. Our women reproach us. Our children want homes. Shall we sell from under them the spot where they spread their blankets? We have not called you here."

During and shortly after the American Revolution, the colonists usually agreed that the land belonged to the Indians. As John Adams wrote: “Our ancestors were sensible of this [Native ownership of the land], and therefore, honestly purchased their lands of the natives.”

But his son, John Quincy Adams, became part of a legal movement to reinterpret the point. He conceded that Native Americans owned the land they lived on and farmed but not the great majority of the continent. J.Q. Adams asked rhetorically, “Shall the lordly savage not only disdain the virtues and enjoyments of civilization himself, but shall he control the civilization of a world?” His answer was that this “unused” land belonged to the United States.

In 1823 this theory was accepted, in a modified form, by the Supreme Court. It remains a part of contemporary American law.

For a more extensive essay regarding the policies of the U.S. Government toward Native American residency on the land, please visit: clarke.cmich.edu/land_transfers
HONORING TREATY AGREEMENTS ABOUT LAND

Despite treaty obligations entered into when Tribal governments surrendered land to the United States, the U.S. government usually looked away when tribal land was taken either illegally or unethically. Examples of this occurred in Michigan’s Isabella County.

The 1918 *History of Saginaw County* told how a lawyer, aware of where and when federal Indian Commissioners would meet Anishinabe tribal members to transfer land titles to reservation property, secretly rifled through the Commissioners’ papers, copied the titles, and identified the best timber areas. He then met with the Indians who owned the land. “He knew many of the Indians personally, and it was not a difficult matter to get them ‘feeling good,’ and then … induce them to sign away their timber rights.”

In 1953, the United States Indian Claims Commission found, “The evidence shows that whites, in devious ways, obtained timber from Indian lands in the Isabella Reservation.” Indians also unfairly lost the land itself on the Isabella County Reservation.

Michigan Indian Agent George Betts, who served between 1871 and 1876, became notorious for making land allotments to tribal members that he quickly sold to speculators for a pittance. In one case, Betts sold over nine thousand of nearly eleven thousand acres on allotment lists before the lists were approved in Washington. Eventually a government investigation forced Betts to resign, but not before five-sixths of the land Betts had allocated to Saginaw-Chippewa Tribal members had been sold. In all, about 75,000 acres were sold, of which the federal government eventually returned 6,500 acres to reserve land status.

For more information about land dealings on the Saginaw Chippewa Reservation please visit: clarke.cmich.edu/loss_of_reservation_land
Treaties signed in 1820, 1836, and 1855 preserved for five Michigan-based Tribal governments pre-existing fishing rights in the Great Lakes. In 1973 the state of Michigan enacted laws limiting commercial fishing and applied these laws to Tribal members.

Several Tribal governments sued the state. The Tribes argued that they had historically fished the Great Lakes before treaties had been signed; through the treaties they had retained the right to fish; and that the Tribes had actively and continually fished commercially since the treaty signing. In 1979 a federal judge found in favor of the Tribes. The treaties preserved their pre-existing right to fish. The state of Michigan could not regulate fishing conducted by Tribal members.

For a more extensive essay regarding fishing rights, visit: clarke.cmich.edu/fishing_rights
After the founding of the United States, many states sought tribal land for white settlement. Georgia was particularly aggressive in doing so. In the 1820s Georgia passed a series of laws which asserted that the state owned the Cherokee nation’s land and could apply state law on it. In every way possible Georgia’s government attempted to drive the Cherokee westward.

In Worcester v Georgia (1832) the U. S. Supreme Court ruled that Georgia had acted illegally. Chief Justice John Marshall ridiculed the “extravagant and absurd idea, that the feeble settlements made on the sea coast” by Europeans gave them the right to govern Native Americans or take their land. European settlers had only the right to purchase “such lands as the natives were willing to sell.” Marshall would ultimately conclude, “the Cherokee nation, then, is a distinct community occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force.”

However, previous decisions by Marshall had emphasized the authority of the federal government over Tribal governments. A year earlier he found that Tribal governments were “domestic dependent nations,” and “their relation to the United States resembles that of a ward to his guardian.” In 1823 he had ruled that first possession of the land gave neither Tribal governments nor individual Native Americans land ownership as it was defined by U.S. law. Native Americans had a “right of occupancy” that should be recognized and legally obtained from them prior to white settlement, but the land was legally owned by the U.S. government.
Most treaties included provisions for the education of tribal members. Many tribal leaders realized the need for European education to sustain their culture in a future that would include living with a large number of non-Native people.

In 1832, Shingwaukonce, who lived at times on both the American and Canadian sides of the St. Marys River and signed treaties with both the United States and British Canada, brought missionaries and teachers into his tribe. Shingwaukonce sought Western knowledge but saw the educational process as Native controlled, with Western education supplementing, rather than replacing, his tribe’s existing way of life.

Forty years later, Augustine (Ogista) Shingwauk, a son of Shingwaukonce, re-affirmed the educational goals established for the tribe by his father.

As Shingwauk put it, his hope was that:

... before I died I should see a big teaching wigwam built at the Garden River where children from the Great Chippeway Lake would be received and clothed, and fed, and taught how to read and how to write; and also how to farm and build houses, and make clothing; so that by and bye they might go back and teach their own people.

In contrast, most nineteenth-century Christian missionaries and government officials saw education as a means to “civilize” American Indians and integrate them into American culture. Education, as well as Christianity, were tools to eliminate tribal values and traditions by teaching children different subjects and a different set of values. Shingwaukonce and Shingwauk both emphasized that education should be tribally controlled and integrate Western knowledge into tribal learning to serve tribal objectives.
Exactly what educational opportunities were granted to Tribal governments and their citizens was often subject to differing interpretation. In the 1960s several people concluded that a treaty signed in 1817 required the University of Michigan to grant free tuition to some American Indians. The treaty read, in part:

Some of the Ottawa, Chippewa, and Potawatomi tribes, being attached to the Catholic religion, and believing they may wish some of their children hereafter educated, do grant to the rector of the Catholic church of St. Anne of Detroit [specific land], for the use of the said church, and to the corporation of the college at Detroit, for the use of the said college, to be retained or sold, as the said rector and corporation may judge expedient.

The rector of St. Anne Church, Father Gabriel Richard, in 1817 became the co-founder of the University of Michigan. In 1974 a federal court ruled that while the treaty might create a moral responsibility to educate tribal members, it did not create a legal right to free tuition at the university.

Supplementing Treaties: The Michigan Legislature Recognizes a Native American Moral Right

A sense that treaties morally obliged Michigan to educate its American Indian citizens led to action in the Michigan legislature. A Detroit News story published on May 21, 1976 summed up this sentiment:

... the history of Michigan and the country is replete with promises to Indians, including a guarantee to Michigan Indians of state supported education in return for land already transferred to the state. Without ever passing a law to guarantee the education the state in effect has reneged on its promises made in early treaties.
While the lawsuit against the University of Michigan proceeded through the courts on appeal, discussions about the issue were also occurring in the state legislature. Legislators from Detroit, particularly Jackie Vaughn, put forward legislation on the subject, using a Minnesota program as a model.

Vaughn, one of a handful of African-Americans then in the legislature, saw the bill as a way to introduce the idea of affirmative action.

[... there were] those [who] were keen toward this, in terms of other minorities. I don’t have to tell you, if I’d have tried to say ‘I want to introduce a bill for all Afro-American free tuition’ I would have been laughed out of existence. But for Native Americans they were sympathetic, and I recognized that.

Vaughn recalled, though, that not everyone saw it his way. “There were a couple of them [Black members of the House] against it, because ‘why should they have it when we don’t have it?’” Other members of the legislature also opposed the bill. One senator argued that there were higher priorities for limited educational funds. Responding to the statement that the U.S. “had robbed the Indians of their land and failed to educate their children,” the senator said he was “tempted to say that if the Indians don’t like it here, they can go back where they came from.”

In 1976 Vaughn’s bill became law. Public Act 174 created the Michigan Indian Tuition Waiver program, granting Michigan’s Native American citizens free tuition at the state’s publicly-funded colleges and universities.

For a more extensive essay regarding Public Act 174 please visit: clarke.cmich.edu/tuition_waiver_programs_in_Michigan
In the nineteenth and early twentieth century, primary education was an important goal for many Tribal governments. Tribal leaders recognized a need for members who could read and write English and who could serve as informed ambassadors between their tribes, the federal government, and white society.

By 1855 missionaries were operating primary schools at various Anishinabe settlements. After the Treaty of 1855 the federal government began to directly operate primary schools for Michigan Indians.

The Anishinabeg usually supported voluntarily sending their children to these day schools, but the U.S. government found them unsatisfactory. As early as 1866, Michigan Indian Agent Richard Smith requested permission to build a boarding school. His goal was to separate the children from their families and their community to fully and quickly integrate them into white society. After the Civil War, this became the basic goal of the U.S. government’s Indian education program; a goal never acquiesced to by the Anishinabe community.

In 1893 a Native American boarding school was opened in Mt. Pleasant, where it continued to operate until 1933. By 1911 the campus had grown to accommodate up to 375 students. The school was run according to military principles and only English was spoken. Although the school never accomplished its goal of erasing Anishinabe culture among the community’s children, it did help create a new spirit of unity among Anishinabe children through shared experiences and a common history. The school also gave new generations of tribal leaders skills to better cope with the U.S. government and white society.

For a more extensive essay regarding the Indian School in Mt. Pleasant and federal policy toward Native American education please visit: clarke.cmich.edu/federal_education_policy
“...I take off my glove, and in giving you my hand, I deliver over my birth-right and lands, and in taking your hand, I hold fast all the promises you have made, and I hope they will last as long as the sun goes round and the water flows, as you have said. ”

- Mawedopenais
Anishinaabe leader