Twenty-five Years of Ojibwe Treaty Rights in Wisconsin, Michigan, and Minnesota

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Introduction

The recognition and implementation of American Indian treaty rights beginning in the last quarter of the twentieth century are transforming the ways in which landscapes are managed, tribal and state institutions are structured, and civic identities are constructed in a number of states that surround Indian nations.[1] This national treaty-rights movement first antedates, catalyzes, and finally comes to be coextensive with the passage of federal legislation that operationalizes tribal self-determination. This synergy has had the effect of politically transforming indigenous polities, their relationships with each other, and their relationships with other sovereign bodies.

Since the mid-1980s, exercising the hunting, fishing, and gathering rights reserved in the treaties of the mid-nineteenth century that were signed between bands of Ojibwe Indian people in Minnesota, Wisconsin, and Michigan has changed those communities' practices and self-conceptions in some fundamental ways. In 1984, the signatories to those treaties were just beginning to contract with the federal government for services under the provisions of

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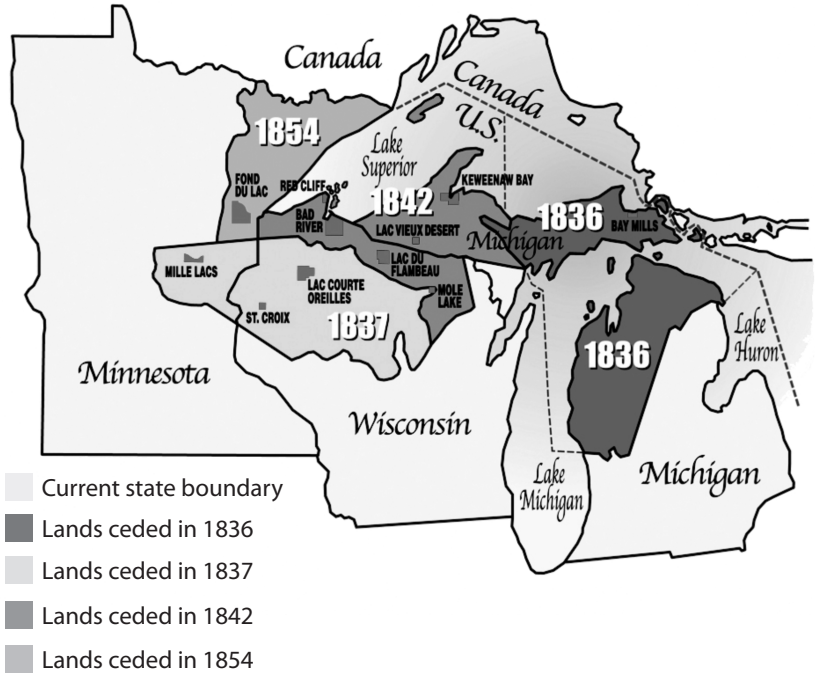


Figure 1. *Ceded Territories. Source: Great Lakes Indian Fish and Wildlife Commission, 2010.*

the Indian Self-Determination and Education Act. Tribes were beginning to take back jurisdiction over their children as provided for by the Indian Child Welfare Act (1978), and they would not undertake gaming until the early 1990s under the Indian Gaming Regulatory Act (1988). Though these important, progressive pieces of federal legislation have had long-term consequences for all of the tribes in the United States, it is the treaty-rights movement that emerged most visibly in the state of Washington during the 1960s and 1970s and then moved to the Upper Great Lakes that not only changed how the tribes thought about themselves and therefore participate in collective political action at the federal level, but also changed the ways in which they would live upon the lands where they had lived for centuries.

This article discusses the meaning and magnitude of the exercise of the rights by describing the institutional developments in the tribal communities that have facilitated and resulted from that exercise. It aspires to document the dimensions of the distinct and measurable renaissance that has taken place in the Ojibwe communities of the Western Great Lakes. This ramifying rebirth has been facilitated in large part by the Ojibwe tribes authorizing and

developing the Great Lakes Indian Fish and Wildlife Commission (GLIFWC), an intertribal natural resource agency.[2] It is the twenty-fifth anniversary of GLIFWC that occasions this retrospective.

Findings

Tribal members recognize the treaty rights as ends, means, and a symbol. First, as ends, they are recognition of a way of life, a set of practices: hunting, fishing, and gathering as human activities that are productive, pleasurable, and socially consequential. They are largely undertaken in small groups of related tribal members. Second, as means, they are the condition of the possibility of reproducing a way of life: the social use of animal and plant bodies in a culturally distinctive way perpetuates a collective way of being in the world as a people. Third, as a symbol, the rights are a sign of cultural, social, political, and legal difference and distinction. Enshrined in documents that are organized and function as constitutions, the treaties in which those rights appear are a symbol of indigenous sovereignty and entail a wide array of opportunities and responsibilities for self-determination and self-governance.

The rights are important to all of the communities in all three of these ways, but because of the various communities' particular ecologies and histories they are important in varying degrees, as the rights and the exercise of them have different effects in the individual communities. For example, for inland communities the exercise of the rights is largely outside of the cash-mediated dominant economy. For the communities on the shores of Lake Superior, the exercise of the commercial right to harvest fish for its exchange value complements the right to harvest other resources exclusively for their use value. Here the exercise of the rights has been shaped by two state court decisions as well as federal district court decisions. Eight of the tribes are within Public Law (PL) 280 states that have been granted the federal share of concurrent criminal jurisdiction and some civil jurisdiction over tribal members. Three of the tribes—those within the borders of Michigan—do not contend with the complexities that PL 280 has engendered and, as a result, have a different history of engagement with the state and the federal governments.[3]

The exercise has had the general effect of making a multisovereign Ojibwe subnational entity more concretely visible, consequential, and imaginable to its members and neighbors. This has happened by virtue of the ramifying effects that the exercise has had on the communities that are in contact and dialogue with each other about the meaning of that exercise. A sketch of twentieth-century pretreaty-rights Ojibwe life in the Upper Great Lakes will reveal the difference that the rights have made.

Community Life before the Recognition of Rights

Though we did not systematically inventory the governmental infrastructure for each of the tribes during the period immediately before the treaties were upheld, Sokaogon tribal member Fred Ackley's description of the difference between then and now is illustrative and provocative: "We didn't have a court at the time in Mole Lake. We didn't have a lot of things in Mole Lake. We didn't have a building like this or a government. We didn't have a lot of people working in different agencies and all they got here now. It was real small, one little building from 1976."[4]

Writing about the Ojibwe tribal communities during the late 1970s, Edmund Danziger offers a more positive portrayal, noting that though there were a few sources of income, "hunting, fishing and trapping . . . continue to be important means of supplementing Indian diets throughout Kitchigami land."[5] The promise of the federal Indian policy era of self-determination was just beginning to manifest itself. For example, the Keweenaw Bay Indian Community had just launched a trailer park, mini-market, and construction company. The Red Cliff arts and crafts center, campground, and marina opened in 1975. Lac du Flambeau had just built a modern campground and renovated its fish hatchery and the Indian Bowl, a venue for cultural performances. St. Croix opened the Black Dirt Corporation. Federal housing programs were building and renovating new homes in many of the communities. Tribal governments were beginning to grow as they contracted with the federal government for services, but very few of the tribes had courts. Although the Great Lakes Intertribal Council was more than two decades old by the time the *Voigt* case was decided, which was the federal court decision that set this process in motion, intertribal relationships as well as government-to-government relations between tribes and states were in their infancy.[6]

Some portion of each community had families that were supplementing their incomes with hunted, fished, and gathered foods and other consumable or salable resources. It is clear that Ojibwe people retained memory of the stipulations of the treaties that reserved them the rights to hunt, fish, and gather throughout the lands that they had ceded in mid-nineteenth-century treaties.[7] At that time, however, such practices were entirely governed by state law that was crafted to facilitate either recreation or commerce and not the subsistence use of resources by indigenous people. As a result, Indian people hunted, fished, and gathered exclusively on their reservations, thus putting a great deal of pressure on the populations of those animals and plants; conformed to state law by purchasing licenses to hunt and fish; or violated state law by hunting, fishing, and gathering off the reservations surreptitiously. It is hard to imagine that an extractive regime assumed under such conditions yielded anywhere

near the amount of foodstuffs, medicines, and materials for crafts to supply families with their needs adequately. Ackley reflects on what life was like before the 1984 *Voigt* decision:

> Put it this way, sometimes you get hungry and there ain't nothing else to do. But the reason why they're doing this is to confine me more. Through hunger. So we would say no, tonight I'm going to go poaching, or we got a feast coming up. You know, people don't understand, the whole . . . controversy started over a couple of us guys wanted to kill a porcupine over there, they wouldn't let us over. Cause we were hungry. This time of year, if you're a traditional Anishinaabe, you eat a porcupine at this time of the year. . . . We knew that was trespassing, we knew that the DNR [Wisconsin Department of Natural Resources] didn't want us to hunt you know, and all that stuff, but that's what it all started with. All my life, I would answer that question honestly. I'd been a violator because that's what my dad taught me. He taught me how to feed my family off the land. I still do that today.

Many tribal members who hunted, fished, and gathered in order to feed their families and supply foods for feasts in spite of state law suffered for it. In our conversations with tribal members, they talked about what is referred to as "violating" or "poaching," with a wry smile in the knowledge that they used these terms ironically.

Steve Depaul at Fond du Lac:

> I got my first game violation back the early eighties before they were all enacted and stuff for shooting a doe; it was a bucks-only season. I got a $150 ticket and then the year after we were able to do it. And in theory, I should've been able to do it anyway. I shouldn't have had to give the state $150 for my violation.[8]

Jim St. Arnold at Keweenaw Bay:

> Around 1972, my dad and I were out in Baraga Plains and we were out bird hunting, but we took some buckshot in case we saw anything else. And got approached by the state DNR who confiscated our rifles and whatever else we had, and gave us tickets. Well, my dad and I were talking and he says, "We have this right."[9]

Tribal commercial fishermen Skip Parrish of Bay Mills:

> Now I was nine years old the first time I got arrested. We had a nice boatload of trout. They confiscated all of them except one. My dad reached in and got the biggest one. Game warden looked at him, my dad looked right back at him. And he just looked at the fish and they left it there. Had decent respect for the people that needed [the fish]. That's what they told us. And we needed them ourselves so, a supply of fish before the ice started.[10]

Curt Kalk at Mille Lacs:

> I would say that we were raised netting fish. And we'd harvest fish and deer out of season, which was against state law back then. The tribe, you know. My

> grandparents always told me you have a right to do that. You can't imagine a parent telling, or a grandparent, telling their kids to do something that's considered illegal. But here on the reservation my grandparents said it's not illegal. The state guys think so, but it's not illegal. There's nothing wrong with you doing this, you have your rights that we've never given up. And my grandmother was Maud Kegg, lived to be about ninety-four years old.[11]

Franny Van Zile of Mole Lake told a story from her youth of the entire family riding together in her father's car, her father shooting a deer, having to hide the gun under the seat, and her little sister being burned by the hot gun barrel:

> I would tease my sister about that. But see, those were the kind of things that we always had to run into when we had to feed ourselves. And I never thought that was right.[12]

George Reynolds from the St. Croix community:

> So it makes it [having the treaty rights recognized] a lot easier, as far as deer hunting goes too, that's the same thing. Those times growing up where we didn't have meat. The only way to get it was to go out and break the law and poach a deer, or whatever, a partridge, rabbits. That's what I really could find. Just get it. At least you got meat.[13]

Violating or poaching, done by Indians and non-Indians throughout the ceded territory, were symbols of social and cultural identity.[14] These identities were fashioned in opposition to the state. With the court decisions beginning with the 1971 *Gurnoe* decision and continuing through the 1999 *Mille Lacs* decision, these identities would transform with Ojibwe people no longer seeing themselves and being seen by others as violating state game law or as poaching deer and fish, but now seeing themselves and being seen by others as "exercising treaty-guaranteed rights," their political communities effectively recognized by the state and the federal government as sovereign.[15]

Suffice it to say that members of many families hunted, fished, and gathered. Although families often continued to hunt and forage as a unit, we get the impression that it was mostly men taking the risks of arrest. This is part of a general trend starting centuries earlier with the fur trade that had privileged the work and produce of men over that of women with the result of the skewing of political power between men and women in men's favor. The recognition of treaty rights appears to have had the indirect effect of reversing this long-term trend and restoring the political power of women as tribal bureaucracies expanded and women came to fill those new positions in disproportionate numbers.

Harvest Levels since the Recognition of Treaty Rights

With the recognition of the right to fish in Lake Superior that came with the 1971 *Jondreau* decision, followed by the 1972 *Gurnoe* decision, the 1979 *Fox* decision, the 1983 *Voigt* decision for the inland lakes, and the 1999 *Mille Lacs* decision, we do have a far better picture of the extent of the harvests on the parts of tribal members in each of the communities.[16] We can take this to be a baseline for assessing the broader impact of the exercise of treaty rights in and on the communities.

The GLIFWC compiles detailed data on all the species harvested by the eleven bands in Michigan, Wisconsin, and Minnesota and publishes it on the commission's website.[17] In an effort to assess the impact of the exercise of the rights, we aggregate the harvests and concentrate only on the most popular species in order to indicate their magnitude and implications for the kinds of exchanges that take place within Ojibwe society.

The bands began harvesting walleye with spears during the spring of 1985 at night on open water on the inland lakes. They take between twenty-two and thirty-two thousand walleyed pike measuring less than twenty inches in length.[18] Since 1999, the bands have the right to net walleye in Mille Lacs Lake, the second-largest lake in the state of Minnesota. The Mille Lacs Band takes an average of twenty-two thousand pounds per year during the month-long spring season. The other bands in the 1837 cession area take a total of eighty-five thousand pounds from the lake per year. If averaged over the entire tribal population, this would come to 3.8 pounds per tribal member.[19] All of these fish are taken for purposes of use and not exchange; that is, they are consumed by tribal members and their families and friends and are not sold. Though the bands also hunt several species of terrestrial mammals, deer are most significant with between two and three thousand taken in the ceded territories per year.

The harvest of wild rice is highly variable in the ceded territories. In 2003, for example, tribal harvesters took twenty-seven thousand pounds of *manoomin* in the ceded territories during a year when nontribal ricers took fifty thousand pounds, whereas, combined, tribal and state ricers took 110,000 pounds in 1997.[20] In contrast to non-Indians, Indian people tend to rice with relatives as opposed to friends or acquaintances. Although they typically have multiple reasons for harvesting, the enjoyment of wildlife and keeping up family and social relationships ranked high for the Indian people whom researcher Annette Drewes interviewed. Drewes writes, "the practice of providing gifts of wild rice for funerals and ceremonies continues."[21]

Tribal members also now harvest plants in the US National Forests that are within the ceded territory under a memorandum of understanding signed by

the GLIFWC tribes and the US Forest Service. For the past ten years, approximately 1,700 tribal members have received general gathering permits and another two hundred received permits for harvesting conifer, princess pine boughs, and ginseng.[22] Although this is largely a commercial activity, Indian people retain control of the social relations of production, often working in family groups.

A great deal of the harvested fish, animals, and plants circulate in the traditional Ojibwe economy as gifts, and we would include spouses presenting foodstuffs to each other, as well as parents feeding their children in the traditional gift economy. As a result, the consumption of these foods has the effect of consolidating relationships between Ojibwe persons as immediate family members, extended family members, and friends, and for that reason deepens their relationships to each other by virtue of exchange.

Student researcher Mike Herrmann comes to the conclusion that, in the exercise of the rights, people gained "the opportunity to create bonds with other people and the natural world." We would extend this insight, drawing particularly upon the fact that the netting of fish at Mille Lacs Lake by tribal members from many of the other tribal communities plays a role in constituting the bands within GLIFWC as a single indigenous ethnonational entity. In 1999, GLIFWC Executive Director James Schlender reflected on the significance of the bands harvesting at Mille Lacs: "There were people from different bands fishing at Mille Lacs and everybody was helping each other. They would help each other get launched and help when it came to extracting fish from the nets, even cleaning the fish."[23] Kalk also noted how social relationships have changed because of the exercise:

> I guess now that I look at it ten years down the line, once treaty right harvests have begun, *people start to see a little bit more of the camaraderie*, the closeness to taking care of the resource. Start meeting people that had these things in common years ago and every now and then I run into somebody and say I remember your uncle or your, you guys's little kids out there spearing or netting or doing something. *And I remember that, so it brings back a certain bond that we say, OK, this is what we do together.*[24]

In general, Ojibwe civil society has been strengthened with the exercise of these rights. More people are sharing the experience of harvesting with each other, sharing foods, and eating them in each other's company. The availability of these foods and the materials for making traditional crafts have led to an expansion of ceremonies and associated feasting. These events are typically undertaken for the purpose of publicly recognizing and validating the status of people in the community. Naming ceremonies, first-kill ceremonies, graduations, weddings, funerals, and ghosts feasts all call for traditional foods as part of their efficacy.[25] The exercise of treaty rights facilitates hosting such ceremonies.

Clearly, much of the exercise of off-reservation hunting, fishing, and gathering rights produces food and materials that go directly into the traditional economy. However, there is also a dimension of the exercise of treaty rights that works to articulate a direct relationship between the tribal societies and the economy of the dominant society: the tribal commercial harvest of fish from Lake Superior undertaken by the Red Cliff and Bad River bands in Wisconsin and the Keweenaw Bay and Bay Mills bands in the Upper Peninsula of Michigan. All four communities lay on the shores of Lake Superior. In the 1972 *Gurnoe* decision, the Wisconsin Supreme Court found that commercial fishing on the part of Red Cliff and Bad River tribal members could only be regulated by the state of Wisconsin if their activity threatened the fish supply.[26]

The commercial fishery shared among the Red Cliff, Bad River, and Keweenaw Bay bands during 2003 was made up of seven large boats and fifteen small boats representing twenty-two tribal licenses. It has been as large as eighteen large boats and twenty-four small boats.[27] These fishermen take just more than one million pounds of fish per year, 85 percent of which are whitefish.[28]

In 2003, Keweenaw Bay issued fourteen commercial fishing licenses to tribal members, who took a total of 198,000 pounds of fish, 60 percent of which were whitefish.[29] In 2009, Red Cliff fisherman Cecil Petersen told us that Red Cliff had forty-two tribal members working as nearly full-time commercial fishermen on big boats. In addition, small-boaters employed another twenty-five to thirty tribal members. In this case, the treaty right to fish commercially is economically very significant and of great value to the band.

> It's tremendous here now. I mean, it's better than it has ever been in my life. And I was there when I was twelve years old when the thing was ok for one good year and then bang, two bad years, you're starving to death. I'm proud to say that last year, we had three of our fishermen, treaty right fishermen, that bought big boats. One was my brother Gilmar. Other was my nephew Shaun and the other one was Newago. So we're upgraded in our equipment now. Twenty years, you know, we're pretty much real small, limited; there wasn't a lot of money in it. We were getting by and making a living twenty-five years ago. And just look where we are today, I think it's just fantastic. But there's a lot that makes that happen. Marketing was killing us, six, seven years ago, worked for thirty, forty, fifty cents a fish. I now sit on a marketing board, which is a marketing board of Michigan Fish Producers Association. . . . They went from fifty cents a pound to, I'm getting a dollar sixty-five for my fish. You know, it's been turned [around].[30]

By stark contrast, the opportunities for commercial fishermen in the far eastern sector of the Upper Peninsula of Michigan in the Bay Mills community have declined considerably according to tribal members, an appraisal

also made by Bay Mills Communications Director Allyn Cameron, who seeks to honor "the dying breed of commercial fishermen who continue their mass exodus from the industry."[31] Parrish described the hard life of tribal commercial fishermen:

> Fishermen work hard and if you don't mind working hard, well, it's a good job. Make that, one day we had seventy-eight boxes of white fish. And you have to handle every pile of the things. Handle the fish five times. You move it up out of the tug, up on the dock, on the truck, on the scales, in the cooler, out of the cooler. So at the end of the day, phweshw, you're tired . . . , you could just call me a slave driver, cause I expected the next guy to work as hard as myself, you know. Well, I used to work sixteen hours a day, seven days a work, twenty-five years no vacation.[32]

Mercury and polychlorinated biphenyl (PCB) contamination, competition from the Canadians and ocean fishermen, and competition from people who raise fish on farms have all undermined the commercial market for Great Lakes tribal fishermen. The restrictions that were imposed in the 1985 and 2000 consent decrees further limited tribal commercial opportunity according to Bucko Teeple.[33] Furthermore, development of the tribal fishing industry is undercapitalized with the tribe allocating no more than $60,000 a year as a revolving fund for the use of the fishermen, and the marketing infrastructure is undeveloped.

The heyday of Indian commercial fishing for Bay Mills was between 1971 and 1985 and was the direct result of the court decision upholding the treaty, though non-Indians contested the fishing and it was a time of violent conflict. According to Teeple, only about ten trap netters worked commercially out of the community during 2009. He thought that now there were perhaps fifteen commercial fishermen in a community in which 80 to 85 percent of the people had previously fished for a living and that most people who were interested in working, were more interested in working at the casino.[34]

The record indicates that the inland bands of Anishinaabeg, whose members hunt, fish, and gather largely for home use, have fared better than most of the lakeside bands whose members also have the opportunity to fish in Lake Superior for fish harvested for exchange, though the experience of the Red Cliff fishermen was represented as rather positive. In general, there is no question that the tribal communities have benefited from the opportunity to harvest in the ceded territories—not only materially but also socially—with all that is entailed in the actual harvesting practices as well as with distribution and consumption. The exercise of the rights is both cause and effect of institutional developments at the level of tribal programs and policies in each of the communities, a topic to which we now turn our attention.

Institutional Development and Consequences of the Exercise of Treaty Rights

Tribal Fish Hatcheries

The institutional effect of the implementation of treaty rights most proximate to the harvests in the ceded territories has been the development of tribal fish hatcheries in many of the communities that authorized GLIFWC. In 1991, there were two tribal fish hatcheries in the ceded territories. Today there are nine.[35] Hatcheries typically produce fish for the lakes, rivers, and streams on the reservations but also for Lake Superior and, in some cases, for lakes in the ceded territory off the reservations.[36] The US Fish and Wildlife Service takes the following position regarding the significance of hatcheries: "Tribal fish hatcheries play an important role in co-managing inter-jurisdictional fishery resources. Great Lakes tribes have responded to the modern day challenges of multi-jurisdictional resource management in their unique role as users and managers on over 900,000 acres of reservation inland lakes, treaty ceded territories and the northern Great Lakes."[37] The fact that seven of the hatcheries have emerged since the 1983 *Voigt* decision and all but one since the *Gurnoe* decision is not accidental. Clearly the tribes responded to the increased harvesting on the parts of their own members with a capitalized program of "giving something back."[38]

The tribal fish hatcheries employ people on the reservations; this has an immediate salutary effect and benefit. They also engage the tribal communities with the state governments and the federal government in government-to-government relationships in the co-management of interjurisdictional fishery resources. The sovereignty of the communities is realized not exclusively in terms of the power to regulate themselves, but also as the power, responsibility, and opportunity to engage with other sovereigns in relationships of interdependency.[39] The development of the tribal hatcheries parallels the development of an interest in the general health and welfare of the entire ceded territories. The tribes regularly engage with other sovereigns over the sustainability of a landscape shared by tribal and state citizens with all of the problems, challenges, and opportunities presented by the stakeholders' often-disparate agendas.

In the pre-*Voigt* years, when off-reservation harvesting of resources for home and commercial use needed to be undertaken surreptitiously because the states arrogated the right to regulate all users' actions to themselves, the treaties notwithstanding, there appears to have been less concern for the sustainability of those species and their environments than there is today with the tribes able to act on their interest in the health and welfare of the lands they ceded in those treaties. At Fond du Lac, tribal members spoke

of the tribe's commitment to strict enforcement of the tribal code regarding harvesting in order to communicate to tribal members and the non-Indian public that the tribe valued the sustainability of those resources and the health of the habitat.[40] Now that tribal, state, and federal agencies are cooperatively managing the ceded territories, the tribes are committed to putting what resources they can into these repatriated lands and waters.

This concern for lands would be manifested in the resistance to a proposed development of a nuclear storage facility during the 1980s, resistance to the proposed development of the Crandon Mine at Mole Lake during the 1990s and early 2000s, and the White Pine and Yellow Dog mine proposals in the 1842 ceded territory during the 1990s and early 2000s. In each case, the local Ojibwe tribe potentially most affected was supported by the other tribes, indicating a growing consciousness of the depth of their common interest in the ceded territories.

Tribal Natural Resource Department Development

Though some of the communities had tribal governmental departments that were responsible for aspects of managing natural resources on the reservation, these policies were informed with a geographical understanding characterized by the stark difference between reservation land that was a tribal and federal responsibility and state land that excluded tribal interest and authority. The recognition of treaty rights changes the valence of land in the ceded territory, and this appears to have had implications for policy on the reservations as well. Because the GLIFWC tribes now share a commons that is the entire ceded territory, the tribal departments charged with concern for natural resources have been placed in more regular and extensive conversations with each other as well as with state and federal agencies. For example, the communities within GLIFWC participate in the Circle of Flight Program, an interagency waterfowl management program that assists reservations in protecting and enhancing wetlands. Several of the communities have initiated seeding wild rice in local waters as well. The Keweenaw Bay Indian Community Natural Resource Department is working with the US Fish and Wildlife Service in the restoration of trumpeter swans. The Anishinaabe Wild Plant Traditional Environmental Knowledge (TEK) and Wisdom/Scientific Integration Project is exemplary in this area. The project involved nearly two hundred elders from all of the tribal communities and resulted in the production and distribution of the CD *Non-medicinal Uses of Plants by the Great Lakes Ojibwe*.[41] This concentration and focus on TEK had positive effects in several institutional settings within the communities, potentially informing policy decisions for tribal agencies that are responsible for the stewardship of natural resources on

and off the reservations. For example, in 1990 Mille Lacs began to operate a laboratory focusing on a holistic/ecological approach to resource management that drew upon traditional values and science: "Following traditional ways, the Department seeks guidance from both professional staff and the traditional knowledge held by tribal elders. Working in conjunction with conventional resource managers is a unique program addressing cultural resources, which identifies those areas traditionally significant to the Mille Lacs Band. Thus, preservation of the natural resources is closely linked with the preservation of the Chippewa culture."[42]

Mole Lake, Bad River, Fond du Lac, and Lac du Flambeau administer their own water-quality programs under the Clean Water Act, thus establishing water-quality standards for their communities with implications for water upstream within the jurisdiction of the state but often within the ceded territory. Fond du Lac administers parts of the Clear Air Act. The Lac Courte Oreilles community has several programs focused upon water quality and wetlands management that are inspired by a traditional understanding: "Water has a spirit also; treat it well. In polluting Mother Earth, this spirit isn't being treated well," states Harold Frogg.[43] Similarly, when Lac du Flambeau applied for Treatment As State status under the Clean Water Act, it evoked the importance of water to the community's spiritual health in the application: "Traditional fishing activities, as well as subsistence hunting and gathering, are dependent on those waters. Traditional beliefs and sacred places also depend on the purity of the waters for their vitality. These ties to water, which have existed from time immemorial, are not less important today—for the Band continues to rely heavily on its Reservation waters for its economic and cultural survival."[44] In sum, with the tribes receiving recognition for their interest in the lands they ceded, their engagement with each other over the management of those lands has affected how the reserved lands are managed.

Tribal Courts

The federal and state court decisions all held that the states that surrounded the communities in possession of treaty rights could not regulate tribal members' exercise on the lands they had ceded. Regulation would be the prerogative and responsibility of the tribal governments. As a result, the tribes would expand or institute courts, and GLIFWC would develop a model code of regulations for those courts. It is clear that the recognition of the treaty rights played a catalytic role in the development of tribal judiciaries in order to adjudicate disputes between tribal governments as regulators and holders of rights and tribal members in possession of harvesting privileges. In terms

of tribal sovereignty and the development of tribal capacity, this represented a very important moment in the history of the communities.

Courts have "radiating effects" on society as they "not only resolve disputes, they prevent them, mobilize them, displace them, and transform them."[45] In assuming these functions, the tribal courts also empower the tribe as a government insofar as it is the tribe that typically assumes the role of a repeat plaintiff versus its own members, who tend to appear as what Marc Galanter calls a "one-shotter" on the nonhabitual defense.[46] Furthermore, courts often expand their domains of jurisdiction, thus further empowering the tribal government that hosts them. Courts not only settle disputes, but also provide "a background of norms and procedures against which negotiations and regulation in both private and governmental settings take place." As such, they provide "bargaining" and "regulatory endowments" in the form of explicit and implicit "authorizations and immunities" to the tribes as governments.[47] For all of these reasons, it is difficult to overemphasize the significance of the development of the tribal courts in the Ojibwe communities and their governments throughout the last several decades. It is also clear that without the recognition of the treaty rights, it is unlikely that the courts would have experienced the development they have.

Though courts vary a good deal, the typical Ojibwe tribal court during the late 1980s exercised jurisdiction over Indian Child Welfare, name changes, marriage and divorce, and the exercise of off-reservation rights. By the end of the first decade of the twenty-first century, all of the courts had added several areas of jurisdiction and increased their caseloads considerably. Of the eleven tribal courts among the bands that make up GLIFWC, all but three (Lac Courte Oreilles, Lac Vieux Desert, and Mille Lacs) developed as a direct response to court decisions which held that states cannot regulate tribal exercise of treaty rights. Looked at in aggregate, there were no tribal courts among any of the Lake Superior bands before the 1971 *Gurnoe* decision.

We regard this as significant in that the recognition of treaty rights is recognition of tribal sovereignty because treaty rights spring from the nation-to-nation relationship proclaimed in the treaties with the federal government.

The capacity for self-governance and self-determination of the tribes has increased considerably by virtue of the development of courts. Tribal communities have been able to take far more responsibility for the welfare of tribal children. In addition to giving force and extending the reach of the tribe as a government, the courts have also been able to avail a user-friendly dispute-resolution forum to their members for the purpose of adjudicating disputes between tribal members over social relations and property.

Not only do the state courts of Wisconsin give full faith and credit to the judgments of tribal courts, the ninth and the tenth judicial districts have

signed agreements with the tribes articulating a protocol for the transfer of cases between these courts.[48] Furthermore, after a long process of interaction and cooperation between the tribes and the state in the Special Committee on State-Tribal Relations, state court judges in Wisconsin can now transfer cases to tribal courts on their own authority.[49] This is a most explicit recognition of tribal sovereignty and citizenship. Like the cooperative management of the fisheries and the terrestrial resources shared between two sovereigns, this protocol and Supreme Court rule are both testimonials to tribal sovereignty that grew directly out of the recognition of the treaties.

Treaty rights have altered some aspects of social relations within the tribal communities, first, by legalizing what had previously been illegal and therefore making it possible for family groups to engage in harvesting activity for home use and creating the opportunity for some tribal members to make or supplement their incomes from the exercise. Second, the tribally regulated harvests create the possibility of using the produce for traditional purposes such as feasting on the occasion of life-crisis rituals, thus deepening and broadening the social worlds of tribal members. The development of tribal fish hatcheries has put the communities on par with the state regarding sustaining the resources on a shared landscape. The tribal courts have had the effect of concentrating more of the governance functions in the communities and put the sovereigns in an ongoing relationship with each other with the goal of sharing the responsibility for serving the justice needs of their populations.

Educational Program Development

The relationship between generations of community members and the transmission of culturally specific knowledge is another dimension of tribal community life that has been affected and enhanced by the implementation of the treaty rights. "The language" and "the culture," as many tribal members will express it, separately and together, are now taught in the schools on and off the reservations as well as in tribally sponsored programs within the communities. This represents a considerable change for the tribal communities and the proximate non-Indian communities.

Before the 1970s, most people assumed that a culturally distinctive Native way of life was coming to an end. Today there is broad consensus that a distinctive way of life, an indigenous modernity, is valuable and worthy of wide support. Historical reasons for this transformation exist that go well beyond the region of the Western Great Lakes, as the same kind of ethnic resurgence has taken place in other societies in the developed and the developing world. Suffice it to say that history and culture are being actively rethought and taught in tribal communities throughout the region. This manifests in

policy decisions on and off the reservations. At the height of the conflict over treaty rights in Wisconsin, there was very little in the way of curriculum that acknowledged the presence of a distinct local indigenous minority in the non-Indian–controlled schools, and the tribes were not in a financial position to offer programs of their own design in order to address matters of history and culture either for their own members' benefit or for that of the general non-Indian public.

The *Voigt* decision motivated the state to enact legislation—colloquially referred to as Act 31—requiring public schools to teach Wisconsin Indian history, culture, and tribal sovereignty.[50] As an unfunded mandate, the requirements of that legislation are unevenly implemented, but it is safe to conjecture that a great deal of curricular development has taken place in the different branches of the University of Wisconsin System departments of education as well as in many school districts.[51]

The Lac du Flambeau Band not only hosts a variety of hunter safety courses that are availed to all of the tribal communities within GLIFWC but also supports the Abinoojiyag Youth Center, where young people join drum groups and learn to make dance regalia and Ojibwe crafts. The Ojibwe language is taught at the center, local high school, and elementary school; as part of the Tribal Head Start program; and during evening classes for adults. In a poetic and insightful reflection, Lac du Flambeau language teacher Leon Valliere told student researcher Chris Recontre in an interview: "*Voigt* was the beginning of a cultural re-awakening in Lac du Flambeau and as a result there are a lot of kids running around on the reservation who don't know their English names."[52]

In the Lac Courte Oreilles community, where the *Voigt* case began, the K–12 tribal school system teaches Ojibwe language and culture classes by relying on elders who are knowledgeable about such matters. The mission of the school, to integrate traditional knowledge with modern technologies in a bilingual and bicultural environment, is carried through the college curriculum at Lac Courte Oreilles Ojibwe Community College. The community also has a Boys and Girls Clubs of America that sponsors traditional harvesting activities. The nearby Hayward Community School District teaches Ojibwe language and culture in the elementary school and high school. In 2009, twenty-seven students were attending Waadookodaading, a charter language-immersion school.

The community at Bad River sponsors summer camps for children that integrate traditional skills and knowledge.[53] Less formal programs have also taught skills such as deer-hide tanning, gardening with native plants, and making hominy. Approximately five hundred children from the Bad River

community make up 21 percent of the population of the Ashland County school district. The elementary and high schools are in compliance with Act 31.

Two-thirds of the Bayfield school district is made up of Red Cliff community members, and the school has a high school graduation rate of 98 percent. The tribe sponsors a language-immersion camp at the Raspberry Campground on the reservation.

Three of the four schools districts in which St. Croix tribal children attend teach the Ojibwe language. The twelfth grade at Unity school district is presently developing a K–12 curriculum on Ojibwe culture and history for Ojibwe Indian students. The children of the Sokaogan community at Mole Lake attend school in Crandon and at Wabeno High School. High school students receive instruction in treaty rights, governance, and economic issues through cooperation with Nicollet College. Wabeno High School offers elective courses for eleventh and twelfth graders on the Native American literature of Wisconsin and on Native American literature and film.

Middle and high school students at Fond du Lac participate in sugar camp, ricing, and collecting birch bark. They also learn to make fishing spears in addition to studying the Ojibwe language. The Natural Resource Department of the tribe also makes presentations to the students about treaty rights, hunting, and gun safety, thus encouraging and normalizing the exercise of the rights.

The Mille Lacs community opened the Nay Ah Shing school in 1975 and created the Ojibwe Language and Culture Program during the 1990s wherein TEK is taught, which includes the practice of ricing, netting, and trapping, as well as singing, dancing, drumming, art, wigwam construction, and sugar bushing (making maple sugar). Students are also encouraged to participate in traditional Ojibwe ceremonies, including dance, name-giving, and birth ceremonies, thus binding the exercise of treaty rights to a set of practices and values. The tribe has used Temporary Assistance for Needy Families funds to pay an experienced net fisherman to teach others.[54]

In the ceded territories in the Upper Peninsula of Michigan, near the Lac Vieux Desert community, the Watersmeet school district offers Ojibwe language classes and a Native-studies elective for high schools students. K–6 students have the opportunity to meet with a Native instructor. The community also sponsors language classes in its daycare program. The Keweenaw Bay Indian Community Summer Science Program is one of the more creative efforts in teaching TEK to young people that explicitly encourages the exercise of treaty rights. In addition to the rich Ojibwe language, culture, and history curriculum at Bay Mills Community College, a K–10 Ojibwe Charter School in Brimley educates just more than one hundred tribal members.

The fact that tribal members have treaty rights, along with a distinctive culture and history is being taught within the tribal communities in a few

different venues, within the school districts that serve Native populations, and well beyond, with the surrounding states having generally accepted the responsibility to educate all of their citizens about the reality of a more complicated cultural and political landscape. GLIFWC has directly contributed to this development with the publication of a variety of educational materials.[55]

All of the educational efforts have engaged elders to one degree or another, thus validating their status within the communities and foregrounding the importance of relations between generations. Hence, the publication of *Gidakiiminaan (Our Earth): An Anishinaabe Atlas of the 1836 (Upper Michigan), 1837, and 1842 Treaty Ceded Territories* was dedicated to the elders and the children.[56] The publication of an alternative and indigenous geography of this region signifies the existence of an Anishinaabe landscape that antedates its settlement by Euro-Americans and serves as a powerful statement about sovereignty.

Health and Wellness

It is no secret that colonized people are less healthy than their colonizers as the net flow of resources in several registers is from the latter to the former, leaving indigenous peoples less educated and less affluent. In assessing the impact of treaty rights on the health and wellness of the communities, we found ourselves gravitating to issues of diet and how this relates to general health, in the broadest sense of the term. Health and wellness generally seem to have a relationship to the greater availability of traditional foods as a result of the exercise of treaty rights.

Provocatively, and at the peak of the conflict over treaty rights, Mike Chosa at Lac du Flambeau said, "The kids will become shells without fish, berries, venison. They are used to these foods in all ways. Macaroni will kill them."[57] The proclamation points to a change in consciousness. It also represents more than a secularization of a traditional Ojibwe conception of the relationship between human and nonhumans. This conception is that the bodies of plants and animals are given to humans as gifts by the spirits that we humans, in turn, consume as food, especially at feasts, and thus honor the spirits of those nonhuman persons such that they consent to be reborn in bodies that will again be consumed by humans.[58] The idea, and the culturally sedimented practices motivated by the idea, account for the tenacity with which Ojibwe people fought for their off-reservation rights when the court finally recognized them.

In 1995, Harriet Kuhnlein wrote a report entitled "Ojibwe Health and Traditional Food" for the Mille Lacs Band that sought to answer the question "Can the use of traditional Ojibwe food improve the health and well-being of Band members?"[59] The answer is an unqualified yes. Kuhnlein claims,

"Traditional food system use provides opportunities for cultural expression and transmission of cultural patterns from one generation to the next. As such, this results in promotion of cultural integrity that promotes many aspects of physical and mental health."[60]

In different ways, the tribal communities within GLIFWC have embraced and implemented this conclusion. Not only are the fish, venison, wild rice, and berries widely shared among relatives in all of the communities, but also tribes, as a matter of policy, deploy resources to encourage the consumption of these foods, thus linking tribal sovereignty to the good physical and spiritual health of their members. The whole range of tribal programs that have the effect of educating members about the rights—language programs, hunter safety, and the various camps—are intended to encourage the consumption of foods that are thought to be better for mental and physical health than are the mass-produced foods available for purchase. For example, the Bad River Gitigaaning Project sought to teach youths about the value of good diets. At the Women of Influence Powwow, supported by the Lac Courte Oreilles tribe, the program focused on women's health and featured a feast of venison, wild rice, berries and corn. Giwegizhigokwe at Lac Vieux Desert spoke of a small movement in the community of people attempting to eat only venison, wild rice, and fish on the understanding that the diet was far better than what is commercially available.[61]

Mary Hindelang has documented the traditional diet of the Keweenaw Bay Indian Community and presented this to the campers at the tribally sponsored camp.[62] Wild meat, fish, berries, wild rice, corn, squash, and pumpkins were lauded for their nutritional value, as was the physical, social, and spiritual value of the activities needed to produce them. Carl Edwards at Lac du Flambeau articulates the relationship between health and traditional foods:

> I know that they're [tribal members] going back to eating more fish, wild rice, and deer meat, especially with the economy now, which, I mean, there's, deer meat is so lean, and fish, I mean, we're watching the lakes with a lot of mercury count, they're going to more fish nowadays, you're going back to more wild rice nowadays. Because it's, one, it's better for you. You're going after a lot of the plants, you go after the onions and the mushrooms. . . . I usually harvest, bring home about fifty pounds of rice a year. I mean, I probably give away twenty-five pounds of it, but still people, we eat that a lot more. We eat a lot more fish nowadays and it's not always deep fried, it's a fish boil or it's on the grill, but we're going back more to what we used to do, one because the economy can't run down across the street or run down to buy a lot of groceries, *I mean, it's get back to the basics and actually that's better for you. I mean sometimes the economy as bad as it is, in a way it is kind of healthy*. People are going back to the old ways and maple syrup, you'll not believe how many how people are maple syruping this year.[63]

Finally, we give the last word to Curt Kalk of the Mille Lacs community, who spoke of the relationship between diet and sociality, pointing to the broader conception of health: "So the milestone really comes ten years later when people begin to see how important it is, a diet of fish and eating it and talking to one another, spending time together and learning about survival. We do our maple syrup and we hunt and now fish and it kind of says hey, we're going to survive."[64]

Relations among Tribal Communities, and the Tribal Communities and the State and Federal Agencies

Creating and sustaining a multitribal natural resource management agency such as GLIFWC has augmented how the tribes think about themselves individually as well as how they regard the relationships that they have with each other and with other governmental entities. With the federal recognition that they collectively had an interest in lands ceded to the United States, but retain a property interest in those lands and the resources upon them, they are naturally placed in more complicated relationships of cooperation and competition with each other. We indicated that sovereignty can and should be assessed not only in terms of self-governance but also in the degree of interdependence that obtains between the community and other sovereign units.

Two hundred years ago, the region that would be ceded to the United States during the mid-nineteenth century was socially and politically organized as an association of autonomous villages linked to each other by blood, descent, and marriage. They were not only self-governing and in political relationships with each other, but also each had relations with other non-Ojibwe politically autonomous groups.[65] Although their political autonomy was compromised considerably during the period between the land cessions and the late twentieth century, when their treaty rights were recognized again, they still remain a set of political communities linked by social relations of different kinds. To this network of relationships we add social and political relations with non-Indian entities.

Relations between tribes and state and federal agencies have proliferated with the recognition of treaty rights. All of the tribal communities not only have relationships with state departments of natural resources but also are engaged with agencies of the federal government such as the US Fish and Wildlife Service and the US Forest Service. Many of these are arguably and demonstrably the direct outgrowth of a mutual assumption of responsibility for the ceded territories. This is in addition to the relationships that have developed among the tribes, states, and federal government by virtue of contracting for federal service programs. We collate some of this development attending

to the fact that the communities surrounded by the states of Wisconsin and Minnesota need to concern themselves with the effects of PL 280 that gave those states the federal share of concurrent civil and criminal jurisdiction and those communities—Keweenaw Bay, Lac Vieux Desert, and Bay Mills—in Michigan that do not.

The *Gurnoe* decision set the process in motion with Bad River and Red Cliff holding a joint recognized interest in self-regulated commercial fishing in Lake Superior, though Red Cliff pursued this right more aggressively. The 1979 agreement with the state regarding home-use fishing effectively began the process of co-management.[66] A similar process was undertaken by Keweenaw Bay with the *Jondreau* decision at the same time. With *Voigt* came the expansion of the Great Lakes Indian Fishing Commission, which only included the tribes on Lake Superior, into the GLIFWC in an effort to include the inland bands. The tribes as a group would negotiate forty interim agreements with the state of Wisconsin as they litigated the rights in federal court. The Minnesota Ojibwe tribes would also engage in negotiations with the state in the context of litigation in federal court. What effect did this recognition of their collective de facto equality with the state have on the individual communities' conception of themselves, and how was this manifest in practice?

Then-chairman Edwards at Lac du Flambeau indicates that a change of attitude on the part of both the state and the tribe has taken place. In the past, the state made the judgment as to whether actions that it was contemplating would affect the tribes and informed them accordingly. Now, Edwards reports, the state has come to presume the tribes have an interest. According to Tribal Warden Larry Deriden at Red Cliff, "Prior to *Voigt*, there was nothing with the state. You were going off reservation, you were going off to the National Forest to do anything unless you bought a state license or a state permit or something like that. Once the *Voigt* came together, people tried together. Now the state had no choice but to listen to the tribes, and the tribes acted as more of a whole versus an individual band."[67] This understanding of their relative sovereign equality has had its ups and downs. One of the former is the agreement that Lac du Flambeau negotiated under Tribal Chairman Tom Maulson wherein the band would harvest walleye from lakes at a level leaving a three-walleye bag limit for anglers and, in return, keep the proceeds from state fishing licenses that the tribe sold. The band has also negotiated a two-month hunt in the Northern Highland-American Legion State Forest where there was none previously. Another is the cooperation between the St. Croix tribe and Danbury Township on a water project. In yet another dimension of governmental activity, at the Lac Courte Oreilles Ojibwe Reservation, ACCESS (Advocating Community Collaborative Emergency Service Strategies) (which is made up of county and tribal agencies) works for affordable housing for

community members. Extensive contact between the state and the tribe exists in the areas of justice assistance, housing and economic development, health and family services, and more.

Among the communities whose neighbors are not PL 280 states, good government-to-government relations obtain between the state of Michigan and Lac Vieux Desert—the most recently recognized federal tribe in the group—largely through the Michigan Department of Transportation. For Keweenaw Bay, relations are more complicated by a longer history of contentious activism, and there is a similar history at Bay Mills.

If sovereignty initially means self-rule, we should include the development of tribal law enforcement since the recognition of treaty rights as at least an indirect effect of that recognition. All the tribes but Mole Lake have their own police departments that work with counties in different measures. Here, too, we call attention to the interdependent aspect of tribal sovereignty that has grown out of the co-management of the natural resources of the ceded territories. Extensive cross-deputization between tribal and state police has been implemented during the last several decades for the tribes within the GLIFWC. In Wisconsin, tribal law enforcement departments now have access to the state's criminal data-sharing system in an effort to facilitate joint state-tribal law enforcement teamwork.[68] One of the more recent developments in this domain that explicitly brings together general law enforcement concerns with treaty rights is Wisconsin passing legislation in 2007 that gives GLIFWC wardens expanded law enforcement credentials including access to emergency radio frequencies and the state criminal-history database.[69]

All of the communities have developed relationships with external non-Indian sovereign entities partially as the result of the entailments of exercising the federally recognized off-reservation usufructuary rights, as we have shown. This has caused them to shift their orientation from almost exclusively looking within their communities, before the court cases, to looking outward at each other, according to St. Arnold, former chairman of the Keweenaw Bay Indian Community and program specialist in the GLIFWC Planning and Development office.[70] We concur with this appraisal of the general transformation and suggest some domains of evidence that are worthy of further exploration.

We indicated earlier that indigenous nations such as Indian tribes—or, in this case, a confederation of Indian tribes—like nation-states, see themselves as sovereign and limited, recalling Benedict Anderson's seminal and erudite analysis of nationalism.[71] Movement and circulation of persons or ideas, as well as ideas embodied in practices, are necessary for the political community to see itself and imagine itself as a unified entity. The recognition on the parts of tribal members in all of these communities that they hold property in

common is the most important element in seeing themselves as a political and cultural unity. We point out two aspects of that process that are particularly relevant here.

The first is the development of a yearly commemoration of the 1850 tragedy at Sandy Lake, Minnesota. The second is the movement of tribal members exercising their rights beyond their immediate off-reservation hinterlands and into the hinterlands of other member tribes to fish, either for home use or the market. Tribal members from at least one of the GLIFWC community of tribes provocatively refer to these lands that are immediately off the reservations as the tribe's "home territories."

In recent years, tribal members from many of the separate communities have been commemorating the tragic events of 1850 at Sandy Lake.[72] In that year, the federal government decided to hold the annuity payment for the treaties of 1837 and 1842 at Sandy Lake, which was a considerable distance from the usual dispersal site at La Pointe, acquiescing in local Indian agents' conspiracy to remove the Ojibwe from Wisconsin to Minnesota for purposes of profiting from such removal. Hundreds of Ojibwe people from nineteen of the bands died waiting for their treaty annuities and while traveling home in December once they had received them. In recent years, monuments were created at Sandy Lake and at Madeline Island to commemorate the event.[73] In December 2000, the event was commemorated for the first time on the 150th anniversary and included a team of runners—tribal members and friends—relay running from Sandy Lake to Madeline Island, 250 miles to the east. The recreation was a profound experience for several of those runners, as they virtually inscribed a simulacrum of their ancestors' experience on their own bodies. A number of them have remained active in tribal cultural and political affairs.

These are the kinds of commemorations and pilgrimages of which national consciousness is made. Such events work to cause members of different bands to see themselves as members of a single political, cultural, and ethnic entity. GLIFWC has recently published a DVD as well as *Ojibwe Journeys: Treaties, Sandy Lake and the Wabanong Run*, by Charlie Rasmussen, thus making an experience of nationhood virtually available to tribal members and others.[74]

Minnesota is also the site of another gathering of Ojibwe nation-making activity and consciousness. As we indicated, the bands of Minnesota and Wisconsin harvest fish in Mille Lacs. In 2007, for example, 595 tribal members took 103,431 pounds of fish from that lake. No other lake is harvested at anything near that level. Though most of the non–Mille Lacs tribal members who harvest at Mille Lacs came from the relatively nearby Fond du Lac community (129 members in 2007), an average of thirty-seven members traveled to Mille Lacs to harvest fish from each of the Wisconsin

tribal communities.[75] This represents a significant portion of the families in each of these communities.

The three Michigan Ojibwe bands—Lac Vieux Desert, Keweenaw Bay, and Bay Mills—do not participate in the netting at Mille Lacs, producing a division within the larger political and cultural entity. Herein lies a source of some conflict that may enhance the sense of indigenous national unity engendered by the exercise of the treaty rights insofar as that the terms of that exercise is internally debated.

Treaty Rights and Gaming

Insofar as the Indian Gaming Regulatory Act of 1988 has had an impact on all of the tribal communities that created GLIFWC in that all of the tribes have developed casinos, we feel it is necessary to comment on what we learned in the research process regarding the ways in which gaming appears to be related to the exercise of treaty rights. It should be pointed out, however, that we were not consistent about exploring this relationship, largely, we surmise, because the impact of gaming is so highly variable in the different communities.

We learned immediately at Fond du Lac that the tribes prefer to keep official conversations with the state about gaming and about their exercise of treaty rights separate notwithstanding the state's desire to link terms of compacts and off-reservation resource harvest levels.[76] At the same time, gaming has brought money to some of the communities that can be allocated toward tribal departments whose work encourages the exercise of treaty rights. Again, at Fond du Lac, we were told in response to the issue of keeping gaming and the rights separate: "That's a good point, but you take a look at the gaming revenue on what it's done for the division over there. Kind of see those guys driving out and buying new trucks and maybe, maybe that's a state grant and maybe it isn't, I don't know. All I know is that the council seems to take good care of it in terms of equipment."[77] Furthermore, the negotiating experience with the state over treaty rights has built up "cultural capital," that is, the individual and institutional skills and capacity for subsequent negotiations with the state over gaming compacts.[78] In Martineau's words:

> It does, it gives you *a background of tenacity*, that's what you need. . . . You need to, you need to, be like an old scent dog, you know. You get on the scent and you find your prey. And that's what you have to do down here sometimes. You know, you have to peel through all the layers to get to that, but once you get to it and get that straightened out, then the rest of it can kind of come back into place, so *tenacity, I think, is one of the things that fighting the treaty rights battle, gave the tribes is that ability to just be able to get the job done*.[79]

When the state of Wisconsin refused to compact in order to determine responsibilities regarding gaming with Lac du Flambeau and Mole Lake, these tribes, which at that point had been "fighting the treaty rights battle" with the state, took the state to federal district court, where a national precedent regarding the relations between tribes and states in the context of the Indian Gaming Regulatory Act was established.[80]

At Bad River, Erv Soulier links a certain level of affluence with the very possibility of going off the reservation to exercise the rights:

> My belief [is] that those *off-reservation treaty rights are the rich man's activity*, in the sense that the greater part of public lands are in the national forest, and I think [those lands are] like, fifty miles, sixty miles below the southern border [of the reservation]. You know a lot of times, we have to drive an hour to go spearfishing, . . . [and] . . . there's so many safety features that need to be maintained on a piece of equipment that you use out there, . . . and then the trailers and the trucks to haul them that distance, you know, *how many of our members have that affluence, so . . . a lot of those younger kids now are going out now, because they're getting to be like middle-income*.[81]

At Mille Lacs, the poverty rate has dropped considerably since they opened their two casinos, which may have affected the exercise of the rights in the same way as at Bad River. At Fond du Lac, Bad River, and perhaps at some of the other communities, gaming funds subsidize tribal departments that encourage the exercise of the rights. David Kamper makes the point that gaming "provides many Indian communities with the tremendous resources required to improve their standards of living and maintain their traditional cultures."[82] Anthropologist Jessica Cattelino certainly argues this for the Seminole throughout *High Stakes*. This indirect effect should not be sold short. Gaming has clearly created a great deal of opportunity for Indian people to expand their sense of self-determination and use the proceeds in a way that asserts their political and cultural distinctiveness. In several of these cases in Wisconsin and Minnesota, the rights are being exercised to produce food for home use. Furthermore, the harvest rates over the years remain constant once they reach a plateau.

It appears that where the treaty rights pertain more to commercial fishing, however, a successful gaming enterprise may have a less than salutary effect on the exercise. The annual harvest of deer and the number of commercial fishing licenses awarded by Keweenaw Bay, for example, have declined since 1996 and 2000, respectively.[83] Stronger evidence comes from Bay Mills. In a response to a question about the impact of gaming on the rights, we were told that working in a casino is not only physically easier but also affords people a more predictable income. Parrish adds that "they hired six hundred people and all

the Natives went in there, cause it was an easier job and not as cold, and you got free lunch." Parrish and Teeple estimate that at one point 80 to 90 percent of the community was involved in fishing. Now, it is maybe 15 percent.[84] Red Cliff has such a small gaming operation that it seems to have had no implications for the exercise of treaty-guaranteed commercial fishing rights.

Conclusion

The recognition of the rights reserved in the mid-nineteenth-century Ojibwe treaties by the state and federal courts, and their subsequent implementation on the parts of the eleven Ojibwe tribes that are members of the GLIFWC, constitutes a partial repatriation of a large portion of their early-nineteenth-century collectively held tribal estate. As such, it represents the watershed event in their collective recent history. That process has put the tribal communities into new and consequential political relationships with each other as well as with state and federal agencies, transforming their earlier conceptions of the value of their external sovereignty. It has contributed to a transformation of consciousness and practice that goes beyond self-determination to the realm of realizing the sovereignty that was first envisioned and enacted by the signatories of those treaties.

At the level of institutional developments within the communities as a result of assuming responsibility for the exercise of the rights of their memberships, all of the communities within this association now have courts that adjudicate disputes between tribal members and the tribe regarding that exercise of rights as well as regarding other matters. Tribal membership is coming to be understood as tribal citizenship as the tribes come to look more like nation-states with the growth of the governmental infrastructure that is, in part, directly attributable to the exercise of treaty rights. Their success at negotiating gaming compacts with the state is also partially attributable to all that they learned in negotiating the terms of the off-reservation resource harvests with the state. Those courts have expanded their jurisdictions within the communities to the point of taking back jurisdiction from the state in several areas. Natural resource departments and tribal fish hatcheries on reservations have expanded especially for the Michigan tribes with the opportunity to fish commercially in Lake Superior. Educational, health, and language programs in the communities have emerged that work to reproduce a viable Ojibwe cultural identity, in part by addressing the social, cultural, and historical significance of the rights.

At the level of tribal civil society, the exercise of the rights has not only made it possible for a segment of the communities to make a commercial living but also has motivated a renaissance of Ojibwe cultural practices generally and

given added substance to Ojibwe cultural and ethnic personal identity. There are more naming ceremonies and ghosts feasts, gift exchanges between relatives, and gifts to the spirits, the ultimate condition of the possibility of collective human life. The communities are far less insular and inward looking than they were before the court decisions that upheld their treaty rights decades ago. They now look to each other as they see themselves much more often, with good cause and in a number of different ways, as far more significant forces in the region of the Western Great Lakes than they were in the past.

Notes

1. The archival and ethnographic research for this article was supported by the Great Lakes Indian Fish and Wildlife Commission (hereinafter referred to as GLIFWC) as part of the commission's twenty-fifth anniversary and undertaken by the author and an undergraduate seminar at the University of Wisconsin–Madison during the spring of 2009, hence the use of the first-person plural throughout. Those students were Colin Burreson, Sawyer Denning, Kyle Diedrick, Chynna Haas, Mee Her, Mike Herrmann, Myung Won Lee, Kelsy Marquardt, Erin Mellenthin, Tyler Moldenhauer, Christina Recontre, and John Sheehan.

2. Fond du Lac and Mille Lacs (in Minnesota); Red Cliff, Bad River, Lac Courte Oreilles, Lac du Flambeau, St. Croix, and Sokaogan (in Wisconsin); and Lac Vieux Desert, Bay Mills, and Keweenaw Bay (in Michigan).

3. See esp. Robert Doherty, *Disputed Waters: Native American Fishing Rights in the Great Lakes* (Lexington: University Press of Kentucky, 1990).

4. Interview by the author with Fred Ackley, Mole Lake, March 19, 2009.

5. Edmund Jefferson Danziger Jr., *The Chippewa of Lake Superior* (Norman and London: University of Oklahoma Press, 1979), 184.

6. A consortium of twelve tribes in Wisconsin and Michigan founded in 1965 that provides technical assistance for economic and political development on Wisconsin Indian reservations.

7. See Larry Nesper, "Ironies of Articulating Continuity at Lac du Flambeau," in *New Perspectives on Native North America: Cultures, Histories, and Representations*, ed. Sergei Kan and Pauline Turner Strong (Lincoln and London: University of Nebraska Press, 2006), 98–121.

8. Interview by the author and Jim St. Arnold with Fond du Lac tribal members Ferdinand Martineau, Chuck Smith, and Steve Depaul, March 16, 2009.

9. Interview by the author with Jim St. Arnold at Keweenaw Bay, March 18, 2009.

10. Interview by the author and Jim St. Arnold with Skip Parrish and Bucko Teeple of Bay Mills, MI, March 18, 2009.

11. Maud Kegg, member of the Mille Lacs Band of Ojibwe was a writer, folk artist, and cultural interpreter. Curt Kalk telephone interview by the author, April 22, 2009.

12. Interview by the author with Fran Van Zile, Mole Lake, March 19, 2009.

13. Interview by the author with George Reynolds, St. Croix, WI, March 20, 2009.

14. For a general discussion of this topic see Ronald N. Satz, *Chippewa Treaty Rights: The Reserved Rights of Wisconsin's Chippewa Indians in Historical Perspective*, (Madison: Transactions of the Wisconsin Academy of Sciences Arts and Letters, 1991), 79n1, esp. ch. 6.

15. *State v. Gurnoe*, 53 Wis. 2d 390 (1972) held that the Red Cliff and Bad River Chippewa bands had the right to fish the waters of Lake Superior by virtue of the establishment of their

reservations under the 1854 treaty. In *Minnesota v. Mille Lacs*, 572 U.S. 126 (1999), the US Supreme Court upheld the treaty rights of the Minnesota Ojibwe bands in Minnesota under the Treaty of 1837.

16. In *People of the State of Michigan v. Jondreau*, 384 Mich. 539 (1971) the Michigan Supreme Court held that the Treaty of 1854 precludes the state from regulating tribal members' fishing in Keweenaw Bay. In this case, *U.S. v. Michigan*, 471 F. Supp. 192 (W.D. Mich. 1979) and referred to by the judge's name, the federal district court held that the Sault Ste. Marie Tribe of Chippewa Indians and the Bay Mills Indian community hold treaty rights to fish in the 1836 treaty cession including the right to fish in Lakes Huron, Michigan, and Superior unregulated by the state. Referred to as "the Voigt Decision," in *Lac Courte Oreilles v. Wisconsin*, 700 F.2d 341 (1983) the Seventh Circuit Court held that the Ojibwe tribes' reserved hunting fishing and gathering rights under the 1837 and 1842 treaties preempt unilateral state regulation.

17. See www.glifwc.org (accessed July 20, 2009).

18. During the spring of 2009, Ojibwe spearers in Wisconsin set a record of 32,200 walleye. "Stars Align in '09," *Mazina'igan: A Chronicle of the Lake Superior Ojibwe* (Summer 2009): 1.

19. "Tensions Linger over Minnesota's Most Popular Walleye Lake," *Mazina'igan: A Chronicle of the Lake Superior Ojibwe* (Winter 2008–9): 19.

20. Peter David, "2003 Manoomin Season a Good One: But What Will 2023 Be Like," *Mazina'igan: A Chronicle of the Lake Superior Ojibwe* (Spring 2004), 2.

21. Annette Drewes, "Sustaining a Ricing Culture: An Integrated Landscape Approach to Understanding Harvest, Distribution and Management of Wild Rice (*Zizania palustris*) across the Upper Great Lakes Region" (PhD diss., University of Wisconsin, 2008), 88.

22. Forest Service, US Department of Agriculture, "Tenth Anniversary of the Memorandum of Understanding Regarding Tribal-USDA Forest Service Relations on National Forest Lands within the Ceded Territory of the Treaties of 1836, 1837 and 1842 Retrospective Report," http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5117633.pdf (accessed July 20, 2009).

23. Sue Erickson, "Good Fishing, Good Feelings: 1999 Treaty Spring Season a Success," *Mazina'igan: A Chronicle of the Lake Superior Ojibwe* (Summer 1999): 1.

24. Kalk telephone interview, April 22, 2009; emphasis added.

25. Feasts require the presence of traditional foods. Ghosts feasts are given for a relative a year after he or she has passed on and symbolize the liberation of the deceased's spirit as well as the end of the period of mourning for relatives.

26. See Thomas Busiahn, "The Development of State/Tribal Co-management of Wisconsin Fisheries," in *Cooperative Management of Local Fisheries: New Directions for Improved Management and Community Development*, ed. Evelyn Pinkerton (Vancouver: University of British Columbia Press, 1989), 170–80, for a discussion of the history of the negotiations that organizes this fishery.

27. Bill Mattes, "Tribes Manage 1842 Treaty Commercial Fishery in Michigan Waters," *Mazina'igan: A Chronicle of the Lake Superior Ojibwe* (Fall 2004): 12.

28. William P. Mattes, Matthew J. Symbal, and H. Gene Mensch, *Biological and Commercial Catch Statistics from the Chippewa Inter-Tribal Gill Net Fishery within Michigan Waters of Lake Superior during 2006*, GLIFWC Administrative Report 08:01 (February 2008).

29. Mike Donofrio, "Keweenaw Bay Indian Community Lake Superior Fisheries Management," *Mazina'igan: A Chronicle of the Lake Superior Ojibwe* (Fall 2004): 11.

30. Interview by the author with Cecil Petersen at Red Cliff, March 17, 2009.

31. These Bay Mills community members were interviewed by the author and Jim St. Arnold at the Keweenaw Bay Indian Community tribal center, March 17, 2009; Kalvin Perron, "Bay Mills to Hold Whitefish Festival," *Bay Mills News* (Bay Mills, MI), June 27, 2007.

32. Parrish and Teeple interview, March 18, 2009.

33. Ibid.

34. Ibid.

35. For details see US Fish and Wildlife Service, "Tribal Fish Hatchery Programs of the Northern Great Lakes Region," http://www.fws.gov/Midwest/Ashland/TribalIndex.html (accessed July 16, 2009).

36. "Tribal Hatcheries Released over 45 Million Fish into Both On- and Off-Reservation Waters in 2010," *Mazina'igan: A Chronicle of the Lake Superior Ojibwe* (Fall 2011): 14.

37. US Fish and Wildlife Service, "Tribal Fish Hatchery Programs."

38. Ibid.

39. See Jessica Cattelino, *High Stakes: Florida Seminole Gaming and Sovereignty* (Durham, NC and London: Duke University Press, 2008), esp.ch. 5.

40. Martineau, Smith, and Depaul interview, March 15, 2009.

41. *Non-medicinal Uses of Plants by the Great Lakes Ojibwe*, CD, Great Lakes Indian Fish and Wildlife Commission, nd.

42. Sue Erickson, "Treaty Rights on Trial in Minnesota: Counties, Businessmen Move in to Intervene," *Mazina'igan: A Chronicle of the Lake Superior Ojibwe* (Summer 1992): 8.

43. David M. Michelson, "Water Resources of the Lac Courte Oreilles Reservation Northwest Wisconsin," in *Water Resources Management Program Institute for Environmental Studies* (Madison: University of Wisconsin, 1991), 35–60.

44. Environmental Protection Agency, *Decision Document: Approval of the Lac du Flambeau Band of Chippewa's Application for Treatment in the Same Manner as a State for Sections 303 (c) and 401 of the Clean Water Act* (Chicago: Environmental Protection Agency, 2008), 11.

45. Marc Galanter, "The Radiating Effects of Courts," in *Empirical Theories about Courts*, ed. K. Boyum and L. Mather (New York and London: Longman, 1983), 117–42, see esp. p. 123.

46. All cases regarding off-reservation harvesting take the form of the tribe as repeat plaintiff versus the individual tribal member as defendant, who typically appears in court quite infrequently, hence the name "one-shotter." Traffic cases, or underage drinking, e.g., take this form as well.

47. Galanter, "The Radiating Effects of Courts," 122.

48. Minnesota has yet to give full faith and credit to all tribal court judgments. In Michigan, court rule 2.615 governs the enforcement of tribal court judgments, though "it is not quite full faith and credit, but [is] a higher standard than comity." Kathryn Fort, "When the Rules Shift: A Review of the Indian Child Welfare Act, M.C.R. 2.615 and Tribal Court Jurisdiction in Michigan Family Law Cases," *Michigan State University College of Law, Indigenous Law and Policy Center Occasional Paper Series*, 2007, http://www.law.msu.edu/indigenous/papers/index.html (accessed July 20, 2009). This is the Teague Protocol. See "State, Tribal Courts Sign Jurisdictional Agreement," *Wisconsin Law Journal*, August 3, 2005, http://www.wislawjournal.com/archive/2005/0803/tribal.html (accessed July 17, 2009).

49. This committee originates at the time of the conflict regarding the exercise of the rights under *Voigt* in Wisconsin. On July 31, 2008, the Supreme Court created Wis. Stats. § 801.54 governing the discretionary transfer of cases from state to tribal courts effective January 1, 2009.

50. Wis. Stats § 121.02(1)(L)4 states that "Beginning September 1, 1991, as part of the social studies curriculum, include instruction in the history, culture and tribal sovereignty of the federally recognized American Indian tribes and bands located in this state at least twice in the elementary grades and at least once in the high school grades."

51. J. P. Leary, consultant, Wisconsin Department of Public Instruction, The Tangled Roots of Act 31, lecture given at the University of Wisconsin–Madison, February 3, 2010.

52. Chris Recontre, "The Lac du Flambeau Tribe: 25 Years after *Voigt*." Manuscript on file with author.

53. See Charlie Rasmussen, "Ojibwe Youth Engage in Traditional Outdoor Skills," *Mazina'igan: A Chronicle of the Lake Superior Ojibwe* (Spring 1998): 10.

54. Temporary Assistance for Needy Families is the federal assistance program formerly and colloquially known as welfare.

55. See Publications Ordering, www.glifwc.org (accessed July 20, 2009).

56. Available as a CD, www.glifwc.org (accessed July 20, 2009).

57. Larry Nesper, *The Walleye War: The Struggle for Ojibwe Spearfishing and Treaty Rights* (Lincoln: University of Nebraska Press, 2002), 28.

58. Though idea and associated practices are widespread among Algonquian-speaking peoples, it is best and most thoroughly articulated by Rob Brightman: *Grateful Prey: Rock Cree Human-Animal Relationships* (Berkeley: University of California Press, 1993).

59. The author is a professor of human nutrition on the faculty of the Department of Agricultural and Environmental Sciences and director of the Centre for Nutrition and Environment of Indigenous Peoples at McGill University.

60. Harriet Kuhnlein, "Ojibwe Health and Traditional Food." Report prepared for the Mille Lacs Band of Chippewa, 1995, 4.

61. Interview by the author with Joyce Hazen, Rith Anton, and giwegizhigokwe Martin at the Lac Vieux Desert Tribal Historic Preservation Office, March 19, 2009.

62. Mary Hindelang, "Traditional Ecological Knowledge of the Lake Superior Region: Explorations to Engage Students in Culture, Scientific Inquiry, and Wellness Activities," *Pimatisiwin* 4, no. 2: 65–82, http://www.pimatisiwin.com/uploads/1759865994.pdf (accessed April 29, 2011).

63. Chris Recontre interviewed Chairman Carl Edwards on May 4, 2009 at Lac du Flambeau; emphasis added.

64. Kalk telephone interview, April 22, 2009. The reference to "ten years later" is to 1999 when the *Minnesota v. Mille Lacs* Supreme Court decision cast light on what the Wisconsin tribes had gone through ten years earlier.

65. See esp., Harold Hickerson, *The Chippewa and Their Neighbors: A Study in Ethnohistory* (Chicago: Waveland Press, 1988). We should include the French and the British in this formulation.

66. Busiahn, "The Development of State-Tribal Co-management," 176.

67. Interview by the author and Jim St. Arnold with Larry Deriden, Rose Gurnoe, Leo Fernier, and Mark Duffy at Red Cliff, March 17, 2009.

68. Todd Richmond, "Tribes, Police Band Together to Fight Drugs, Gangs," http://www.policeone.com/community-policing/articles/1839563-Tribes-police-band-together-to-fight-drugs-gangs/ (accessed July 22, 2009).

69. Charlie Rasmussen, "Ceremony Marks GLIFWC Warden Bill Achievement," *Mazina'igan: A Chronicle of the Lake Superior Ojibwe* (Winter 2008): 1–2.

70. Personal communication with St. Arnold.

71. Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London and New York: Verso, 1983).

72. See James Clifton, *Wisconsin Death March: Explaining the Extremes in Old Northwest Indian Removal*, vol. 75 (Madison: Transactions of the Wisconsin Academy of Sciences, Arts and Letters, 1991), 1–39.

73. Susan Lampert Smith, "Wisconsin's Trail of Tears," *Wisconsin State Journal* (Madison, WI), July 29, 2001.

74. See *Mazina'igan: A Chronicle of the Lake Superior Ojibwe* (Spring 2008): 23; http://www.glifwc.org/publications/publications.html#cdrom (accessed July 22, 2009).

75. Nicholas Milroy, Jennifer Krueger, and Eric Madsen, "Open-Water Spearing and Netting in the 1837 Minnesota Ceded Territory During the 2007–2008 Quota Year," *GLIFWC Administrative Report 2009–12*, December 2009.

76. Martineau interview, March 16, 2009. For Wisconsin generally, see Kathryn R. L. Rand and Steven A. Light, "Do 'Fish and Chips' Mix? The Politics of Indian Gaming in Wisconsin," *Gaming Law Review* 2 (1998): 129–42.

77. Martineau interview, March 16, 2009.

78. The concept is discussed throughout the work of the French sociologist Pierre Bourdieu.

79. Martineau interview, March 16, 2009; emphasis added

80. *Lac du Flambeau Band v. Wisconsin*, 770 F. Supp. 480 (W.D.Wis. 1991)

81. Interview by the author and Jim St. Arnold with Robin Powless, Vern Stone, and Erv Soulier at Bad River, March 17, 2009; emphasis added.

82. Angela Mullis and Dave Kamper, eds., *Indian Gaming: Who Wins?* (Los Angeles: UCLA American Indian Studies Center, 2000), vii.

83. Seminar student Erin Mellenthin assembled and charted data from GLIWFC reports in her research paper, "The Keweenaw Bay Indian Community: Development After Reaffirmation of Treaty Rights." Manuscript on file with author.

84. Parrish and Teeple interview, March 18, 2009.