

Twenty-five years of Treaty Rights and the Tribal Communities *Minwaaajimo Symposium July 28-31, 2009*

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I. Introduction

Twenty-five years of the exercise of the hunting, fishing, and gathering rights reserved in the treaties of mid-nineteenth century signed between the eleven bands of Ojibwe Indian people in Minnesota, Wisconsin and Michigan have changed those communities' practices and self-conceptions in some fundamental ways. Twenty-five years ago, in 1984, the federal Indian policy era of self-determination was barely a decade old.² The Ojibwe tribes that were signatories to those treaties were just beginning to contract with the federal government for services under the provisions of the Indian Self-Determination and Education Act (1975). Tribal governmental infrastructures were just beginning to take their fully modern form. Tribes were beginning to take back jurisdiction over their children as provided for by the Indian Child Welfare Act (1978). Both of these important, progressive pieces of federal legislation have had long-term consequences for all of the tribes in the United States. But it would be the treaty rights movement that had emerged most visibly in the state of Washington in the 1960s and 70s, and then moved to upper Great Lakes with the *Gurnoe* decision in 1972, the *Jondreau* decision in 1976, and Fox decision in 1979, that would not only change how the tribes thought about themselves but would also change the ways in which they would *live* upon the lands they had lived upon for centuries. It was in this context that the Tribble brothers of Lac Courte Oreilles contested state regulation of Indian fishing on the basis of the treaties that proclaimed the sovereignty of these communities that set in motion the changes that have come about in the last 25 years.

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²The policy is typically associated with the Nixon administration and specifically with the legislation passed by Congress in the mid-1970s in response to Nixon's speech given in July of 1970, though an argument can be made that the policy began with the Kennedy administration with the recommendation of the Chicago Indian Conference in 1961.

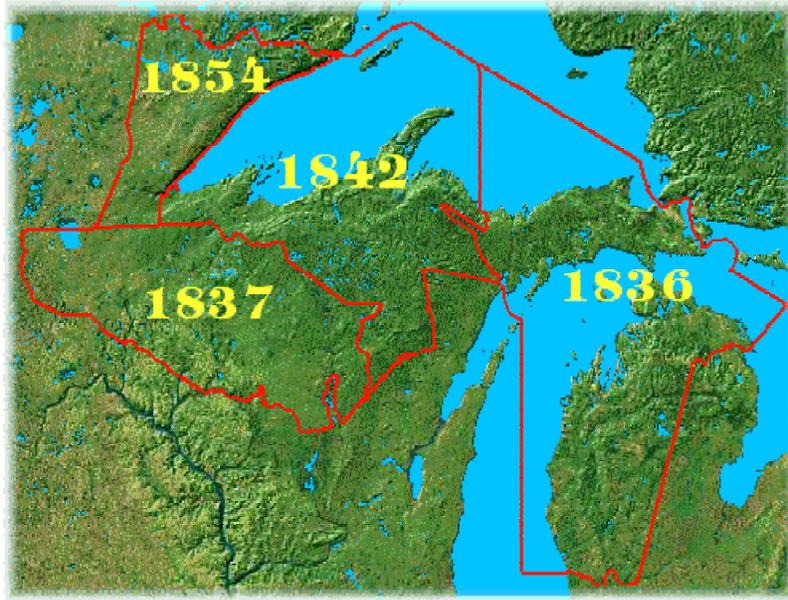


Figure 1: Lands ceded in the treaties of 1836, 1837, 1842, and 1854 (Source: glifwc.org)

This paper seeks to describe the ways in which the exercise of these rights have affected the tribal communities by attending to the meaning and magnitude of the exercise of the rights as expressed by tribal members, as well the institutional developments that have facilitated and resulted from that same exercise. As such, it aspires to document some of the dimensions of the distinct and measurable renaissance that has taken place in the Ojibwe communities of the western Great Lakes in relationship to the indigenous renaissance that has taken place in many of the communities of tribal peoples in the United States, Canada and elsewhere in the last several decades.³ Because of the peculiar history and structure of the legal and political relationships between the federal government, the tribes, and the states, the indigenous North American renaissance has been profoundly shaped and stimulated by the reaffirmation of the government-to-government relationship between the tribes and the federal government. The reaffirmation has been facilitated by the development of an inter-tribal natural resource agency,⁴ the Great Lakes Indian Fish & Wildlife Commission, (GLIFWC) made up of the following bands: Fond du Lac, Mille Lacs (both in Minnesota), Red Cliff, Bad River, Lac Courte Oreilles, Lac du Flambeau, St. Croix, Mole Lake⁵ (all in Wisconsin), Lac Vieux Desert, Bay Mills and Keweenaw Bay (all in Michigan).

II. Methods of Inquiry

Upon being invited to participate in the Minwaajimo Symposium and accepting the responsibility of attending to the ways in which the treaty rights upheld in *the Gurnoe*, *Jondreau*, *Voigt*, and *Mille Lacs* court decisions were affirmed and implemented in the tribal communities within the Commission, I consulted with Jim Zorn, Executive Administrator, Jim Thannum,

³Ronald Niezen, *The Origins of Indigenism: Human Rights and the Politics of Identity*, University of California Press. 2003.

⁴Acting as a group, the signatory tribes authorized this agency.

⁵Officially known as the Sokoagon Band of Lake Superior Chippewa Indians.

Natural Resource Development Specialist, and Jim St. Arnold, Program Specialist, all long-time employees of GLIFWC, about how to proceed. Through several conversations we identified the domains of social and cultural activity that might be the indicators of the importance and value of treaty rights affirmation and implementation:

- Tribal Natural Resources Departments
- Tribal Courts
- Education and Language Preservation
- Community Health and Wellness
- Economic development
- Inter-community relationships

Assessing the developments that have taken place over a twenty-five year period in six largely distinct institutional categories in eleven communities in three different states is a monumental research undertaking and far too much work to do in anything close to a responsible fashion for a single professional researcher. As a result of this realization, I organized Anthropology 330/American Indian Studies 450, Topics in Ethnology/ Issues in American Indian Studies, Spring Semester 2009, at the University of Wisconsin-Madison as a research seminar that would take on this project. Students who had registered for the course were required to read Edmund Danziger's *Chippewas of Lake Superior* and Larry Nesper's *The Walleye War* over the winter break to qualify for participation in the course. Twelve students elected to take the course and each student would be responsible to write a research paper on one of the communities.⁶ They 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. Without their interest, enthusiasm, hard work, patience, resourcefulness, and faith, very little would have been accomplished in assessing the impact of exercise of the treaty rights on the tribal communities.

In consultation with Jim Thannum and Jim St. Arnold, we began to identify GLIFWC documents and published sources that would permit us to describe the communities at the time of the relevant litigation and then throughout the time that the treaty rights have been exercised. In addition to sources about the tribes on the shelves of the main research libraries at the University, as well as sources in the archives of the Wisconsin Historical Society, students read newspaper accounts from both tribal newspapers as well as from the towns close to the Indian communities archived at the Wisconsin Historical Society. As a group, we also read all of the publications available on the GLIFWC website.⁷ Early on we decided that one of the best sources of information was *Mazina'igan: A Chronicle of the Lake Superior Ojibwe*, the newsletter of the Great Lakes Indian Fish and Wildlife Commission.

The University of Wisconsin-Madison is in possession of a full run of the newsletter both in print form, at the Law School Library, and on microfilm. I first suggested that the class index the 25-year run of approximately 3,000 pages so that student researchers might be able to identify articles that would be valuable for composing their individual research papers. After trial run of indexing, a small group of students led by Mike Herrmann persuaded me that scanning the entire

⁶One student would drop out leaving eleven students; one for each of the GLIFWC communities.

⁷<http://www.glifwc.org/>

run and creating a single pdf file would not only facilitate student research for the seminar but would also contribute a valuable tool for researchers in the future. That project was undertaken and completed within a few weeks and is described in the Summer 2009 issue of *Mazina'igan*.⁸

Larry Nesper, assisted by Shiela Reaves,⁹ and working with Jim St. Arnold, undertook the second major component of the research in the form of face-to-face interviews with knowledgeable tribal members from nine of the eleven communities, all but one of the interviews taking place in the community.¹⁰ Jim St. Arnold arranged and scheduled all of the interviews for the week of March 15-19, 2009. The schedule of interviews follows:

DATE	COMMUNITY	TRIBAL MEMBERS PARTICPATING IN THE INTERVIEW
Monday, March 15	Fond du Lac	Ferdinand Martineau, tribal treasurer; Chuck Smith; Steve Depaul
Tuesday, March 16	Red Cliff	Rose Gurnoe, tribal chair; Larry Deragon; Leo Fernier, Voigt Intertribal Task Force Representative; Mark Duffy, tribal warden Cecil Peterson, commercial fisherman
Tuesday, March 16	Bad River	Vern Stone, tribal warden and former tribal chair; Erv Soulier, tribal judge; Robin Powless, clerk of courts
Wednesday, March 17	Keweenaw Bay	Fred Dakota, former tribal chair; Brad Dakota, Chris Schwartz
Wednesday, March 17	Bay Mills	Bucko Teeple, Skip Parrish
Thursday, March 18	Lac Vieux Desert	giwegizhigokwe Martin, tribal historical preservation officer; Joyce Hazen, assistant THPO; Ruth Antoine
Thursday, March 18	Mole Lake ¹¹	Franny Van Zile; Fred Ackley, tribal judge
Friday, March 19	Lac Courte Oreilles	Fred Tribble: Mike Tribble; Agnes Fleming, tribal council member; Mary Ann Baker ¹²
Friday, March 19	St. Croix	George Reynolds, Croix Tribal Planning Department and Voigt Intertribal Task Force representative

⁸Mike Herrmann, "UW-Madison students digitize the *Mazina'igan*," Summer 2009, *Mazina'igan: A Chronicle of the Lake Superior Ojibwe*, p. 14.

⁹Shiela Reaves is Professor of Life Sciences Communication at the University of Wisconsin-Madison and affiliated with the American Indian Studies Program. She has been active in the development of the Native American Journalists Association.

¹⁰Although we did not interview tribal members from Mille Lacs and Lac du Flambeau during the week when we interviewed the other tribal members, Larry Nesper conducted a telephone interview with Curt Kalk, Commissioner of Natural Resources for the Mille Lacs Band and President of the Board of Directors of GLIFWC on April 22, 2009, and Christina Recontre conducted interviews with Tom Maulson, former tribal chairman and chair of the Voigt Intertribal Task Force at his home in Lac du Flambeau on the same day as well as with Carl Edwards, chairman of the Lac du Flambeau band in his office on May 4, 2009. All interviews used the same schedule of questions.

¹¹See note 3.

¹²A separate interview as undertaken with Mary Ann Baker.

The audiotaped interviews typically lasted between 45 and 90 minutes and involved Nesper and St. Arnold asking the participants to reflect upon the ways in which the community has exercised the off-reservation rights, and how the community has changed as a result of that exercise since the time of their implementation.¹³ The audiotapes were then sent to Madison where Christopher Butler, graduate student in anthropology and research assistant to us in this project,¹⁴ transcribed the interviews rendering a nearly verbatim transcript of the conversations. Nesper wrote an index for each of the transcripts using the six categories listed above as a guide. Students then read the each transcript in preparation for a 75-minute class that was given over to the analysis of the topics and themes of each of the interviews, comparing and contrasting the interviews with each other.

In the twelfth week of the semester, students circulated draft research papers within the group by email for written comments and then presented an overview of their paper in class. Two or three papers were presented in each class session where they were verbally critiqued. Final papers were submitted at the end of the term. In the following sections, I explicitly draw upon those eleven research papers, the transcripts of the interviews, the discussions in class, and twenty years of involvement and research with the communities that created the Great Lakes Indian Fish & Wildlife Commission to assist them in the protection and management of their off-reservation treaty rights in a presentation of our findings.

III. Findings

The treaty rights are recognized by tribal members as an ends, means, and symbol. 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. 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. As 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 symbol of 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 different communities' particular ecologies and histories, the rights and the exercise of them have different effects in the different communities. For example, there are inland *Anishinaabeg* communities and communities on Lake Superior. For the former, the exercise of the rights is largely outside of the dominant economy mediated by cash. For the communities on the shores of the Great Lakes, the exercise of the commercial right to harvest fish from the big lake for their exchange value complements the right to harvest other resources exclusively for their use value. These tribes' exercises of the treaty rights have been shaped by two state court-level decisions as

¹³See Appendix I, Interview Topics.

¹⁴GLIFWC applied for and received a research grant from the Wisconsin Humanities Council to support this research and the symposium.

well as federal district court decisions. Eight of the tribes are surrounded by Public Law 280¹⁵ states that have been granted the federal share of concurrent criminal jurisdiction and some civil jurisdiction over tribal members. Three of the tribes--those surrounded by the state of Michigan--do not contend with complexities that Public Law 280 has engendered, and as a result, have a different history of engagement with the state and the federal government.

The exercise of the rights have had the general effect of making a multi-sovereign *Anishinaabeg* sub-national entity more concretely visible, palpable, consequential, and imaginable¹⁶. These effects are felt both to its members and to its neighbors by virtue of the different effects that the exercise has had on the communities who are in contact and dialogue with each other about the meaning of that exercise. In order to appreciate the difference that the rights have made, we begin by offering a sketch of pre-treaty rights *Anishinaabeg* life in the upper Great Lakes.

A. Community life before the recognition of the rights

The 1980 U. S. census data for eight of the eleven communities offers us an impression and baseline from which to begin our analysis of the effect of the treaty rights upon those communities. On average, they had 44% unemployment rate and 26% of the households were below the 1979 poverty level. Though we did not systematically inventory the governmental infrastructure for each of the tribes in the period immediately before the treaties were upheld, Judge Fred Ackley's hyperbolic description of the difference between then and now is illustrative and provocative:

We didn't have no 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 1976.¹⁷

Writing about the Ojibwe tribal communities in the late 1970s, with the devastation of the federal Indian policy era of termination a rather recent memory, Edmund Danziger offers a more positive portrayal, noting that though there were few sources of income, "hunting, fishing and trapping, on the other hand, continue to be important means of supplementing Indian diets

¹⁵Carole Goldberg's *Planting Tail Feathers: Tribal Survival and Public Law 280*, (1997) is the definitive work on this significance of this legislation.

¹⁶There was some resistance to the use of the word "imagine" in describing the emergence of a sense of Anishinaabeg national identity early in the research development process, but I argue that the term is more than useful, and in fact necessary for understanding the different dimensions of what has developed in the ceded territories in the last several decades. The use of the term and its variants indexes the seminal and provocative work of Benedict Anderson in *Imagined Communities: Reflections on the Origin and Spread of Nationalism*. Anderson argues that nations are imagined limited and sovereign political communities. Imagined, not in the sense that they are in any way false, but that people who see themselves as members of the same political community "never know most of their fellow members, meet them or even hear of them, yet in the minds of each lives the image of their communion" (2006:6).

¹⁷Judge Ackley is referring to the recently constructed tribal community building. In 1976, the community had just successfully negotiated to have a first-rate contractor build high-quality homes in the community. Danziger *Chippewas of Lake Superior*, 191.

throughout Kitchigami land.”¹⁸ The promise of the Self-Determination Era was just beginning to manifest itself. For example, the Keweenaw Bay Indian Community had just launched a trailer park, a mini-market, and a 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 their fish hatchery and the Indian Bowl. 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. And though the Great Lakes Intertribal Council was more than two decades old by the time of the *Voigt* decision, indicating the development of inter-tribal relationships, government-to-government relations between tribes and states were in their infancy.¹⁹

As Danziger describes in some detail, the general economic conditions on the reservations argue for the likelihood that some portion of the community would have been attempting to supplement their income with hunted, fished, and gathered foods and other consumable or saleable resources. It is clear that Ojibwe people retained memory of the stipulations of the treaties that reserved them rights to hunt, fish and gather throughout the lands they had ceded in mid-nineteenth century treaties.²⁰ Any exercise of treaty rights on these lands and upon these waters of the ceded territories off the reservations, however, was at that time entirely governed by state law and state law in all three of the states that surround these communities was crafted to facilitate either recreational or non-Indian commercial, not subsistence use of resources. As a result, Indian people either hunted, fished and gathered exclusively on their reservations, putting a great deal of pressure on the populations of those fish and animals, conformed to state law purchasing licenses to hunt and fish, or they violated state law, hunting, fishing, and gathering off the reservations surreptitiously. It is hard to imagine that an extractive regime undertaken under such conditions yielded anywhere near the amount of foodstuffs, medicines, and materials for crafts to adequately supply families with their needs.

Judge Ackley at Mole Lake reflecting on what life was like before the *Voigt* Decision:

Put it this way, sometimes you get hungry and there ain't nothing else to do. But the reason why, this is my thought, 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....

¹⁸Danziger, p 184.

¹⁹The joint state-tribal legislative council was yet to emerge in Wisconsin, for example.

²⁰See Nesper, “Ironies of Articulating Continuity at Lac du Flambeau,” in *Native Peoples of North America: Cultures, Histories, and Representations*, ed., Sergei Kan and Pauline Turner Strong, pp. 98-121, for a case from the late nineteenth century, as well as Norgaard, “Beyond Folklore: Historical Writing and Treaty Rights Activism in the Bad River WPA,” in Hosmer and Nesper, eds, *Tribal Worlds*, forthcoming, on the nature of tribal consciousness of treaty rights in the 1930s. In 1974, the Tribble brothers at Lac Courte Oreilles staged a test of the state’s right to regulate Indians exercising their off-reservation treaty rights.

I was talking about by this old lady...my great-great aunt. That's what we were doing, when we were hunting and fishing. We knew that was trespassing, we knew that the DNR 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 to feed their families and to supply foods for feasts in spite of state law, suffered for it.²¹ In our conversations with tribal members, upon asking them to contrast how things were before the treaties were upheld and how they are now, 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 80s before all they were 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."

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.'"

Tribal commercial fishermen Skip Parrish of Bay Mills:

I had fished for forty-nine years. I started real young in fishing. We had state licenses back in those days. My dad did.

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.

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

²¹Chapter 3 of James W. Oberly's *The Lake Superior Chippewas and Treaty Rights in The Ceded Territory of Wisconsin: Population, Prices, Land, Natural Resources, and Regulation, 1837-1983*, and Ronald N. Satz's chapter 6, "The Curtailment of Treaty Rights," in *Chippewa Treaty Rights: The Reserved Rights of Wisconsin's Chippewa Indians in Historical Perspective*, Wisconsin Academy of Sciences, Arts, and Letters are excellent published sources on the depth and extent of this suffering.

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,²² [who] lived to be about 94 years old.

Franny Van Zile of Mole Lake tells a story from her youth that captures many of the most salient aspects of the effort to remain self-sufficient in a context of domination:

I remember one time when my dad first got his first rifle. When he was talking about enforcement. Dad went out and he got his first rifle. Me and my sister Dawn and I and my sister Rose. Riding in the back seat of that '48 Dodge. Doors opened this way like that. Anyway, we were going down the road. Miles says 'Right there,' dad stopped, got that gun out and shot it. Us kids were sitting in the back seat. Rose, my sister Rose, she was crying for it. Dad told her, he said, 'Lorraine shut that kid up, you're going to get us caught.' Oh, [unclear, 311] we see that those cars coming up behind us had a big red light on there. 'Shut up now, you kids behave.' Dad thought that that was just going to go by us, you know. He stopped right behind us.

He said, 'Hey, Tommy, did you just shoot a gun?' 'Nope.' 'Yeah, well we seen that fire coming out of that barrel, you know, coming out like that, we heard it.' He didn't find no gun. Here and my sister Rose, she's still crying. Ma says, 'There's something wrong with that baby, it keeps crying.' 'What happened?' What happened was my sister she, dad put that gun underneath the seat of us girls, you know, in the back seat. Put that gun underneath us like that. Rose crying, boy she had great big [burn], that gun barrel burn right across the back of her thigh, where like [laughs]. Dad told Rose that's what you get, you should have shut up. But 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. Was never right.

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."

²²Her Ojibwa name is Naawakamigookwe, meaning "Centered upon the Ground Woman"; 1904-1996, Maud Kegg was an Ojibwa writer, folk artist, and cultural interpreter. She was a member of the Mille Lacs Band of Ojibwe.

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

We did not undertake the onerous task of assembling arrest records for violation of game laws for the tribal communities in the late 1970s or 1980s to get some sense of the numbers of tribal members who were exercising their rights in defiance of state law. Even if we had, such numbers would not bear a clear relationship to the actual level of hunting, fishing and gathering that was taking place throughout the ceded lands. Nor did we ask the tribal members we interviewed to estimate the numbers of tribal members who hunted, fished and gathered both on their reservations and off their reservations. Suffice to say that most families had hunters, fisherpersons, and gatherers. Though as Franny Van Zile’s story indicates, families continued to hunt and forage as a unit, we get the impression that it was mostly men taking the risks of arrest when “violating.” We read this as part of a general trend starting with the fur trade centuries earlier that was privileging the work and produce of men over that of women with the result of skewing political power between men and women in men’s favor. The recognition of treaty rights appears to have had the effect of reversing this long-term trend and restoring the political power of women.²³

B. Harvest levels since the recognition of treaty rights

With the recognition first of the right to fish in Lake Superior that came with the *Jondreau* decision²⁴ in 1971, followed by the *Gurnoe*²⁵ decision in 1972, the *Fox Decision*²⁶ in 1979, then the *Voigt Decision*²⁷ in 1983, and *Mille Lacs*²⁸ in 1999, we do have a far better picture of the

²³This suggestion is based upon the research of Eleanor Leacock “Interpreting the Origin of Gender Inequality: Conceptual and Historical Problems” a 1983 wherein the author attempts to account for gender inequality in terms of several factors, the most important being the structure of exchange and the division of labor. An inventory of both the political leadership of the tribes as well as the numbers of women employed by the tribes confirms this impression.

²⁴In *People of the State of Michigan v Jondreau*, the Michigan Supreme Court held that the Treaty of 1854 precludes the state from regulating tribal members’ fishing in Keweenaw Bay.

²⁵*State v. Gurnoe*, held that 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.

²⁶In *U.S. v. Michigan*, 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.

²⁷Referred to as “the Voigt Decision,” in *Lac Courte Oreilles v Wisconsin*, the 7th Circuit Court held that the Ojibwe tribes’ reserved hunting fishing and gathering rights under the 1837 and 1842 treaties pre-empt unilateral state regulation.

²⁸In *Minnesota v. Mille Lacs*, the state of Minnesota contested the treaty rights of the Ojibwe bands in the Minnesota part of the 1837 treaty cession. The Supreme Court of the United States held that the Chippewa retain the usufructuary rights guaranteed to them by the 1837 Treaty.

extent of the harvests on the parts of tribal members in each of the communities. We take this to be a baseline for assessing the broader impact of the exercise of treaty rights in and on the communities.

The Great Lakes Indian Fish & Wildlife Commission compiles detailed data on all the species harvested by the eleven bands in Michigan, Wisconsin and Minnesota and publishes it in the form of reports that are available as pdf documents on the Commission's website at www.glifwc.org/biology/reports/reports.html. In an effort to assess the impact of the exercise of the rights, I aggregate the harvests and concentrate only on the most popular species to suggest their magnitude and implications for the kinds of exchanges that take place within Ojibwe society.

The bands have been harvesting walleye with spears in the spring of the year at night on open water on the inland lakes since 1985, the bands take between 22,000 and 32,000²⁹ walleyed pike under 20 inches in length. Since 1999, the bands have the right to net walleye the 132,500 acre Mille Lacs Lake, the second largest lakes in the state of Minnesota. The Mille Lacs Band itself takes an average 22,000 lbs per year in the month-long season in the spring. The other bands in the 1837 cession area take a total of 85,000 lbs from Mille Lacs Lake per year. If averaged over the entire tribal population, this would come to 3.8 lbs per tribal member.³⁰ All of these fish are taken for purposes of *use* and not exchange, that is, they are not commoditized and sold by tribal members, their families and friends, but ideally and typically consumed by them. 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 rice harvest is highly variable in the ceded territories. In 2003, for example, tribal harvesters took 27,000 lbs. of *manoomin* in the ceded territories in a year when non-tribal ricers took 50,000lbs., whereas in 1997 combined tribal and state ricers took 110,000 lbs.³¹ In a recent study of wild ricing in the region, Annette Drewes has discovered that in contrast to non-Indians, Indian people tend to rice (75%) with relatives as opposed to friends or acquaintances. And though they typically have multiple reasons for harvesting, the enjoyment of wildlife and keeping up family and social relationship ranked highly for the Indian people she interviewed. She writes that "the practice of providing gifts of wild rice for funerals and ceremonies continues."³²

Tribal members also now harvest plants in the National Forests that are within the ceded territory under a Memorandum of Understanding signed by the GLIFWC tribes and the U.S Forest Service. For the past ten years, approximately 1,700 tribal members have gotten general

²⁹In the spring of 2009, Ojibwe spearers in Wisconsin set a record of 32,200 walleye. "Stars Align in '09," *Mazina'igan*, Summer 2009, p. 1.

³⁰"Tensions linger over Minnesota's most popular walleye lake," *Mazina'igan*, Winter 2008-2009, p 19.

³¹Peter David, "2003 Manoomin season a good one: but what will 2023 be like" *Mazina'igan*, Spring 2004.

³²Annette 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 dissertation, UW-Madison, 2008, p. 88.

gathering permits and another 200 took permits for harvesting conifer and princess pine boughs, as well as ginseng.³³ This is largely commercial activity.

We call attention to the fact that a great deal these fish, animals and plants circulate in the traditional Ojibwe economy as gifts, and we include spouses presenting foodstuffs to each other, as well as parents feeding their children in the traditional gift economy.³⁴ As a result, the appearance of these foods has the effect of consolidating relationships between *Anishinaabeg* persons as immediate family members, extended family members and friends deepen their relationships to each other by virtue of exchange.³⁵

In his research paper on the exercise and impact of treaty rights on the Mille Lacs community, 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.”³⁶ We extend this insight drawing particularly upon the fact that the harvest of a highly dense resource of Mille Lacs Lake by the other tribal communities plays a role in constituting the bands within GLIFWC as a single indigenous national entity. In 1999, then 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.”³⁷ Curt 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’ 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’*³⁸ [Author’s emphasis].

Though some tribal members leave their home communities to travel to lakes that are closer to other tribal communities, and though this can create problems (which we will discuss below),

³³Tenth 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.fed.us/r9/cnnf/reports/mou/Tenth_Year_Retrospective_Document. Accessed July 20, 2009.

³⁴Anthropologists refer to exchange under such circumstances as generalized reciprocity, giving what you can and taking what you need.

³⁵In his paper for the seminar, Mike Herrmann begins by drawing on the work of Marcel Mauss and Karl Polanyi to theorize the significance of the exercise of treaty rights for the quality of social relationships between people who share in the bounty of the exercise.

³⁶Herrmann, *supra*.

³⁷Sue Erickson, “Good fishing, Good feelings: 1999 treaty spring season a success,” *Mazina’igan* Summer 1999, p. 1.

³⁸Telephone interview April 22, 2009.

tribal members from *all* communities only congregate at Mille Lacs in substantial numbers. The chart below indicates both the magnitude of those numbers as well as the general trend.

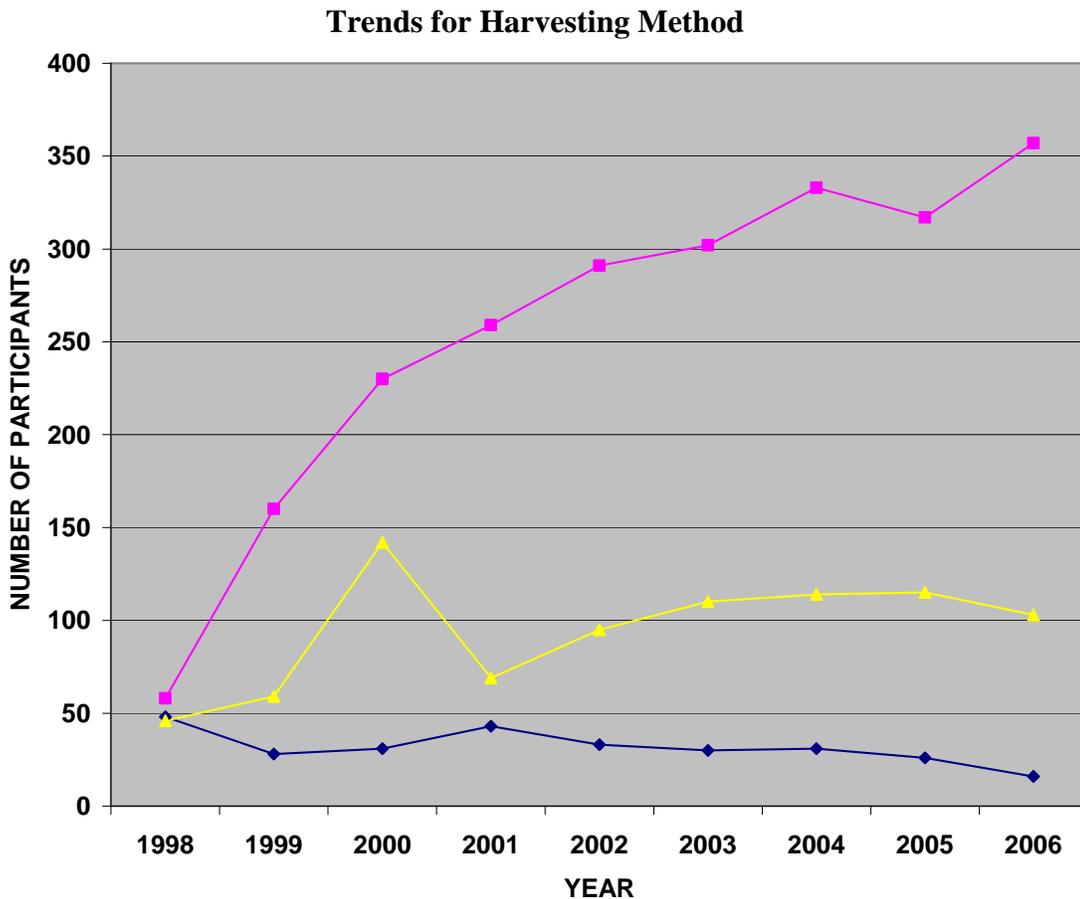
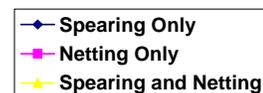


Figure 2: Total number of members from the 8 Ojibwe tribes that speared, netted, or speared and netted one or more nights over the 1998-2006 fisheries in the Minnesota treaty territory. Source: Herrmann 2009.



In general at the level of social organization and kinship relations, social relationships between tribal members have been enhanced with the exercise of the rights. More people are sharing the experience of harvesting with each other, sharing foods with each other, and eating them in each other's company. The availability of these foods as well as materials for making traditional crafts have facilitated an expansion of ceremonies and associated feasting as well. These events are typically undertaken for the purpose of publicly recognizing and validating the status of persons in the community. Naming ceremonies, baptisms, first kill ceremonies, graduations, weddings, funerals, and ghosts feasts³⁹ all call for traditional foods as part of their efficacy. The exercise of treaty rights facilitates hosting such ceremonies

³⁹Namings, first kill ceremonies, and ghosts feasts all effectively require the presence of traditional foods. Ghosts feasts are given for relative a year after they have passed on and symbolize the liberation of the deceased's spirit as well as the end of the period of mourning for relatives.

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. This is 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 lying on the shores of Lake Superior. In 1972, the Wisconsin Supreme Court in the *Gurnoe* decision found that commercial fishing on the parts of Red Cliff and Bad River tribal members could only be regulated by the state of Wisconsin if their activity threatened the fish supply.⁴⁰

In 2003, the commercial fishery shared between the Red Cliff, Bad River and Keweenaw Bay bands was made up of seven large boats and fifteen small boats representing 22 tribal licenses. It has been as large as eighteen large boats and twenty-four small boats.⁴¹ These fishermen take just over one million round pounds of fish per year, 85% of which are whitefish.⁴²

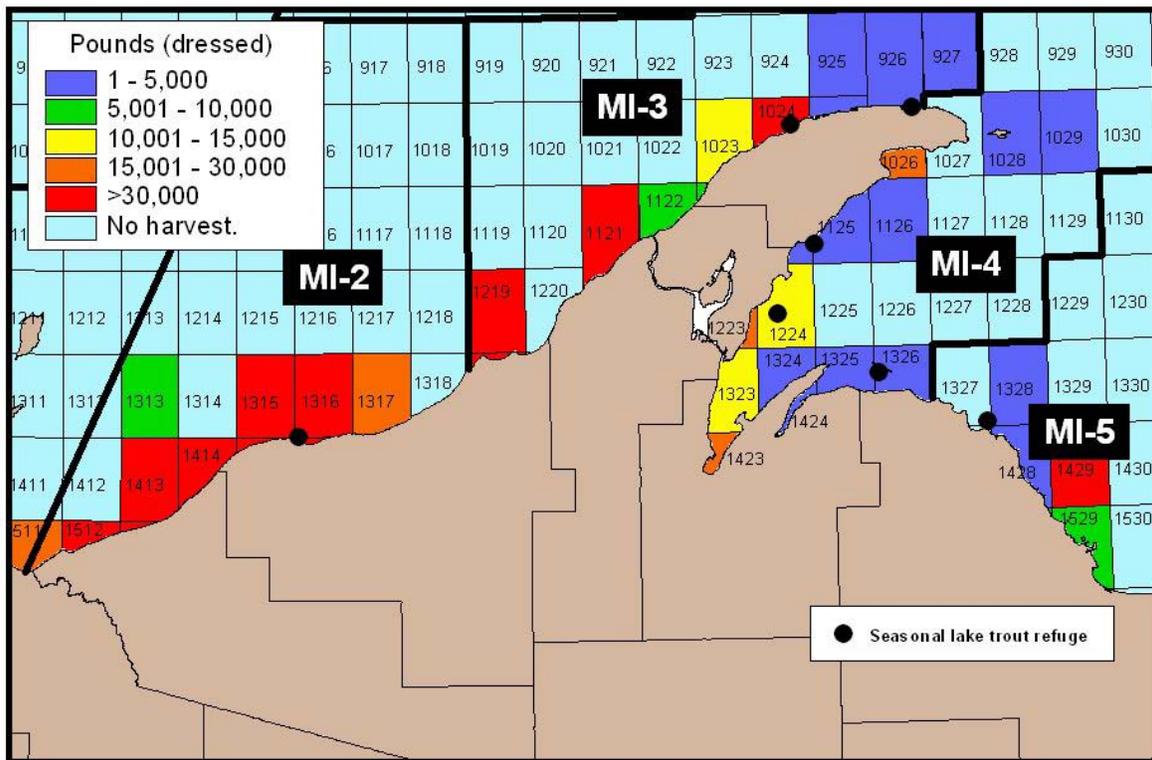


Figure 3: Whitefish harvest in the 1842 treaty ceded area, 2006

⁴⁰See Thomas Busiahn's "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 for a discussion of the history of the negotiations that organizes this fishery.

⁴¹Bill Mattes, "Tribes Manage 1842 Treaty commercial fishery in Michigan waters," *Mazina'igan* Fall 2004:12.

⁴²See "Biological and Commercial Catch Statistics from the Chippewa Inter-Tribal Gill Net Fishery within Michigan Waters of Lake Superior during 2006," William P. Mattes, Matthew J. Symbal, and H. Gene Mensch. *GLIFWC Administrative Report* 08:01, February 2008. GLIFWC.

In 2003, Keweenaw Bay issued fourteen commercial fishing licenses to tribal members and they took a total of 198,000 lbs of fish, 60% of which were whitefish.⁴³

In 2009, Red Cliff fisherman Cecil Peterson told us that Red Cliff had 42 tribal members working as nearly⁴⁴ full-time commercial fishermen on big boats. There were also small-boaters that employed another twenty-five to thirty. Here the treaty right to fish commercially is economically very significant and of great value to the band. And were looking up, according to Cecil:

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 [inaudible] 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 fisherman, treaty right fisherman, that bought big boats. 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 upon a fish. I now sit on a marketing board, which is a marketing board of Michigan fish producers association. It deals somewhat more with Michigan area than it does here, but still they're a marketing board. When it happens, when something happens over there, it happens here. And I think it's, I give them a lot of credit for having that board to turn this fish prices around. And they have. They went from fifty cents a pound to, I'm getting a dollar sixty-five for my fish. A dollar sixty-five plus. You know, it's been turned around. Hopefully we can keep it there and keep at it. We're still a board looking at different ways to sell the product, we do a lot of PR work.

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 Bucko Teeple and Skip Parrish,⁴⁵ an appraisal also made by Allyn Cameron, Bay Mills Communications Director who seeks to honor "the dying breed of commercial fishermen who continue their mass exodus from the industry."⁴⁶ Skip Parrish described the hard life of tribal commercial fishermen:

⁴³Mike Donofrio, "Keweenaw Bay Indian Community Lake Superior fisheries management," *Mazina'igan* Fall 2004: 11.

⁴⁴The season is closed for two months of the year.

⁴⁵Bay Mills community members Bucko Teeple and Skip Parrish were interviewed at the tribal center at the Keweenaw Bay Indian Community on March 17, 2009.

⁴⁶Kalvin Perron, "Bay Mills to hold Whitefish Festival," Bay Mills News, June 27, 2007.

Fishermen work hard and, if you don't mind working hard, well, it's a good job. Make that, one day, we had 78 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. Make that six times handling that same weight in one day. 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.

The combination of mercury and PCB contamination, competition from the Canadians and from ocean fishermen, as well as from fish raised on farms has 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. 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 the direct result of the court decision upholding the treaty, though the fishing was contested by non-Indians and it was a time of violent conflict. According to Bucko Teeple, there were only about ten trap netters working commercially out of the community in 2009. He thought there were perhaps 15 commercial fishermen in a community where 80-85% of the people fished for a living. Most people, who were interested in working, were more interested in working at the casino.

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 gathered for exchange, though the experience of Red Cliff was represented to us 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 the distribution and consumption of such produce. This reality 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.

C. Institutional development and consequences of the exercise of treaty rights

1. 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.⁴⁷

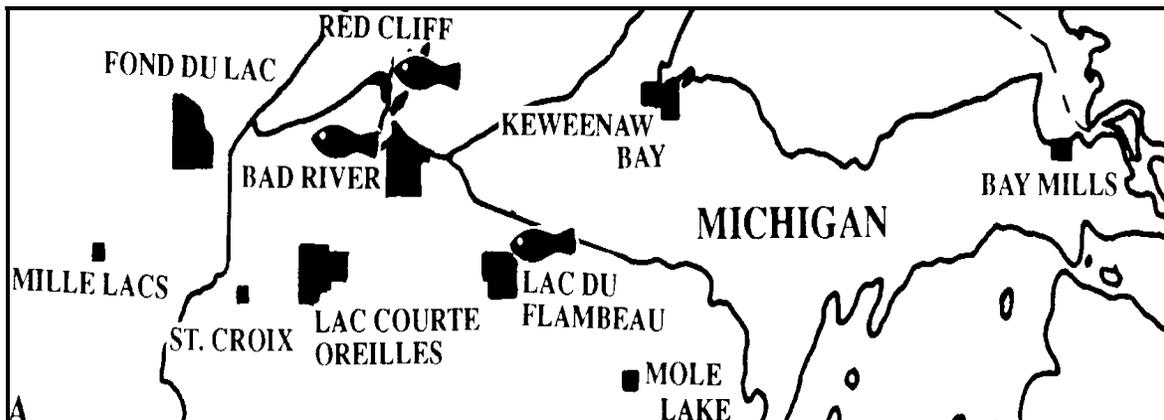


Figure 4: Tribal fish hatcheries in the ceded territories

Tribal Community	Year Established	Species of fish reared
Bad River	1975	Walleye, yellow perch, lake sturgeon
Fond du Lac		
Keweenaw Bay	1989	Brook trout, lake trout
Lac Courte Oreilles	1992	Walleye, musky
Lac du Flambeau	1936	Walleye, muskellunge, white suckers, fathead minnows, brown trout, brook trout, rainbow trout, cisco, and on occasion, largemouth bass and smallmouth bass.
Lac Vieux Desert	1992	Walleye
Mole Lake	1990	Walleye
Red Cliff	1994	Trout, lake sturgeon and walleye
St. Croix	1987	Walleye

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. The U.S. Fish and Wildlife Service take the following position regarding their significance: "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."⁴⁸

⁴⁷For details see U. S. Fish and Wildlife's "Tribal Fish Hatchery Programs of the Northern Great Lakes Region" at <http://www.fws.gov/Midwest/Ashland/TribalIndex.html> visited July 16, 2009.

⁴⁸U.S. Fish and Wildlife Service, *supra*.

The fact that seven of the hatcheries have emerged since the *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 the own members with a capitalized program of “giving something back.”⁴⁹

The tribal fish hatcheries employ people on the reservations, an immediate salutary effect and benefit. They also entail the tribal communities with the states, as well as the federal government, in government-to-government relationships in “co-managing inter-jurisdictional fishery resources.” It is here that we introduce the idea that the sovereignty of the communities is realized not exclusively in terms of the power to regulate themselves, but as the power, responsibility, and opportunity to engage with other sovereigns in relationships of interdependency,⁵⁰ a topic which we will have more to say about below regarding relationships with other federal and state agencies. The development of the tribal hatcheries parallels the development of an interest in the general health and welfare of the entire ceded territories. Here the tribes are co-managing with other sovereigns for the sustainability of a landscape shared by tribal and state citizens.

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 to themselves the right to regulate all users’ actions, treaty rights notwithstanding, there appears to have been less concern for the sustainability of those species and their environments than there is today with the tribes having a stake in the health and welfare of the lands they ceded in those treaties. We first learned of this concern in our interview at Fond du Lac.⁵¹ Here tribal members spoke of the tribe’s commitment to strict enforcement of the tribal code regarding harvesting in order to communicate to both tribal members and the non-Indian public that the tribe valued the sustainability of those resources and the health of the habitat. Now that tribal, state, and federal agencies are cooperatively managing the ceded territories, the tribes have committed themselves to putting what resources they can into these repatriated lands and waters.

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

2. Tribal natural resource department development

Another institutional domain that has been impacted by the implementation of treaty rights are departments in the tribes that deal with natural resources. 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

⁴⁹U.S. Fish and Wildlife Service, *supra*.

⁵⁰See Jessica Cattelino’s *High Stakes: Florida Seminole Gaming and Sovereignty*, 2008 especially chapter 5 for a provocative discussion of this hitherto under-theorized dimension of sovereignty.

⁵¹March 15, 2009 with Tribal members Ferdinand Martineau, Chuck Smith and Steve Depaul.

by the radical 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 off the reservations and this appears to have had implications for policy on the reservations as well.

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 about reservations that seek to protect and enhance wetlands. Seeding wild rice has increased initiated by several of the communities. Keweenaw Bay Indian Community's Natural Resource Department is working the U. S. Fish and Wildlife Service in the restoration of trumpeter swans. *The Anishinaabe Wild Plant Traditional Environmental Knowledge and Wisdom/Scientific Integration Project*, funded in 2000, is exemplary in this area. The project involved nearly 200 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," produced by the Commission. This concentration and focus upon 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 both 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 both 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.⁵²

Mole Lake, Bad River, Fond du Lac, and Lac du Flambeau administer their own water quality programs under the Clean Water Act establishing water quality standards for their communities, 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 spirits isn't being treated well," according to Harold Frogg.⁵³ 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

⁵²Sue Erickson, "Treaty Rights on Trial in Minnesota: Counties, businessmen move in to intervene," *Mazina'igan*, Summer 1992, p. 8.

⁵³"Water Resources of the Lac Courte Oreilles Reservation Northwest Wisconsin." *Water Resources Management Program Institute for Environmental Studies*, Madison: University of Wisconsin Madison, 1991.

vitality. These ties to water, which have existed from time immemorial, are not less important today—for the Band continues to rely heavily on reservations waters for its economic and cultural survival⁵⁴

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 appears to have affected how the reserved lands are managed.

3. Tribal courts

The pre-*Voigt* court decisions, *Gurnoe*, *Jondreau*, *Leblanc*, and the *Fox* decisions all held that the states which surrounded the communities in possession of treaty rights could not regulate tribal members' exercise of treaty rights. Regulation would be the prerogative and responsibility of the tribal governments themselves. With *Voigt*, the inland bands faced the same situation and opportunity. As a result, the tribes would institute courts and the Commission would develop a model code of regulations for purposes of managing the exercise of the rights in the form of codified tribal law.

Examining the institutional history of the different communities leads to the conclusion that it was the recognition of the treaty rights that played at least a catalytic role in the development of tribal judiciaries. The communities would develop courts in which 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.⁵⁵

Marc Galanter, professor of law at the University of Wisconsin-Madison, has written about the significance of courts in a way that is particularly germane for our understanding of how the tribal communities in the upper Great Lakes region have changed in the last several decades. Courts have “radiating effects” on the entire tenor of society, according to Galanter. Like most courts, tribal courts are the sites of “administrative processing, record-keeping, ceremonial changes of status, settlement negotiations, mediation, arbitration, and ‘warfare’ (the threatening, overpowering, and disabling of opponents) as well as adjudication.” Thus they “not only resolve disputes, they prevent them, mobilize them, displace them, and transform them.”⁵⁶

In assuming these functions, the tribal courts also empower the Tribe as a government insofar as

⁵⁴Environmental Protection Agency. (2008). 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.

⁵⁵Scholars from various disciplines have addressed the significance of the development of courts for social and political relations within societies. See Stanley Diamond, “The Force of Custom and the Rule of Law,” *In Search of the Primitive*; Martin Shapiro, *Courts*; Sally Merry, “Courts as performances: Domestic violence hearings in a Hawaii family court.” In *Contested states: Law, hegemony, and resistance*, ed. Mindie Lazarus-Black and Susan F. Hirsch, 35–58. New York: Routledge.

⁵⁶“The Radiating Effects of Courts,” In *Empirical theories about courts*, ed. K. Boyum and L. Mather, 117–42. New York and London: Longman., p. 123.

it is the tribe that typically assumes the role of a repeat plaintiff versus its own members who tend to appear as what Galanter calls a “one-shotter” on the non-habitual defense.⁵⁷ Furthermore, courts often expand their domains of jurisdiction thus furthering empowering the state, or in this case, the tribal government that hosts them. Courts not only settle disputes, they provide “a background of norms and procedures against which negotiations and regulation in both private and governmental settings take place.” As such they provide both “bargaining” and “regulatory endowments” in the form of explicit and implicit “authorizations and immunities”⁵⁸ to the tribes as governments. In addition to the special effects on the litigants, the courts radiate general effects to the rest of the community in which they operate. The courts radiate general deterrence, they enculturate, facilitate, mobilize and demobilize.⁵⁹ Finally, courts are “one component of a complex system of indirect control over the whole system of disputing and regulation.”⁶⁰

For all of these reasons, it is difficult to overemphasize the significance of the development of the tribal courts in the Ojibwe communities in the last several decades since the state and federal court decision upholding the treaty rights held by the bands. It is also clear that without the recognition of the treaty rights, it is unlikely that the courts would have experienced the development that they have had they come into existence at all.⁶¹

The chart below shows the year (or approximate year) in which each member band in GLIFWC established its court, the subject matter areas in which the band was exercising jurisdiction in the late 1980s and the number of such cases where data was available twenty years ago, and the subject matter areas in 2009.⁶² Of the eleven tribal courts among the bands that make up GLIFWC, all but three (Lac Courte Oreilles, Lac Vieux Desert, and Mille Lacs) are developed as a direct response to court decisions that held that states cannot regulate tribal exercise of treaty rights. Looked at in aggregate, there were *no tribal courts amongst any of the Lake Superior Bands before the Gurnoe decision*. We regard this as significant in that the acknowledgment of treaty rights is the recognition of tribal sovereignty because treaty rights spring from the nation-to-nation relationship proclaimed in the treaties with the federal government. By contrast, the Indian Self-Determination and Education Act of 1975 and the Indian Child Welfare Act of 1978—which played a role in motivating the development of the courts at Lac Courte Oreilles, Lac du Flambeau, and Mille Lacs-- are Congressional Acts that effectively devolve and transfer

⁵⁷I have examined hundreds of cases in the Lac du Flambeau tribal court. *All* cases regarding off-reservation harvesting take the form of the Tribe versus the individual tribal member. Traffic, Unlawful Detainer, and certainly all criminal cases for the courts that have taken jurisdiction in this area have this form as well. Most of the Indian Child Welfare cases are also of this nature. It is only in the area of divorce, small claims, and restraining orders that we see cases between tribal members, wherein the litigants are approximately equal in their experience with court procedures, quite unlike the great inequality in disputing experience between the Tribe and its members. For a detailed discussion of this and other related matters, see Nesper, “Negotiating jurisprudence in tribal court and the emergence of a tribal state: The Ojibwe in Wisconsin,” *Current Anthropology*, Volume 48, no. 5 October 2007.

⁵⁸Galanter, 122.

⁵⁹Galanter, 126.

⁶⁰Galanter, 128.

⁶¹A tribal community does not necessarily need a court to operate effectively. The largest tribe in the state of Wisconsin is the Oneidas. They have no off-reservation treaty rights and no court, though the other four tribes in the state without treaty rights have developed courts.

⁶²Sources for the 1989 data were the proffers offered in the timber trial phase of the *Voigt* litigation a series of legal documents on file both at the Commission and with the author as well as interviews conducted during March of 2009. Sources for the current subject matter jurisdiction are the tribal websites and Judicare Wisconsin compilation.

authority to tribes as sub-national units and do not as explicitly recognize the sovereignty of the tribes.⁶³

TRIBAL COURTS OF THE GLIFWC MEMBER BANDS

BAND	Year established	Subject matter jurisdiction, late 1980s	Subject matter jurisdiction, 2009
Bad River	1979	Conservation, name changes and marriages. 19 cases in 1989.	General civil including domestic abuse, divorce, child protection, conservation/Natural Resources, truancy, curfew & and landlord/tenant.
Bay Mills	1975	Civil matters and minor crimes ⁶⁴	Territorial criminal jurisdiction; commercial and subsistence natural resource harvesting activities of members.
Keweenaw Bay	1972	Fishing cases after <i>Jondreau</i> , civil and criminal cases.	Criminal (traffic) and Civil: (small and large claims), Juvenile delinquent, Dependency and Neglect, Divorce and Guardianships and Conservatorships. Hunting Fishing and Trapping violations.
Fond du Lac	1970s	Hunting and fishing cases on the reservation	General civil jurisdiction and conservation.
Lac Courte Oreilles	1976	Adoption 1; child custody 13; Indian Child Welfare 15; conservation 33 separation 1; unlawful detainers 31; name changes 3; termination of parental rights 1; paternity 1;divorce 14; total 114	Adoption, Civil, Guardianship, Child Custody, Conservation, Divorce, Domestic Abuse, Child Welfare, Small Claims, Landlord/Tenant Name Change, Paternity, Truancy, Traffic.

⁶³The Indian Self-Determination Act speaks of “the strong expression of Indian people for self-determination” (25 U.S.C. § 450a) in announcing the motivation for the legislation, and ICWA motivates their action in Congress having “assumed responsibility for the protection and preservation of Indian tribes and their resources,” (25 U.S. C. § 1901).

⁶⁴Cleland, *Place of the Pike: A History of the Bay Mills Indian Community*. The University of Michigan Press.

Lac du Flambeau	1983	Unlawful detainers; small claims; child welfare; family actions; visitation; paternity; termination of parental rights; traffic; natural resources; sold waste	Civil (includes traffic, child welfare, child support, paternity, housing, truancy, domestic abuse, juvenile drinking, landlord/tenant, Conservation/Natural Resources on and off reservation, and divorce); and CHIPS for children 17 years of age and under, Small Claims, Probate; Criminal (probation by judges).
Lac Vieux Desert	1988	Came with federal recognition.	
Mille Lacs	Early 1980s	Indian Child Welfare Act	Criminal jurisdiction over Indians and broad civil jurisdiction.
Mole Lake	1983	Conservation 118 ICW 19	Conservation violations; some child protection and domestic abuse matters; and Judges perform marriages.
Red Cliff	1978	Conservation 42; Housing 5; Name change 6, Indian Child Welfare 12; Traffic 10; animal control 27; Pollution and environmental protection 7; appeals 8	Conservation violations On/Off reservation; Small claims, Domestic abuse; Traffic; Child welfare; Tribal ordinances; Extensive civil code; Divorce.
St. Croix	1984	Reservation natural resources 20 ; housing; off-reservation hunting, fishing, gathering 9	General civil jurisdiction.

The tribes' capacity for self-governance and self-determination has been considerably increased 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-friendly⁶⁵ dispute-resolution forum to their members for purposes of adjudicating disputes between tribal members over both social relations and property.

⁶⁵Tribal courts have the option of integrating distinctly Anishinaabeg cultural values in their jurisprudence especially in the form of peace-making efforts to mediate family disputes. Tribal courts are characteristically informal wherein legal representation is not required of those that appear. They are also relatively inexpensive to use.

Not only do the state courts of Wisconsin⁶⁶ give full faith and credit to the judgments of tribal courts in Wis. Stat. § 806.245, the Ninth and the Tenth judicial districts have signed agreements with the tribes articulating a protocol for the transfer of cases between these courts.⁶⁷ Furthermore, after a long process of interaction and cooperation between the tribes and the state in the Special Committee on State-Tribal Relations,⁶⁸ and several hearings at the Supreme Court of Wisconsin, the latter has passed a rule permitting state court judges to transfer cases to tribal courts on their own authority.⁶⁹ This is a most explicit recognition of tribal sovereignty. 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.

We argue that 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. Secondly, the legal tribally regulated harvests create the possibility of using the produce of the harvests 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 themselves instead of needing to use the adjudicative facilities of the counties. At the same time, because the tribes and the state share jurisdiction over criminal and civil matters in the communities in Wisconsin and Minnesota, the development of the courts has put the sovereigns in an on-going relationship with each other with the goal of sharing the responsibility for serving their populations.

4. 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. Both “the language” and “the culture,” as many tribal members will put it, separately and together, are now taught in the schools on and off the reservations, as well as in the context of tribally-sponsored programs within the communities. This represents a considerable change for both tribal members and for the non-Indian communities that surround them from the time when the treaty rights were not recognized.

⁶⁶Minnesota has yet to give full faith and credit to tribal court judgments other than those having to do with Indian Child Welfare. In Michigan, court rule 2.615 governs the enforcement of tribal court judgments, but “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*.

⁶⁷This 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.

⁶⁸This committee originates at the time of the conflict over the exercise of the rights under *Voigt* in Wisconsin.

⁶⁹On July 31, 2008, the Supreme Court created Wis. Stats. §801.54 governing the discretionary transfer of cases to tribal court effective January 1, 2009.

Before the 1970s, there was ambivalence on the parts of both native and non-native peoples regarding the possibility and desirability of the survival of a culturally distinctive native way of life as well as relevance of the culturally specific knowledge associated with that way of life. This manifests itself most profoundly and sadly in the decision on the parts of many Indian people in the region, as well as nation-wide, not to teach their children their native tongue. This is out fear of marking them known as an ‘Other’; they took this to be the inevitability of assimilation at a time that the United States was rising as world power in the twentieth century.⁷⁰ In his essay, “Ethnography as Narrative”,⁷¹ Edward Bruner argues that before 1970, the temporal narrative that organized both ethnographic practice and native experience imagined the Indian past as glorious, the present as disorganized, and the future as assimilation. By the 1970s, the narrative had revalued time and the narrative had transformed. The past was now seen as oppressive, the present as resistance, and the future as resurgence. Importantly, Indians and non-Indians shared these narratives.

There are historical reasons for this transformation that go well beyond the region of the western Great Lakes and even general American Indian history insofar as the same kind of ethnic resurgence has taken place in other societies in the developed and underdeveloped world. And this is not the place for such an exploration.⁷² Suffice to say that history and culture are being actively re-thought and taught in tribal communities throughout the region. This manifests in policy decisions both on and off the reservations. It should be obvious that at the height of the conflict over treaty rights in Wisconsin, there was very little in the way in curriculum that acknowledged the presence of a distinct local indigenous minority in the non-Indian controlled schools. The tribes were not in a financial position to offer programs of their own design to address matters of history and culture either for their own members’ benefit or for that of the general non-Indian public.

We begin cataloging this change with examples from several of the Wisconsin tribal communities within GLIFWC as it was the conflict in the 1980s over the exercise of the treaty rights in the wake of the *Voigt* decision of 1983 that motivated the state to pass Act 31, legislation requiring public schools to teach about Wisconsin Indian history, culture and tribal sovereignty.⁷³ As an unfunded mandate, the requirements of the act are variously implemented but it is safe to conjecture that a great deal of curriculum development has taken place in the shadow of the law, as it were.

⁷⁰Currently, many tribal members lay responsibility for the loss of language entirely at the feet of white educational institutions and especially the boarding schools. And though I agree that the many of schools took policy positions that were antagonistic to all aspects of native culture, the explanation robs Indian people of agency. See Brenda Child *Boarding School Seasons: American Indian Families 1900-1940*, for a nuanced treatment of this subject.

⁷¹In Victor Turner and Edward Bruner, eds., *The Anthropology of Experience*, University of Illinois Press

⁷² Interested readers might begin with Steven Cornell, *Return of the Native*, but also the far more general, comprehensive, difficult if also provocative works by Jonathan Friedman, *Cultural Identity and Global Process*, and Jean and John Comaroff, *Ethnicity, Inc.*

⁷³Wis. 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.”

The Lac du Flambeau band hosts a variety of hunter safety courses that are available to all of the tribal communities within GLIFWC, and which have the effect of encouraging the exercise of the treaty rights. The Tribe also supports the Abinoojiyag Youth Center, where young people join drum groups, learn to make dance regalia and Ojibwe crafts. At least as significantly, The Intercultural Leadership Initiative (ILI) at Lakeland Union High School, where most of the Lac du Flambeau tribal members enroll, began in 1999 and has a mission, “to improve academic and social success for students by reducing racial tensions in schools and promoting cultural understanding through inter-cultural experiences,”⁷⁴ The program seeks to 1) reduce racial tension and conflict in high schools that serve Wisconsin tribal communities, 2) implement district-wide transition programs from the elementary schools into the high schools, and 3) improve academic and social achievement rates for all ILI students, particularly American Indian students. ILI has received funding from the Lac du Flambeau Tribe, local businesses as well as state and federal grants. ILI most recently won the Honoring Nations 2008 Grant Award from Harvard University, a national awards program that identifies, celebrates, and shares outstanding examples of tribal governance.

At Lac du Flambeau, Ojibwe language is taught at the Youth Center but also at the LUHS, the elementary school and Tribal Head Start program, and evening classes for adults. In a poetic and insightful reflection linking the development of language revitalization programs and treaty rights that could be said of many of the communities within GLIFWC, Lac du Flambeau language teacher, Leon Valliere told 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.”

At Lac Courte Oreilles, where the *Voigt* case began with the action taken by the Tribble brothers, the K-12 tribal school system teaches Ojibwe language as well as culture classes using Elders knowledgeable about such matters. The schools’ mission to integrate traditional knowledge with modern technologies in a bilingual and bicultural environment is carried through the college curriculum at LCO Ojibwe Community College. The community also has a Boys and Girls club that sponsors traditional harvesting activities. The nearby Hayward Area Community School District, with 25% of its students coming from the reservation, teaches Ojibwe language and culture in the elementary school and the high school. Middle and high school student may take *Anishinaabemowin* to satisfy their foreign language requirement. In 2009, 27 students were attending *Waadookodaading*, a charter Language Immersion School. The language is also taught at the community college.

The community at Bad River demonstrates its own commitment to the value of the treaty rights in a variety of ways including sponsoring summer camps for children that integrate traditional skills and knowledge.⁷⁵ 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% of the population of the Ashland county school district. Both the elementary and high schools are in compliance with Act 31 and teach about “the history, culture and tribal sovereignty” of the tribes of Wisconsin.

⁷⁴See <http://www.ilileadership.org/>. Accessed July 17, 2009.

⁷⁵See Rasmussen, “Ojibwe Youth Engage in Traditional Outdoor Skills,” *Mazina’igan* Spring 1998, p. 10.

68% of the Bayfield School District is made up of a Red Cliff community members and the school has a 98% high school graduation rate. The tribe sponsors a language immersion camp at the Raspberry Campground on the reservation.

All of the four schools districts where St. Croix tribal children attend have a full-time Title VII Indian Education Coordinator who works with the students, teachers and administration. Three of the school districts teach Ojibwe language. The 12th grade at Unity school district is presently developing a K-12 curriculum for Ojibwe Indian students on Ojibwe culture and history

The children of the Sokaogan community at Mole Lake attend school in Crandon and at Wabeno. High school students receive instruction in treaty rights, governance and economic issue through cooperation with Nicolet College. The Wabeno High School, which also serves Forest County Potawatomi, offers elective courses for 11th and 12th graders on Native American Literature of Wisconsin and Native American Literature and Film. Like the other communities, GLIFWC wardens teach youth safety classes for ATVs, boating, and bow hunting, which incorporates traditional skills.

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 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.

At Mille Lacs, the community opened the Nay Ah Shing school in 1975 and created the Ojibwe Language and Culture Program in the 1990s wherein Traditional Ecological Knowledge (TEK) is taught that includes the practice of ricing, netting, trapping, as well as singing, dancing, drumming, art, wigwam construction, and collecting maple syrup. 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 complex of practices and values. The tribe has used TANF⁷⁶ funds to pay an experienced net fisherman to teach others.

In the ceded territories in the Upper Peninsula of Michigan, near the Lac Vieux Desert community, the Watersmeet School District offers Ojibwe Language for high schools students and Native Studies elective though relations between the community and the school system remain tense. 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 Traditional Ecological Knowledge to young people that explicitly encourages the exercise of treaty rights. In addition to rich Ojibwe language, culture and history curriculum at Bay Mills Community College, a K-10 Ojibwe Charter School in Brimley, MI educates just over 100 tribal members.

The fact that tribal members have treaty rights, a distinctive culture and history, is being taught both within the tribal communities in a few different ways as well as within the school districts

⁷⁶Temporary Assistance for Needy Families is the federal assistance program formerly and colloquially known as “welfare.”

that serve native populations, and no doubt, well beyond as the surrounding states have variously 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.⁷⁷

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 of tribal members. We noted the significance of the Anishinaabe Wild Plant Traditional Environmental Knowledge and Wisdom/Scientific Integration Project, funded in 2000, above in relation to the effort to infuse Anishinaabe values in natural resource management policy. Here, we add to that effort the publication of *Gidakiiminaan (Our Earth): An Anishinaabe Atlas of the 1836 (Upper Michigan), 1837, and 1842 Treaty Ceded Territories*⁷⁸ dedicated to the Elders and to the children. The publication of an alternative and indigenous geography of this region proclaims the existence of an Anishinaabe landscape that antedates its settlement by Euro-Americans is a very powerful statement about sovereignty.

5. Tribal historic preservation

The National Historic Preservation Act (NHPA) requires that federal agencies “must take into account” the impact of their regulatory actions on historical properties, among them the “traditional cultural properties” of American Indian tribes. The act was amended in 1992 in PL 102-575 and section 101 (d) (2) allows federal recognized tribes to assume any and all of the functions of the State Historic Preservation Officer with respect to tribal land. This is effectively a transfer of power. Several of the GLIFWC communities were quick to take this opportunity to assume this power and responsibility.

In addition to conducting surveys and maintaining inventories of historic properties, nominating properties to the National Register, reviewing federal undertakings that impact historic properties, carrying out comprehensive historic preservation planning, conducting educational activities regarding matters *on* the reservation, the Lac du Flambeau and Lac Vieux Desert Tribal Historic Preservation Offices are particularly aggressive about negotiating with federal agencies regarding the impact of proposed projects *off* their respective reservations in the ceded territories, a clear measure of their recognized sovereign fiduciary responsibility. Nesper’s work with Anna Willow in 2008 on the report entitled *Big Lake and Rice Creek: A Traditional Cultural Property Analysis* for the Lac du Flambeau tribe and the Bureau of Land Management is an example of this commitment on the part of the THPO in this community. In different measures, the other tribal communities within GLIFWC conduct some subset of the activities listed above, with Lac Courte Oreilles particularly active in gathering stories, local ecological knowledge, BIA records of land loss to name just a few.

6. 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. In assessing the impact of treaty

⁷⁷See the tab, “Publications Ordering” at www.glifwc.org.

⁷⁸Available in CD from GLIFWC. See note above.

rights on the health and wellness of the communities we found ourselves gravitating not so much toward changes in the health care delivery systems that have taken place since the court decision upholding the rights though there has been considerable improvement in health care services in the communities. It is not clear that this could be *directly* attributable to treaty rights, though an argument can be made that having the rights upheld and the subsequent extensive exercise of them has had the effect of changing how the governments of the communities thought about themselves in relation to the federal government with which they contract for health services. None-the-less we leave that aside here. Instead, issues of diet and how this relates to general health, in the broadest sense of the term, however, seem to have a relationship to the greater availability of traditional foods as a result of the exercise of treaty rights.

At the peak of the conflict over treaty rights, Mike Chosa at Lac du Flambeau told the author the following: “The kids will become shells without fish, berries, venison. They are used to these foods in all ways. Macaroni will kill them.”⁷⁹

The quote is iconic of a change in consciousness. And it also represents more than a secularization of a traditional Ojibwe conception of the relationship between human and non-humans. This is the idea that the bodies of plants and animals are given to humans as gifts by the spirits which we humans, in turn, consume as food especially at feasts, and thus honor the spirits of those non-human persons such that they consent to be reborn in bodies that will again be consumed by humans.⁸⁰ The idea—or rather, the culturally sedimented practices motivated by the idea—played no small role in motivating the tenacity with which Ojibwe people fought for their off-reservation rights when the court finally recognized them.⁸¹

In 1995, Professor Harriet Kuhnlein⁸² wrote a report for the Mille Lacs Band entitled *Ojibwe Health and Traditional Food* that sought to answer the question “Can the use of traditional Ojibway food improve the health and well-being of Band members?” The answer is an unqualified yes.

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.⁸³

In different ways and to different extents, the tribal communities within GLIFWC have embraced and operationalized this conclusion. Not only are the fish, venison, wild rice and berries widely shared among relatives in all of the communities, as we indicated above, tribes as matters of policy deploy resources to encourage the consumption of these foods linking tribal sovereignty to the good physical and spiritual health of their members. The whole range of tribal programs

⁷⁹Larry Nesper, *The Walleye War: The Struggle for Ojibwe Spearfishing and Treaty Rights*, 2002, p. 28.

⁸⁰Though idea and associated practices are widespread among Algonquian-speaking peoples, it is best and most thoroughly articulated by Rob Brightman in *Grateful Prey: Rock Cree Human-Animal Relationships*. 1993.

⁸¹See Nesper, 2002.

⁸²She is Professor of Human Nutrition on the Faculty of Agricultural and Environmental Sciences and Director of the Centre for Nutrition and Environment of Indigenous Peoples at McGill University.

⁸³Kuhnlein, p 4.

that have the effect of educating members about the rights—language programs, hunter safety, the various camps—are, in part, intended to encourage the consumption of food that are thought to be better for mental and physical health than are the mass-produced foods available for purchase. For example, Bad River's Gitigaaning Project sought to teach youths the value of good diets. At the Women of Influence Powwow, supported by the tribe at Lac Courte Oreilles, the program focused on women's health, and featured a feast of venison, wild rice, berries and corn."⁸⁴ 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.

Mary Hindelang has documented the traditional diet of the Keweenaw Bay Indian Community⁸⁵ and presented this to the campers at the tribally sponsored tribal camp. Wild meat, fish, berries, wild rice, corn, squash, pumpkins were lauded for their nutritional value, as was the physical, social and spiritual value of the activities needed to produce them. Chairman 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... Before it was always Mickie-Ds and now with us, we, 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 [the store 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.⁸⁶ [Author's Emphasis]

Curt Kalk of the Mille Lacs community spoke of the relationship between diet and sociality, pointing to that broader conception of health mentioned above: "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

⁸⁴Nick Van Der Puy, "Theresa Barber: Honoring Women's Health." News from Indian Country. April 11, 2009. http://indiancountrynews.net/index.php?option=com_content&task=view&id=6074&Itemid=131>

⁸⁵"Traditional Ecological Knowledge of the Lake Superior Region: Explorations to engage students in culture, scientific inquiry, and wellness activities." *Pimatisiwin*, 4 #2:65-82. Accessed February 25, 2009.

⁸⁶Chris Recontre interviewed Chairman Carl Edwards on May 4, 2009 at Lac du Flambeau. Italic emphasis added.

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."⁸⁷

7. Relations between tribal communities, and the tribal communities and the state and federal agencies

The very decision, then the process of creating and sustaining a multi-tribal 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 sovereign entities. With the 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 both cooperation and competition with each other. We indicated above 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. We attend to that dimension of tribal sovereignty explicitly here.

Two hundred years ago, the region that would be ceded the United States in the middle of the nineteenth century was socially and politically organized as an association of autonomous villages linked to each other by blood or descent, and marriage. They were not only self-governing and in political relationships with each other, they each had relations with other non-Ojibwe politically autonomous groups to different degrees.⁸⁸ And though their political autonomy was compromised considerably in the period between the land cessions and the late 20th 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, 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 have relationships with the state Department of Natural Resources, as well as agencies of the federal government such as the U. S. Fish and Wildlife Service as well as the U. S. Forestry Service, that are arguably the direct outgrowth of a mutual assumption of responsibility for the ceded territories. We collate some of this attending to the fact that the communities surrounded by the states of Wisconsin and Minnesota need to concern themselves with the effects of Public Law 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 of 1972 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

⁸⁷Curt Kalk was interviewed by phone from UW-Madison on 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.

⁸⁸See especially, Harold Hickerson, *The Chippewa and their Neighbors: A Study in Ethnohistory*, 1988. And we should include the French and the British in this formulation.

fishing effectively began the process of co-management.⁸⁹ A similar process was undertaken by Keweenaw Bay with *Jondreau* at the same time. With *Voigt* came the expansion of the Great Lakes Indian Fisheries Commission, which only included the tribes on Lake Superior, into the Great Lakes Indian Fish & Wildlife Commission, 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 tribes would also engage in negotiations with the state in the context of litigation in federal court. We might ask 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?

Chairman Carl Edwards at Lac du Flambeau indicates that a change of attitude on both the state's and the tribe's part has taken place. In the past, the state made the judgment as to whether or not actions, that it was contemplating, would affect the tribe and inform the tribes accordingly. Now, Edwards reports, things are different:

No, we'll let you [the state] know if it involves us. Don't let us know because you don't know us. What matters to St. Croix may not matter to Lac du Flambeau. And so what I push for is you [the state] tell us the issues and we'll let you know if it involves us. And I think that the state realizes that. I think that the state and the tribes, while it's never going to be great, it's good and we kind of work on good to get it better.⁹⁰

The point was also made by Tribal warden Larry Deragon 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 and individual band.⁹¹

This understanding of their relative sovereign equality has had its ups and downs. One of the former is the agreement Lac du Flambeau negotiated under Tom Maulson's chairmanship 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 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 tribes and Danbury Township on a water project. In an alternative dimension of governmental activity, and in another of the Wisconsin tribal communities, at Lac Courte Oreilles, ACCESS (Advocating Community Collaborative Emergency Service Strategies) made up of county and tribal agencies works for affordable housing. There is extensive contact between the state and the tribe in the

⁸⁹See note 39, Busiahn, p. 176.

⁹⁰Edwards interview, see note above.

⁹¹Interview at Red Cliff, March 17, 2009.

areas of justice assistance, housing and economic development, health and family services as well as others.

Among the communities whose neighbors are not PL 280 states, Lac Vieux Desert the most recently recognized federal tribe (1988) in the group, good government-to-government relations obtain between the state of Michigan and the tribe, largely via Michigan Department of Transportation. For Keweenaw Bay, relations are more complicated by a longer history of contentious activism. As indicated above, the Natural Resource Department of the tribe is engaged with several state and federal agencies. But the tribe is also contesting Michigan's permitting of the Yellow Dog Mine. There is a similar history at Bay Mills. [Author suggests the 52-page Tax Agreement between the state of Michigan,⁹² signed in 2002, and the tribe as a measure of tribal sovereignty]

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 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 in the last several decades for the tribes within GLIFWC. In Wisconsin, tribal law enforcement departments now have access to the state's criminal data-sharing system. This is to facilitate joint state-tribal law enforcement teamwork.⁹³ The most recent development in this domain that explicitly brings together general law enforcement concerns with treaty rights is Wisconsin passing Act 21 in 2007 that gives GLIFWC wardens expanded law enforcement credentials including access to emergency radio frequencies, and to the state's criminal history database.⁹⁴

Many of these developments are an outcome of the stage of Wisconsin's Special Committee on State-Tribal Relations, which brings together state assembly and senators with representatives of each of the tribes in the state. This is a direct result of the need for sovereigns to interact, made so obvious by the *Voigt* litigation. Since that time, the State-Tribal Justice Forum, a joint committee of state and tribal court representatives, was established by the Chief Justice of Wisconsin's Supreme Court to promote and sustain communication, education, and cooperation among Wisconsin tribal and state court systems. Michigan also has a Tribal Court/State Trial Court Forum.

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 been showing. 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 Jim St. Arnold, former chairman of the Keweenaw Bay Indian Community and Program Specialist in the Planning and Development office at GLIFWC.

⁹²See

http://74.125.93.132/search?q=cache:zJ6hkXO0pLcJ:www.michigan.gov/documents/BayMillsFinalTaxAgreement_61196_7.pdf+powers+tribal+police+michigan+Bay+Mills&cd=5&hl=en&ct=clnk&gl=us. Accessed July 22, 2009.

⁹³Todd Richmond, "Tribes, police band together to fight drugs, gangs," *Native Times. Com*. Accessed July 22, 2009.

⁹⁴Charlie Rasmussen, "Ceremony marks GLIFWC Warden Bill achievement," *Mazina'igan*, Winter 2008, pp. 1-2.

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 sub-national ethno-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.⁹⁵ Movement and circulation of persons or ideas, or ideas embodied in practices, are necessary for the political community to see itself, that is, imagine itself *as* a unity. 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 element that are particularly relevant here.

The first is the development of a yearly commemoration of the tragedy at Sandy Lake in 1850. The second is the movement of tribal members exercising their rights out of their immediate off-reservation hinterlands and into the hinterlands, called by at least one member of the GLIFWC community, their “home territories,” of other member tribes to fish, either for home use, or for the market.

In recent years, tribal members have been commemorating the tragic events of 1850 at Sandy Lake, Minnesota.⁹⁶ In 1850, the federal government decided to hold the annuity payment for the treaties of 1837 and 1842 at Sandy Lake, a considerable distance from the usual dispersal site at La Pointe, on Madeline Island, acquiescing in local agents conspiracy to effectively remove them 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 then traveling home in December once they had received them. Monuments were created at both Sandy Lake and at Madeline Island to commemorate the event in recent years.⁹⁷ In December of 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, 285 miles to the east. The simulation 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 since.

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,⁹⁸ which documents the journey some Ojibwe leaders took to Washington D.C. in order to maintain their reserved rights to natural resources.

⁹⁵See note 15 above.

⁹⁶See James Clifton’s “Wisconsin Death March: Explaining the extremes in Old Northwest Indian Removal,” *Transactions of the Wisconsin Academy of Sciences, Arts and Letters* 75:1-39.

⁹⁷Susan Lampert Smith, “Wisconsin’s Trail of Tears,” *Wisconsin State Journal*, July 29, 2001.

⁹⁸See Mazina’igan Spring 2008, p. 23 and <http://www.glifwc.org/publications/publications.html#cdrom>. Accessed July 22, 2009.

Minnesota is also the site of another gathering of Ojibwe nation-making activity and consciousness. As we indicated above, the bands of both Minnesota and Wisconsin harvest fish in Mille Lacs. In 2005, for example, 458 tribal members took over 97, 000 lbs. of fish the Mille Lacs 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 (128 member in 2005),⁹⁹ an average of 35 members traveled to Mille Lacs to harvest fish from each of the Wisconsin tribal communities. This represents a significant portion of the families in each of these communities.

We note that the three Michigan bands—Lac Vieux Desert, Keweenaw Bay and Bay Mills—do not participate in the fishing on Mille Lacs lake, and therefore, this opportunity to see themselves as members of a larger political and cultural entity. Herein lies a source of conflict that may¹⁰⁰ or may not enhance the sense of ethno-national unity engendered by the exercise of the treaty rights in general and all that we have outlined as entailed in that. And this is not the only conflict within the community.

When asked of the effect of the *Voigt* decision for Keweenaw Bay Indian Community, long-time political leader Fred Dakota responded candidly, “It brought us Wisconsin [tribal] fishermen in our territory”¹⁰¹ whom they could not regulate independently of GLIFWC. KBIC would file suit against the state of Michigan, but more provocatively and consequentially against five individual members of the Red Cliff band and three members of the Bad River band in an effort “to protect and preserve the lake trout fishery” and “in order to fulfill the Tribe’s treaty-reserved fishing rights.”¹⁰² Though Wisconsin Ojibwe may commercially fish in Lake Superior in the area that Keweenaw Bay idiosyncratically refers to as its “home territory,” the agreement that grew out of the *Gurnoe* litigation in Wisconsin does not permit reciprocity for Keweenaw Bay members. It remains a sore point for some members of the community.

This is not the extent of the Ojibwe version of what Garret Hardin has famously analyzed as the tragedy of the commons,¹⁰³ the dilemma that eventuates when multiple actors acting independently in their own interest can destroy a shared limited resource. Though destruction is an unlikely outcome because of the safeguards built into the co-management regime, conflict between the communities over harvesting in what they each take to be their own traditional use areas adjacent to their separate reservations appears to be either increasing or has been a problem all along and has been suppressed.

In addition to the conflict between Red Cliff/Bad River and Keweenaw Bay, bands with commercial rights in Lake Superior, we were told that there was anxiety on the parts of Lac Vieux Desert tribal members over Mole Lake members fishing in waters that have historically

⁹⁹Nicholas Milroy, Jennifer Krueger, and Eric Madsen, “Open-Water Spearing and Netting in the 1837 Minnesota Ceded Territory During the 2005-2006 Quota Year” *GLIFWC Administrative Report 2007* – 15 December 2007.

¹⁰⁰Anthropologists Evans-Prichard and Max Gluckman both were interested in the ways in which conflict functioned to produce social coherence.

¹⁰¹Interview at KBIC, March 18, 2009.

¹⁰²*Keweenaw Bay v. State, et al.* 11 F.3d 1341. The loss in the district court was appealed to the 6th circuit and then to the BIA.

¹⁰³Garrett Hardin, “The Tragedy of the Commons”, *Science*, Vol. 162, No. 3859 (December 13, 1968), pp. 1243-1248.

been fished predominantly by Lac Vieux Desert community. Ruth Antoine, Elder in the LVD community:

Everything was so good and we had our fishing, could go fishing any place, get as many as you could, and now they have the limit where you can get just so many. And then this other reservation that come here and get our fish and I think they have a lot of lakes too, they should be in their own territories [laughs], I think.¹⁰⁴

St. Croix disputes with Lac Courte Oreilles for the same reasons. With a small and non-continuous land base, St. Croix tribal members are more widely dispersed than other tribes. In the spring of 2009, St. Croix named a lake that lay between their general area and Lac Courte Oreilles. Rehearsing a negotiation dialogue about the issue George Reynolds to us the following:

...there's a lake between us and LCO that we're going to go through that with [conflict over spearfishing it]. We've been doing it since the mid-80s when the [Voigt] decision went through. LCO tried to start doing it in the 90s, said, all right, you know, we name it aggressively, so if you're going to jump in, then stay with us on it. So they fished there for a while. Then it's like, OK come on now you guys, we've let you come in and fish for a while and came out. [We] said well we have members that live on that lake. Then, all right, you know, cause we have members that live on your reservation and they want to fish. If you guys [come] back I can send in the folks that are right there, just a hop, skip from where they live and we can make a trade off like that. He's like nah, we got people that live there, all right, then name [inaudible], that's right on the boundary of your reservation. I have tribal members that live right there on your rez, they need to fish, said I have to give them an opportunity. Oh, we'll let them, under our permits. No you won't [laughs]. I have to under our permits. They're over here saying they want an opportunity to fish to, and if you won't back off on the lake that we've been doing fifteen years before you guys even decided to venture this way, I have no choice. They're limited there now, so I have to name another [inaudible], so that they get enough.¹⁰⁵

The effect of the conflict between the communities may be to create greater solidarity within the separate communities, or at least within the sector of those communities that are actively exercising the rights. Inter-tribal conflict may also have the effect of producing internal tribal disputes between the sectors of the community that actively harvest and the sector that does not. Some of this is present at Lac du Flambeau between the part of the community that actively fishes off the reservation and the part of the community that benefits from the tribe guaranteeing

¹⁰⁴Interview at Lac Vieux Desert, March 19, 2009. While we spoke there was a meeting going on in the community wherein the conflicts between the communities over the exercise of the rights were being discussed.

¹⁰⁵Interview at Hertel, March 20, 2009.

to the state that it will only spear 60% of its allocation such that lakes are left with no less than a three-walleye bag limit for the recreational anglers.

8. Treaty rights and gaming

Insofar, 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 on 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.

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 not with standing the states' desire to link terms of compacts and harvest levels.¹⁰⁶ 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.¹⁰⁷

Furthermore, the negotiating experience with the state over treaty rights has built up the skills and capacity for subsequent negotiations with the state over gaming compacts. 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.*¹⁰⁸ [Author's Emphasis]

When the state of Wisconsin refused to compact to determine responsibilities regarding gaming with Lac du Flambeau and Mole Lake, these tribes who, at that point had been "fighting the

¹⁰⁶The point was first made by Ferdinand Martineau in our interview of March 16, 2009 at Fond du Lac. For Wisconsin generally, see Kathryn R.L. Rand & Steven A. Light, "Do 'Fish and Chips' Mix? The Politics of Indian Gaming in Wisconsin," 2 *Gaming Law Review* 129-42 (1998).

¹⁰⁷Fond du Lac interview.

¹⁰⁸Ibid., emphasis added..

treaty rights battle” with the state, took it to federal district court to have that court set a national precedent.¹⁰⁹

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*¹¹⁰[Author’s Emphasis]

At Mille Lacs, the poverty rate has dropped precipitously since they opened their two casinos and may have effect the exercise of the rights in the same way.

At Fond du Lac, Bad River and perhaps at some of the other communities where gaming funds subsidize departments in the tribe that encourage the exercise of the rights, gaming may have had the effect of encouraging 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.”¹¹¹ Cattelino certainly argues this for the Seminole.¹¹² And 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. Both the annual harvest of deer and the number of commercial fishing licenses awarded by Keweenaw Bay, for example, have declined and deer licenses since 1996 and fishing licenses since 2000.¹¹³ Stronger evidence comes from Bay Mills. In a response to a question about the impact of gaming on the rights, Bucko Teeple told us that working in a casino is not only physically easier, it affords people a more predictable income. Skip Parish 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.” Parish

¹⁰⁹*Lac du Flambeau Band v. Wisconsin*, 770 F. Supp. 480 (W.D.Wis.1991).

¹¹⁰Interview at Red Cliff, March 17, 2009, emphasis added.

¹¹¹Angela Mullis and Dave Kamper, eds., *Indian Gaming: Who Wins?*

¹¹²*Supra* Cattelino, note 50.

¹¹³Erin Mellenthin assembled and charted data from GLIWFC reports in her research paper, *The Keweenaw Bay Indian Community: Development After Reaffirmation of Treaty Rights*.

and Teeple estimate that 80-90% of the community was involved in fishing at one time. Now, it is maybe 15%.¹¹⁴ Red Cliff, on the other hand, has such a small gaming operation that it seems to have no implications for the exercise of treaty-guaranteed commercial fishing rights.

IV. CONCLUSION

The recognition of the rights reserved in the treaties of 1836, 1837 and 1842 by the state and federal courts, and their subsequent implementation on the parts of the eleven Ojibwe tribes that are members of the Great Lakes Indian Fish & Wildlife, the Ojibwe communities 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 of repatriation 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 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 over that exercise as well as over other matters. Tribal membership is becoming tribal citizenship as the tribes come to look more like nation-states as the result of 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 they learned in negotiating the 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, and this represents a *de facto* retrocession of Public Law 280 for the tribes in Wisconsin and Minnesota. Natural resource departments and tribal fish hatcheries on reservations have expanded especially for the Michigan tribes with the opportunity to commercially fish in Lake Superior. Educational, health, and language programs in the communities have emerged that work to reproduce a viable Anishinaabeg cultural identity, in part by addressing the social, cultural, and historical significance of the rights.

At the level of society, that is, the level of family life, the exercise of the rights has not only made it possible for a segment of the communities to make a commercial living, it has motivated a renaissance of Anishinaabeg cultural practices generally and given added substance to Anishinaabeg cultural and ethnic personal identity. There are more naming ceremonies and ghosts feasts, more gift exchanges between relatives, more gifts to the spirits themselves.

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 far more to each other as they see themselves, 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 before the treaty litigation.

¹¹⁴Interview with Bay Mills tribal members Skip Parish and Bucko Teeple at Keweenaw Bay, March 18, 2009.