Native Studies Review 6 no. 2 (1990)

Boundaries of the Reservation: Social, Political and Geographical Considerations for Defining the Limits of the Keweenaw Bay Chippewa Reservation

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Defining the Issues

Lake Superior Chippewa leaders from northern Wisconsin and Michigan's upper peninsula gathered at La Pointe in the fall of 1854 to negotiate a treaty with representatives of the United States government. The Chippewa's ultimate goal was to end the threat of their removal west of the Mississippi River and secure their right to remain in their traditional homes.[1] In return for a major cession of land that Americans valued for minerals and timber, the federal government assigned each Chippewa Band a reservation of approximately three townships on or near the sites of their villages (see Figure 1). Although the nature of Indian tenure and jurisdiction on these parcels of land has changed over time, the reservations have withstood the United States allotment policy and subsequent efforts by state and federal governments to diminish Indian jurisdiction within them.[2] Late 19th and early 20th century Indians gradually relinquished title to the majority of lands within the boundaries of their reservation. The 1934 Wheeler Heard Act (*Indian Reorganization Act*) created a federal mechanism whereby Indians could reassert their claims for self-government and for returning reservation acreage to Indian ownership.[3] Today the Chippewa own title to nearly two-thirds of their original land holdings at Keweenaw Bay Reservation.

This paper describes a recent law suit brought by the Keweenaw Bay Indian community against the state of Michigan to define the scope and protect the integrity of tribal jurisdiction within reservation boundaries. It discusses the kinds of data they presented in United States district court in November 1988 and January 1989. It briefly highlights issues that proved important for interpreting historical data from an ethnohistorical perspective guided by federal laws that determine the facts most relevant in a given case. The closing discussion examines the role of expert witnesses in presenting and explaining documentary evidence to federal

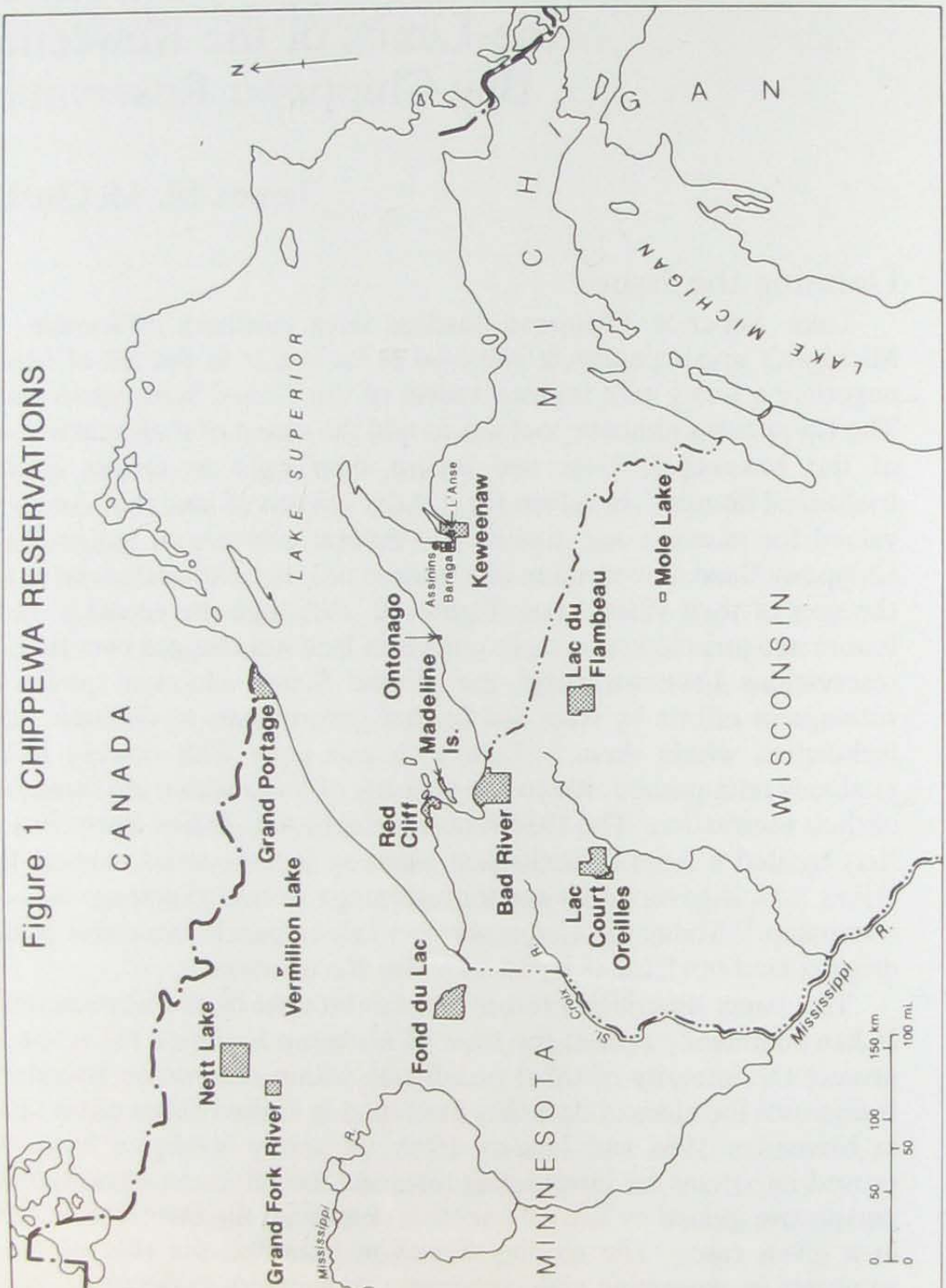
Figure 1 CHIPPEWA RESERVATIONS
CANADA
LAKE SUPERIOR
MICHIGAN
LAKE MICHIGAN
WISCONSIN
MINNESOTA
N
Nett Lake
Grand Fork River
Mississippi R.
Vermilion Lake
Grand Portage
Fond du Lac
Red Cliff
Madeline Is.
Ontonagon
Assinins
Baraga
L'Anse
Keweenaw
Bad River
Lac Court Oreilles
St. Croix R.
Lac du Flambeau
Mole Lake
Mississippi R.
0 50 100 150 km
0 50 100 mi

courts, making observations about biases that shape interpretations.

The issue of contention between the parties of this suit rested on interpreting the treaty clause that created the Keweenaw Bay Chippewa reservation. There were two diverse interpretations concerning the amount and location of lands the treaty makers believed they reserved. The Indians claim that the 1854 treaty established a reservation that included all of the lands within township boundaries described in the following clause:

> For the L'Anse and Vieux De Sert bands, all the unsold lands in the following townships in the State of Michigan: Townships fifty-one north range thirty-three west; township fifty-one north range thirty-two west; the east half of township fifty north range thirty-three west; the west half of township fifty north range thirty-two west, and all of township fifty-one north range thirty-one west, lying west of Huron Bay.[4]

Modern interpretation of the treaty language by the Michigan attorney general contradicts the Indian understanding. The state counters, saying that the 1854 treaty language that created the Keweenaw Bay reservation differs from the wording used to describe other Chippewa reserves listed in the same document. Of the seven reservations defined in the articles of this treaty, only the Keweenaw Bay reservation is defined with township lines. All others are described in metes and bounds, and no other clause contains the word "unsold land."

The state of Michigan contends that distinctions made in this treaty indicate that the Keweenaw Bay reservation boundary was never intended to follow the township lines. By the terms of this treaty all reservations were to be "allotted" or divided into parcels for nuclear families. As the Chippewa people adopted agriculture and wage labour, the government hoped that they would accept title to the lands in fee simple, becoming competent, assimilated U.S. citizens (a hope that rarely came to pass during the 19th century). Taking this policy into consideration, the state contends that the Indians and the government representatives both understood that the reservation described excluded all lands already patented at the time of negotiation. There was, in effect, no external boundary, only rights to land titles still vested in the federal government, and these would be held in trust for the Indians.

The Michigan attorney general claims that the Keweenaw Bay reservation clause is unambiguous and can be clearly understood as written. In the state's logic, the Chippewa had already ceded the parcel of land in question by the treaty of 1842. Between that year and 1854, the

federal government had issued a number of patents and passed laws that transferred political jurisdiction to Michigan. In 1854 the federal government could not give the Indians what was not theirs to give, and hence, all lands patented before the final treaty were to be excluded from the reservation.[5] The resulting reservation did not have an external boundary that followed township lines, but excluded lands along the coastline of Keweenaw Bay and other large parcels within the townships, making a "checker-board" Indian jurisdiction.

The tribe continues to maintain that the boundaries of its reservation follow township lines, and that description by these lines rather than metes and bounds resulted from the simple fact that theirs was the only land surveyed by the United States at that time, a repercussion of the rush of miners to extract copper from the Keweenaw peninsula. Treaty makers on both sides were aware that non-Indians lived within the boundaries of the reservation—the issued was discussed in the negotiations but this fact was not allowed to prevent establishment of the boundary. The consistency of the Indian position from treaty times to the present gives validity to their claim that merited examination in the courts.

There would have been no court case if the Indians agreed with the state's reading of the treaty, but they did not. The Chippewa believe that their treaty negotiators reserved all of the land within the township lines described. This is a technical problem of legal importance. Indians today exercise political rights over lands described in United States federal law as "Indian Country." Under modern definitions of Indian Country, an Indian reservation is the land that falls within the external boundaries of a reservation, whether or not Indians still hold title to those lands. As title passed from Indians to non-Indians, most if not all of the reservations in the United States were marked by checker-board ownership, but Indian tribal jurisdiction over their own members continued to be acknowledged within the former external boundaries. This jurisdiction has continued to be recognized and protected by Congress.[6]

This being the case, the issue of whether or not the exterior boundary of the Keweenaw Bay reservation follows the township lines was the most important issue before the court.[7] By the state's reading of the 1854 treaty, the Keweenaw Bay Chippewa have no claim to the lands bordering on Keweenaw Bay, the most valuable lands within the townships—the lands that the Indians have traditionally lived on from treaty times to the present. Jurisdiction over these lands, which include the modern towns of L'Anse and Baraga, falls outside the scope of legal influence. Federally protected Indian rights to arrest and try its members anywhere within the reservation, issue licence plates, intervene in domestic conflicts and maintain a host of other functions held by Indian tribes are diminished.

If the reservation is indeed "checker-boarded," then the tribal jurisdiction remains only on those lands where title is held in trust by the federal government, either by original treaty or by modern purchase.

In the years since the attorney general's opinion was handed down, numerous disputes over jurisdiction have arisen between the tribe, county, state and municipal officials within the townships. Peace has been kept by a continual tribal deference to non-Indian officials.

Interpreting the Facts

If federal courts could interpret Indian treaties at face value, there would have been no need for trial and the Indians probably would have lost their claim. However, the legal "canon of construction" instructs United States courts that treaties and agreements should be construed as the Indians would have understood them and that ambiguities should be read in their favour. With this rule, the federal government recognizes that the United States drew up treaties in its own language, not that of the Indians, and that the government should not be the beneficiary of unclear language.[8]

United States courts have traditionally relied on the skills of anthropologists, historians, and ethnohistorians to help understand what the Indians who made the treaties might have understood by ambiguous language. In *Keweenaw Bay Indian Community* v. *Michigan*, as in many other cases, the experts were called on to interpret the same body of text and have little quarrel with the "facts" of the case. Yet researchers on either side of an issue reach conclusions that differ significantly, depending on the type of documents they rely on and perspectives they bring to their work.

The legal matter to be interpreted through the canon of construction focused on the boundary issue. Indian attorneys relied on substantial Indian law to show that, once a reservation was created, it remained a reservation, with jurisdiction vested in the federal trust relations with Indians until that trust was ended by the Congress.[9] This was a most important distinction that guided research for the Chippewa. It was incumbent on the state's experts to define what the Indians believed the boundary to have been in 1854 and 1855, not who held title to lands, how the amount of land in Indian title diminished, nor even subsequent actions by Indians or the state in issues around the boundary—matters that provided the state with the bulk of its case and testimony.

In this case, as in many others, the experts on both sides relied on the same documents and agreed on the basic facts about the history of the region and its impact on the Keweenaw Bay Chippewa. Final arguments on both sides freely quote each other's experts on many matters. What

differed was the perspective from which the facts were interpreted.

I participated in this case as an ethnohistorical researcher and the junior witness for the tribe. My colleague, Charles Cleland, set the research agenda. Since the tribe had limited funds, it was incumbent on us to establish a careful set of research priorities that would address the major issues of the case without introducing extraneous facts or variables. Cleland and I wished to show cultural continuity, facts that would indicate that primary values and cultural tenets of Chippewa life adopted American culture only so much as necessary to maintain their integrity as a distinct people between the coming of Americans and 1854. We argued that, even though the Indians accepted some elements of American culture, they continued to understand the world through their own language, and maintained social, political and economic patterns theoretically consistent with egalitarian band-level societies; and that these strongly influenced the understanding of treaty negotiators.

Throughout our testimony Cleland and I held that if Chippewa culture remained vital, then it is more difficult to accept the state's contention that all parties to the 1854 treaty attached the same meaning to the words "unsold land." The Indians would have been hard-pressed to conceive of their reservation divided into small, well-defined parcels from which they and their kinsmen could be excluded by virtue of a written deed. These Indians had historically made their living by mixed economic pursuits of gathering, fishing and hunting/trapping. Should these traditional pursuits continue to be the mainstay of subsistence, then there is little likelihood that a notion of land divided into discrete parcels for the benefit of a single owner/occupant would be relevant to the daily lives of the Keweenaw Bay Chippewa. Indeed, common ownership of a band territory would have been supported by a strong ethic of reciprocal giving between kinsmen, allowing all community members access to land and resources. All of these would support a picture of Indians holding their land as the common property of the band, marked by an external boundary with use rights within that territory resting on kinship.

Researchers who worked for the state of Michigan had a vested interest in providing evidence that emphasized rapid change in Indian society: evidence of an education system that trained Indians to deal with the complexities of American society; indications of a shift from Indigenous religious beliefs to Christianity that demonstrate a broader change in the fundamental world view of Indian society; and finally, a major shift in subsistence and demographic patterns that would dictate adoption of American understandings of land use and tenure. These do not directly bear on the legal impact of the boundaries of the Indian reservation, but by demonstrating that these elements of culture change

were in place, the state could argue that the Indian understanding was no different from that of the state.

Plaintiffs present their testimony to the court first, so I will begin my discussion of supporting documentation from the Chippewa files. Since canons of treaty construction focus the attention of the courts on understandings at the time of the treaty, we limited our research to the years from extension of American jurisdiction to a time shortly after the allotment years of the 1870s. Formation of the external boundary was not difficult to establish. The federal tract book, the document in which all federal records of land ownership were recorded, indicated that the federal government had interpreted the treaty as the Indians had. At the beginning of each reserved township's land descriptions we found a note indicating that the township had been withdrawn from sale for an Indian reservation. Subsequent documents emphasize that "the whole" of the township was reserved.

Although the weight of federal law indicated that the external boundary was the ruling issue, the Indians' attorneys wanted to examine the issue of "unsold lands" from the state's approach as well. As senior witness, Cleland was commissioned to portray the board summary of United States and local policies as they affected the Keweenaw Bay Chippewa, placing local detail in its broadest political and economic context. My role as the junior witness was to testify about community composition. To do so, I located all of the parcels that were claimed at the time the treaty was negotiated, plotted them on a map, and traced family histories to reconstruct the roles these people played in the community. Reconstruction of the community, also, began with the federal tract books. From these we mapped all of the property that might possibly be listed as "sold" at the time of the 1854 treaty. Land owners fell into four categories: Indians who had purchased land for members of their bands (235 acres), Métis people (174 acres), non-Indians who had married L'Anse Chippewa women (396 acres), non-Indians with no apparent connection to the Indian community (970 acres), and missions who held lands for the benefit of Indians (894 acres). Assuming that the reservation contained approximately 60,000 acres, as did all of the other reservations created by the 1854 treaty, the Indians held 0.39 percent, Métis 0.29 percent; non-Indians married to Indians 0.66 percent, 1.60 percent was claimed by non-Indians not affiliated with Indian communities, and 1.49 percent was claimed by missions. A total of 2,669 or 4.43 percent of the land could be considered "sold" in the sense that a patent had been issued. All of these lands were and are the prime residential lands along the Keweenaw Bay. They were and are the lands occupied by the Keweenaw Chippewa.

The state also claimed that additional lands equalling or surpassing this amount were "sold" in that laws passed by Congress had given the state jurisdiction over them. These included lands set aside to finance schools by an act of Congress in 1836, swamplands reserved for the state by act of Congress in 1850, and those claimed by the Sault Ste. Marie Canal Company under legislation approved in 1853. Claims to these lands were severely challenged by Supreme Court rulings that the state's rights to attach lands are limited only if they are part of the public domain. Although the state claimed that the 1842 treaty made these lands part of the public domain, the Indians still exercised possessory right, which made title unattachable.[10] State claims on these lands all but completely melt away when these are coupled with the canon of treaty construction. Canal lands were not patented until five months after the treaty was ratified. There is no indication that the Indians had any idea of claims upon land that was not inhabited, marked or patented prior to the treaty. Swamplands and school lands, too, were not marked and patented until almost twenty-five years after the treaty was ratified.

Following a long line of questioning about these "claimed" lands, Cleland and I returned to the matter of the persons who did hold patent at the time of the treaty to determine how the Indians believed these related to the boundaries of the reservation. They looked specifically at categories of persons who "owned" land. The first private non-Indian owners of land were French traders who had come strictly to trade with Indians. One sold his land to the headman of one band, the other sold his land directly to the first Catholic priest, who established his mission in the region in 1840. During the removal era, when the right of Indians to remain in their villages on the bay was uncertain, two missions purchased the lands in which the Indians villages were located. They did so to prevent removal and to provide the Indians a secure title to their improvements. Although some mission workers may have bought land with an intent to make a profit from land under pre-emption laws, the preponderance of evidence indicates that they held the land for the Indians' benefit.

What of the lands held by Indians, Métis and non-Indians married to Indians? This analysis requires an assumption, one that I felt most comfortable with after examining the documents—that kinship remained the primary organizing principal in the Keweenaw Bay Chippewa well into the late 19th century, despite the inclusion of church- and government-based institutions. This was especially true in the years between American expansion into the copper region and the treaty era. This being the case, one could expect that the related ethic of reciprocity between kin

remained a potent factor in shaping rules of possession, especially of territory.

Three parcels of land belonged to Indians by patent. One parcel was held by the headman of the Methodist Indians, a second by an unidentified Indian named Daniel and a third by the Vieux Desert leaders Pushquagin and Adam Nungo, who had purchased a parcel by subscription of their kin group. This land was clearly held by Indians who believed that the land was part of their reservation and that they had the right to possession and jurisdiction. The Métis who lived within the boundaries of the reservation were most often the products of liaisons with local Chippewa women and non-Indians. Most of these people had been raised by their Indian families and were contributing members to their kin groups. As such, we believed that they would have seen themselves and would have been seen by the Indians as forming a part of the Indian community, so long as they maintained their end of the reciprocity exchange. The land these people held would have been open to their Indian kinspeople and counted by the Indians themselves as their own.

Two non-Indian men had married Indian women. Were they a part of the Indian community? That is difficult to answer, but their children were considered so. They appear on the earliest annuity payrolls, before the 1854 treaty, and later received land allotments. I believed that they, too, occupied positions in the Chippewa kin-based system.

All but 1.60 percent of the total reservation area patent prior to 1854 could be considered within the sphere of direct Indian socio-political influence, if not ownership. The remaining acres were clearly the titled property of non-Indians who had no tie to the Indian community. Who were these men? The largest of the two non-Indian land holders were speculators who did not live on these lands. Two more did not show up on any other documents, and may well have received title as military pensioners. At any rate, they apparently did not live on the lands they claimed. Only one non-Indian man lived on his land and was a visible non-Indian presence. His land may have been the point of contention during the treaty negotiations when the government assured the Indians that a non-Indian living on the reservation would have to leave if they so wished.

Once again, the important question to ask here is what Chippewa understood of claims made on these lands at the time of the 1854 treaty. The notion of land sub-divided into surveyed parcels for the exclusive use of one individual or nuclear family is theoretically foreign to band ethics. Each Chippewa kin group who made up the Keweenaw Bay Chippewa would have known the general boundaries of hunting and fishing territories of other kin groups, but land rights depended on use and were

vested in people who occupied them. There is no evidence that the lands patented to non-Indians, except one, were demarcated in any way that would have alerted the Indians to the claims. No other non-Indian claimant without ties to the Indian community resided on the land. Did the Indians believe that these were part of their reservation? We were compelled to answer that they probably had no reason to doubt it.

How did the state's witness refute this evidence? In fairness to the state's position, I must say that the brevity of this presentation forces me to recount only a small portion of long and complex testimony.[11] Rather than giving a detailed synopsis of the facts they discussed, I will provide a summary of their general critique of our argument.

The testimony presented by the state focused primarily on the intent of government officials at the time they negotiated the 1854 treaty, especially on the United States government's efforts to end their responsibilities to Indian tribes through the civilization policy. The crux of the argument rested not on the issue of boundary, but on the treaty's allotment clause, which provided for dividing the reserve lands into family farms. The intention to do so, the witness summarized, would have negated the need to maintain an external boundary. The Indians would hold secure title through patents until they chose to alienate them. Those lands already patented to Indians were secured in the same way and there was no need to place them under trust. The federal government could already end their responsibility, even for the villages that the Indians lived in. There was, then, no intention to make any external boundary lines, only to reserve tracts for later division.

To meet criteria of the canon of construction, the state's witness was compelled to examine Indian intent for this treaty. The witness did so from a perspective very different from that of the plaintiffs. Testimony began with a recounting of the unique relationship in this community between the Indians and not one but two mission societies within the reservation boundaries. Methodist missionaries had created an establishment on the east side of Keweenaw Bay in 1832. Mission goals included salvation of souls, but also a component of civilizing the society through education and introduction of agriculture, so that converts could do the good work of the church. In 1840 the Catholic Church placed a second mission on the west side of Keweenaw Bay and worked to meet much the same goals. The defendants relied strongly on church documents, especially those of the Methodist Church, which praised the strides that the Indian mission communities had made toward accepting Christianity and accompanying values.

Both sides in this case openly discussed the role of the church in securing lands on which to build houses and farms. The difference was in

the interpretation of the results. The state contends that the missions had made substantial inroads in civilizing the Indians and had created a society of Christian farmers, literate to the degree that they understood American concepts of land tenure, and transformed in values so that the concept of the nuclear-family farm was a real goal. Thus, a substantial number of persons understood the word "unsold" just as the attorney general does today. Their changed values led them to anticipate the day when their reservation would be divided and allotted to individual community members.

The merit of this position was ably rebutted by my co-witness, who relied on a long series of federal government accounts of mission failures to alter the religious conviction of the largest part of the community, or to change their subsistence base from hunting/gathering/fishing to agriculture, making a change in land-holding patterns feasible. The Indians continued to live on the sites of their pre-treaty villages until the present. A portion of the community adopted some tenets of Christianity, but the climate of their territory and lack of markets prohibited them from becoming farmers as the missionaries envisioned. By the end of the century the government gave less-than-flattering accounts of the competency of Indians in the English language and in academics in general. These, however, were not my arguments to deal with.

The issues that challenged my own testimony focused on Chippewa social and political organization, and my characterization of Métis and non-Indians married to Indian women as part of the Indian community and subject to rules of reciprocity. The Chippewa have long been represented in anthropological literature as a strongly patrilineal society with identity, rights, privileges and property passing to ascending generations through the male line. The state used this theoretical reading to challenge my contention that persons descending from non-Indian fathers and Indian mothers would be considered part of the Indian community and eligible for benefits under the treaty. If these children were excluded from the Indian communities because their fathers were not Indian, then the parcels patented to Métis and to persons married to Indian women could be considered divorced from the Indian community and outside the reservation, except in rare and highly specific instances where a child was formally adopted into a different kin group.

Much detailed genealogical work needs to be done on this issue before it can be considered settled. In the case of Great Lakes groups, where I am most familiar with genealogy and descendance, I have found that patrilineal rules, like most others, are matters to be debated in daily life in the context of interpersonal relationships and political affiliations. Rules are used to bolster or deny the status of individuals' or families'

access to rights and resources, to be sure, but they are also relaxed to extend marriage relationships, rights of leadership and economic benefits beyond the values of any kinship system. The Michigan Ottawa, for example, were led by a long series of Métis "Chiefs" throughout the late 18th and early 19th century; these men were considered in many instances to be Indians by Native peoples and Euro-Americans alike. Indeed, it is only substantial genealogical reconstruction that allows a researcher to find any trace of a European descendancy in these people. Likewise, some of the most influential Ojibwa leaders of the same time period were also Métis, and through their continued community affiliation and demonstrated ability in religious and political spheres were included in their mother's kin group with or without a formal "adoption."[12] In other words, the flexible nature of cultural and personal identity leaves individuals significant latitude to break the norms prescribed by the structures of any system. In times of intense pressure for culture change, I believe this was especially likely to happen.

Time and cost prohibited either side from studying this line of information in depth significant enough to resolve this issue for the Keweenaw Bay Chippewa. The state's witness assumed that the structural argument of patrilineal descent was sufficient to bolster his pronouncements. In lieu of substantial genealogical research, I was forced to rely on the Indian's own decisions of who was and who was not a member of their society. I did so by examining the annuity payrolls and land allotment records. Annuity payments were most useful in determining who was considered kin. They began immediately after the treaty and listed recipients with their Anglicized surnames. It was easy to determine which Métis were considered closely enough related to participate in the payment. Unavailability of land for allotment in the 1870s caused dissension between factions on the reservation over the right of some, if not all, Métis to choose lands on the reservation. In the end, the federal government allowed them to do so. Those who remained on the reservation became, if they were not already, members of the modern Keweenaw Bay Indian community.

Deciding the Issues

Final arguments were heard in *Keweenaw Bay Indian Community* v. *State of Michigan* on 16 October 1989. A federal judge weighed the ethnohistorical documentation and interpretation in light of federal law and decided in favour of the Keweenaw Bay Indian community. As a prelude to his decision, the Honorable Robert Holmes Bell said:

> Any attempt to place this matter in perspective necessitates a rather lengthy historical narrative because, as this court has concluded, an accurate historical account surrounding the making and implementation of the Treaty gives meaning to the ambiguities in the crucial treaty language.[13]

As a witness in this case, I had to directly consider a number of academic issues that face potential witnesses who are called on to provide such "an accurate historical account" in federal Indian cases. In closing, I would like to highlight a couple that have the broadest implications for Native rights litigation in the United States.

Before undertaking a Native rights case, a potential witness should carefully consider where his or her own stance on the issue of Native American rights. For more than one hundred years, Indian people have been faced with political and economic dispossession by federal and state bureaucracies that responded only slowly and haphazardly to the needs of their community. As discussed above, federal courts have replied to this just critique by issuing instructions for the "canon of construction," which aims to prevent modern legal entities from benefitting from inequalities of the past. Some politicians, the citizenry at large and even learned scholars argue that this attempt to rectify past imbalances gives the Indians in the United States unprecedented advantages in pursuing their claims against states and other parties. Some assert that court decisions issued under the canons have created a group of citizens with rights above and beyond those of other United States citizens—a group with extra-constitutional rights based on racial criteria that exclude others from participating in the benefits they hold. By participating in this case I learned that the litigious, adversarial nature of our court system necessitates taking a strong stance on Native rights versus that of a larger community.

The second major issue is closely related. Those who feel that the courts make too many decisions in favour of Indian tribes often argue that the rights of Indians based on treaties are somehow diminished by time and historical changes in the composition of the United States citizenry and demographics, if not the changes that have taken place in the Indian populations. Today larger numbers of Americans and Indians compete for limited natural and cash resources, and it bothers some people to think that Indians have legal rights based on laws passed a century or more ago that they had no influence in shaping. Proponents of abrogating these treaties, or at least in removing the federal judicial force that supports them, most often argue that Indian populations are genetically diluted and that the intermarriage of non-Indigenous peoples diminishes the right of

descendants of the signatories to treaty stipulated rights. The courts have spoken to this issue in each finding that supports Native rights to resources or political jurisdiction, most often finding the proof to support the Indian perspective.

I believe that the witnesses' stances on these issues strongly shaped the testimony of the witnesses in *Keweenaw Bay* v. *State of Michigan*. Experts can always consider the known facts of a case and the merits of an argument before they accept a job like this one, but, as we have seen, in this instance, as in many others, there are no disputes over the historical facts of a given case. The issue depends on the interpretation of the facts in light of a body of law and here there is room for interpretations that reflect the biases of the scholars. While each side hopes for the closest approximation of truth while analyzing diverse documentation, the emphasis of the interpretation will in the end support the right of an Indian group to maintain a semi-autonomous socio-political unit or a desire to see their jurisdiction ended.

Notes

An earlier version of this paper was presented at the 1989 Annual Meeting of the American Society for Ethnohistory, Chicago, 4-6 November 1989.

1 For a brief discussion of the evolution of the Indian Removal Policy, see Francis Paul Prucha, *The Great Father: The United States Government and the American Indians* (Lincoln: University of Nebraska Press, 1897) pp. 183-213.

The best treatment of the United States government efforts to move Michigan and Wisconsin Chippewa from their tribal estates to the Minnesota Territory appears in James Clifton, "Wisconsin Death March: Explaining the Extremes in Old Northwest Indian Removal," in *Transactions of the Wisconsin Academy of Sciences, Arts and Letters*, vol. 75 (1987), pp. 1-39.

The Chippewas' location above the line of intense American settlement had protected them from earlier government efforts to displace tribes who lived east of the Mississippi River and relocate them to more western locations. In 1848 the Wisconsin Territory prepared to enter the union as a state. Local leaders then desired clear and undisputed title to Chippewa lands. This and other federal and local issues led President Zachary Taylor to issue an order for Chippewa removal from Michigan and Wisconsin to Sandy Lake, Minnesota, on 6 February 1850. More than four hundred Chippewa died during a carefully planned, covert attempt to lure the Indians from their homes. Continued Chippewa resistance, and efforts of a coalition of missionary groups, regional newspapers and local citizens, along with the legislatures of Wisconsin and Minnesota, lobbied the federal government for a repeal of the removal order. The secretary of the interior rescinded the removal order on 25 August 1851, though efforts to move the Chippewa continued until June 1852, when President Millard Fillmore completely cancelled the removal order. The 1854 Treaty of La Pointe further protected the Chippewa by guaranteeing them reservations in their tribal territory.

2 End of the removal threat and establishment of reservations in the 1854 treaty did not secure the Chippewa permanent possession of their lands. From the 1840s onward, the United States sought to promote agriculture as an economic replacement to Article 3 of the 1854 treaty. This clause allowed federal agents to survey the reservation and divide the commonly held tract into eighty-acre parcels. These plots were to be distributed to Indian heads of families in an effort to stimulate the move toward private property and to increase tillable acreage.

The process of "allotment" began in Wisconsin in the 1860s. Ostensibly to facilitate agriculture, federal agents began leasing timber on unallotted lands. Tillable acreage increased only slightly after 1860. Instead, the Chippewa used proceeds from timbering to pay for subsistence foods. Timber companies rapidly purchased allotted lands between 1870 and 1880. Title to many parcels of the reservation passed from Chippewa ownership to non-Indians and to the states of Michigan and Wisconsin. Subsequent commissioners of Indian affairs, secretaries of interior, and presidential administrations issued a series of opinions asserting that when title to reservation lands passed to non-Indians, the federal government would no longer honour their trust responsibilities to protect Chippewa rights. They abrogated their responsibility to support the Chippewa rights to hunt, fish, and gather on these lands, and more important, allowed the state to assert political jurisdiction within the boundaries of the reservation.

The progressive diminishment of Indian land base and governmental rights occurred throughout the United States. The 1887 Dawes Act formalized the allotment system, making the division of common lands a mechanism for "civilizing" Indians throughout the United States. For a discussion of the administrative process that created this policy and motivations of its proponents see Prucha, *The Great Father*, pp. 582-606, 611-86.

3 Prucha, *The Great Father*, pp. 940-68.

4 Charles J. Kappler, *Indian Treaties: 1783-1883* (New York: Interland Publishing Company, 1972), pp. 648-52.

5 United States District Court For the Western District of Michigan Northern Division, *Keweenaw Bay Indian Community* v. *State of Michigan, Defendant's Post Trial Brief*, file no. M87-278-CA2, 1989.

6 For a concise discussion of "Indian Country" and its relationship to external boundaries see Charles F. Wilkinson, *American Indians, Time, and the Law: Native Societies in a Modern Constitutional Democracy* (New Haven: Yale University Press, 1987), pp. 89-93.

7 Wilkinson, *American Indians, Time, and the Law*, pp. 89-93.

8 Wilkinson, *American Indians, Time, and the Law*, pp. 46-48.

9 United States District Court for the Western District of Michigan Northern Division, *Keweenaw Bay Indian Community's Post Trial Reply Brief, Keweenaw Bay Indian Community* v. *State of Michigan*, file no. M87-278-CA2, 1989.

10 *Keweenaw Bay Indian Community's Post Trial Reply Brief.*

11 *Keweenaw Bay Indian Community's Post Trial Reply Brief.*

12 One such Ojibwa leader is discussed in detail in Janet Elizabeth Chute, *A Century of Native Leadership: Responses of Chief Shingwaukonse and his Successors to Government, Missionary and Commercial Influences on the Ojibwa Community at Sault Ste. Marie and Garden River, Ontario*, Ph.D. thesis, McMaster University, Hamilton, 1985.

13 United States District Court Western District of Michigan Northern Division, *Opinion of the Court, Keweenaw Bay Indian Community* v. *State of Michigan*, file no. M87-278-CA2, 1989.