

Introduction: A General Note of Caution

Indians are human beings and Native American history is a part of human history. Indian people, like people from other cultural backgrounds, are actors in history; they are not the passive objects of other peoples' actions. In the past, as in the present, Native Americans brought specific expectations and objectives to their historical surroundings and acted to further both personal and community goals. The outcome of these actions was not inevitable, nor did it follow foreordained "laws" of evolution or progress. Students of history seeking to untangle the Native American past must keep all of this in mind as they do their work.

In 1836 the Ottawa and Chippewa peoples of Michigan were agents of their history. Confronted with difficult historical circumstances, they pursued a coherent set of community goals. They wished to end their indebtedness to fur traders. They wished to provide for their families, both in the short and long term. They wished to continue living in their ancestral homelands. To accomplish these goals, Ottawa and Chippewa leaders struggled to understand the forces arrayed against them and they acted in ways they believed would be effective. As would be true of leaders in any diverse community spread over hundreds of miles of water and forest, Native American "chiefs" in the 1830s employed a variety of tactics. Some individuals were directly involved in the discussions leading up to the negotiation and ratification of the Treaty of Washington; others knew nothing of the treaty until after it had been signed. Still others learned of the treaty only after it had been ratified at Mackinac in July. Some individuals were eager to form alliances with powerful non-Indians; others were not. Few members of these communities followed a single set of motives; fewer still in 1836 understood the precise dimensions of the coalition of business and political leaders arrayed against them. To understand this distant historical moment—and to interpret fairly the meaning of the treaty provisions agreed to in Washington in March, 1836 and ratified at Mackinac in

July of that year—it is crucial that the humanity and the complexity of the Indians’ motives and actions be kept before us. These broad—perhaps commonplace—observations suggest some important cautionary themes.

First, it is crucial that modern scholars look carefully at government actions as they took place on the ground. They should be cautious about statements written by self-interested parties after the fact and should avoid assuming, for example, that “No one understood the terms of the 1836 treaty better” than an ambitious young Indian agent with a personal financial interest in its outcome.¹ Most historians have long since rejected the idea that the meaning of complex, cross-cultural events can best be determined by taking self-serving post-hoc statements of government officials at face value. For example, the provisions of the 1795 Treaty of Greenville were not something “explained” to the region’s Indians,² as the state’s expert contends. Rather the treaty’s terms were debated and negotiated by representatives of the United States and Native American leaders. This agreement was not simply a pronouncement; it was the charter document for Indian-white relations in the region. From the perspective of the Indian people of northern Michigan, the Greenville Treaty was still the basic event that shaped their understanding of their relations to the United States in 1836. That agreement had become a central element in peoples’ daily lives.³ Scholars therefore should seek that—or any—treaty’s meaning amidst the mutual expectations and understandings of the parties who participated in its formulation.

Second, a generation of scholars have now shown that the history of Indian communities does not run along a single, fixed route from “tradition” to “civilization.” It is clear that Native American history is not the same as a trolley line, shuttling between fixed destinations of “backwardness” and “progress.” And few contemporary scholars

¹ Lawrence C. Kelly, “A Report on the 1836 and 1855 Federal Treaties with the Ottawa and Chippewa Indians of Michigan,” 121. ****Appears to be incorrect. Kelly's quote is on page 127.**

² Kelly, 14.

³ It is interesting that in his Memoirs, Schoolcraft recalled a conversation with a local leader who told him that as of 1833 three men in his tribe were still alive who had attended the treaty sessions at Greenville. See page 450.

would be satisfied with simplistic labels such as “traditionalist,” “progressive” or “faction” to describe Native American historical actors and tribal interest groups. Such language leads to historical distortions and simplifications.

For example, the fact that anthropologists assert that Chippewa people in what is now Ontario and Manitoba adopted boundaries for hunting areas when they became involved in the fur trade does not mean that in nineteenth century Michigan “both the Ottawa and Chippewa had a land tenure system that was in many ways similar to private property.”⁴ This evolutionary assumption—that changes in all Indian communities follow a common pattern and that this pattern led Indians from “backwardness” to “civilization” and private property—was set aside by most scholars many years ago. For this reason scholars today (even those who claim to be capable of hearing a singular “Native voice”) avoid assuming a pattern when they identify similar, but isolated, incidents in different settings. It is not accurate, for example, that property attitudes in the St. Lawrence Valley in the eighteenth century—cited as evidence for Richard White’s assertion that Indian hunters encountered boundaries in the woods and quoted by state expert Professor Karamanski—constitutes evidence that private property rules somehow burst forth in northern Michigan a century later.⁵ Similarly, the fact that some Native leaders sought an agreement with the United States about their land title in Michigan does not make them spokespeople for a geographically dispersed community, much less identify them as the “founding fathers” of an “Anishinabe renaissance.”⁶ And finally, it does not further the scholarly enterprise to extend this evolutionary theme by boxing nineteenth century Michigan Indians into the Victorian categories of “progressives” and “traditionalists.”⁷

Indian historical actors—like all people in the past—engaged in events as

⁴ Theodore J. Karamanski, “The Historical and Ethnohistorical Context of Hunting and Fishing Treaty Rights in Western and Northern Michigan,” p.25. See also footnote 54 on the same page.

⁵ See Karamanski, 25, footnote 55. Professor White’s statement, cited here by Karamanski, was based on a study of Iroquois and Abenaki hunters in the vicinity of Montreal that was published in French in 1722.

⁶ Ibid., 190-191.

⁷ See Ibid., 175.

effectively as they could, altering outcomes when possible, shifting tactics when forced to do so, inventing new strategies as the situation demanded, and retreating when necessary. In 1836 the Ottawa and Chippewa predicament in Michigan was particularly poignant. These communities faced a coordinated effort, orchestrated from the highest levels of American government and finance, to take control of their homelands. Moreover their very voices—the “Native Voice” so celebrated by Professor Karamanski⁸—come down to us largely through the hands of their adversaries. It is therefore vital that fair minded students of history strain to hear those voices and to understand them on their own terms rather than to simplify and essentialize them or hammer them into an evolutionary framework.

Holding these historical themes in the foreground, I would respond to the reports of the experts for the State of Michigan with the following observations and assertions.

1. The Treaty of Greenville and Provisions for Use of Ceded Lands

The Treaty of Greenville was a negotiated agreement in which Midwestern tribes exchanged recognition of American sovereignty for the right largely to remain in their traditional homelands northwest of the treaty line established in northern Ohio. The U.S. government’s declaration that it would not settle on tribal lands and that it would recognize the Indians usufructuary rights was the price with which it purchased peace on its western border. As I pointed out in my report, the Greenville Treaty “allowed federal authorities to present themselves as both the enablers of national expansion and the protectors of the tribes.”⁹

The Greenville treaty did not require large movements of tribal members. It formalized a boundary between white and Indian settlements that had taken shape over the previous decade and it guaranteed the persistence of Native communities into the foreseeable future. For example, Article Four declared in part that the United States

⁸ Ibid., 5.

⁹ Frederick E. Hoxie, “The Meaning of Article XIII of the Treaty of Washington,” 10.

would “relinquish their claims to all other Indian lands northward of the river Ohio, eastward of the Mississippi, and westward and southward of the Great Lakes and the waters uniting them, according to the boundary line agreed on by the United States and the king of Great-Britain, in the treaty of peace made between them in the year 1783.” Later in Article Six, the Americans recognized the tribes’ right to attack any U.S. settler who might venture into the Indian territory. “Such citizen or other person,” the treaty noted, “shall be out of the protection of the United States; and the Indian tribe, on whose land the settlement shall be made, may drive off the settler, or punish him in such manner as they shall think fit....”¹⁰

These statements, read together with Article Seven recognizing the signatories’ right to hunt on ceded lands “so long as they demean themselves peaceably,” make clear that in the Greenville Treaty the federal government took on a mediating role between the ambitions of white settlers and the demands of tribal leaders. Article Seven was not a “precedent set by Anthony Wayne,” but a provision developed and agreed to by powerful, recognized tribal leaders at a treaty council.¹¹ This event was not a moment, as one state expert asserts, in the story of “obtaining control over title to land occupied by Native Americans.”¹² It was instead a moment of negotiated agreement in which Native peoples pledged their word to exchange peace and territory for a series of concessions from the United States. The United States, in turn, pledged to protect the tribes from intrusive settlers.

The Ottawas and Chippewas of northern Michigan of course made few territorial concessions in the Greenville Treaty, but the treaty continued to govern their relations with the United States and they continued to insist that the Americans adhere to it. That is why Pabanmitabi, the L’Arbre Croche leader, protested the closing of the Mackinac blacksmith shop in 1834 by declaring, “It is forty winters since we first saw the

¹⁰ 7 Stat 49.

¹¹ See Kelly, 17.

¹² Kelly, 8

Americans. When we first shook hands with you and smoked the pipe of peace with you at Greenville. ... Some of the men are yet living who were at the treaty and we have been told by our old men of the terms of it.”¹³

Subsequent treaties negotiated by Ohio, Michigan, Illinois and Indiana tribal leaders and U.S. commissioners in the period between 1795 and 1836 carried a variety of provisions regarding boundaries, annuities and the jurisdiction of Indians over white intruders. The conditions under which these treaties were negotiated varied with each agreement, as did the particular arrangement of concessions and conditions they contained. In addition to variations in the specific language of these treaties, there was surely great variation in the ways the largely non-English speaking Indian leaders understood them.

Exploring the circumstances surrounding the negotiation of other Midwestern treaties lies beyond the scope of this dispute. Nevertheless, it is important to keep in mind that treaty making across the region was a mutual process involving two active and interested parties. While abuses occurred on many occasions, and U.S. treaty commissioners could be heavy-handed in their actions, the role of the United States throughout was to stand as a mediating force between the desires of frontier expansionists and the demands of Native communities for protection. The representatives of the United States in these proceedings were not simply “explaining” provisions to Indians or “making the point” that a particular clause had been inserted.¹⁴ It is essential that we recognize the Native American contribution to, and perspective on, these agreements. Fair minded scholars should avoid using the English text of one agreement to interpret another. It is therefore does a disservice both to the Native American and United States participants in these negotiations, as well as to history itself, to declare simply that “over the years the treaty language used to describe the Indians’

¹³ See Document P-30, U.S. v. Michigan, 1976. Speech of Pabanmitabi, August 18, 1834.

¹⁴ See Kelly, 14, 19.

hunting rights on ceded lands evolved but the meaning remained the same....”¹⁵

Each set of circumstances surrounding treaty negotiations was unique, shaped by the array of historical forces and the diverse cast of historical actors assembled for the purpose of concluding the agreement. The structural and institutional role of the United States as mediator did not change; the circumstances affecting the specific outcome of each negotiation did.

2. The Black Hawk War

In 1804 representatives of the Sauk and Fox tribes signed a treaty in St. Louis wherein they ceded a vast wedge of territory between the Mississippi and Illinois Rivers to the United States. For decades afterward, Sauk leaders insisted that the agreement had been fraudulently negotiated and that the men who signed it had not been authorized to sell tribal land. The treaty reserved the right of Sauk people to “live and hunt” on the ceded lands “so long as they were the property of the United States.” So, conflict with settlers was avoided until 1829 when the territory was transferred to the General Land Office and opened for sale to individuals. At that point, disputes arose quickly, particularly with members of the “British band” of Sauks under the leadership of Black Hawk.

Black Hawk, who as a young man had fought alongside Tecumseh and the Redcoats in the War of 1812, had long allied himself with British traders. He reluctantly left his Rock River, Illinois homeland in the late 1820s but in 1832 he crossed back over the Mississippi. Black Hawk’s return set off a panic among white settlers and a subsequent skirmish with local militia touched off the tragic-comic “Black Hawk War.” That conflict ultimately drew 7,000 American troops to northwest Illinois and cost the lives of hundreds of soldiers on both sides as well as large numbers of Sauk women and

¹⁵ Kelly, 106. See also 107, item 9.

children.¹⁶

Occurring while he was serving at Mackinac Agency, and involving Indians closely allied to the British whose soldiers lay just across the St. Mary's River and Lake Huron, the events of the Black Hawk War were well known to Henry Rowe Schoolcraft. While Professor Gregory Dowd is correct in stating that this event "did not much affect Michigan,"¹⁷ the Black Hawk War surely provided a cautionary example for Indian Office personnel like young agent Schoolcraft. An agreement that at the least had been confusing, but that probably had been fraudulent, had created an opportunity for an ambitious Native leader and his supporters (both in the tribe and across the lakes in Canada) to present themselves as the defenders of Sauk interests. Indian dissatisfaction with the 1804 treaty had also provided an opportunity for a group of elusive, but persistent, nativist religious leaders among the northern tribes to assert themselves. Many Indian and white observers believed Black Hawk had crossed into Illinois to join forces with a Winnebago prophet in southwestern Wisconsin, while others told of Sauk emissaries traveling as far as Texas in search of allies.¹⁸

The Black Hawk War presented Schoolcraft and his colleagues with a vivid, local example of what could occur when the government lost its position as mediator between settlers and tribes. Convinced he had been betrayed, Black Hawk felt no reason to accommodate himself to the government's orders. Certain that a frontier war had begun, local whites saw no alternative to panic and wholesale violence. Having traversed much of the northern country surrounding the Great Lakes, Schoolcraft had a sense of both the scale of the region and the complexity of the Indian communities who resided there. He also appreciated the many sources of disruption that existed in this arena including rival tribal leaders, British agents, competing traders, and ambitious new religious prophets. The Black Hawk War put all of this on display.

¹⁶ Helen Hornbeck Tanner, Atlas of Great Lakes Indian History (Norman: University of Oklahoma Press, 1987), 151-154.

¹⁷ Gregory E. Dowd, "The Meaning of Article 13 of the Treaty of Washington, March 28, 1836," 190.

¹⁸ See Tanner, 154.

The Black Hawk War would have encouraged Schoolcraft to maintain his position as mediator between Indians and local whites. It would have discouraged him from needlessly defrauding the tribes or provoking them into resistance. It taught him to proceed cautiously and to avoid confrontations.

3. Why A Treaty in 1836?: “Improbable Events,” a Desire for “Civilization” or An Orchestrated Effort?

According to Dr. Lawrence Kelly’s report, the onset of treaty negotiations between the United States and the Ottawas and Chippewas of Michigan in March, 1836 was the result of “a series of improbable events.”¹⁹ He added that “the Indian Office had initially shown only mild interest” in the idea and “there had been very little Indian interest” as well. These “improbable events” included the desire of leaders from L’Arbre Croche, worried over the closing of government blacksmith shops, to obtain “financial assistance in exchange for a cession of some of their lands,”²⁰ together with “the entrance of Augustin Hamlin, Jr.” as a tribal leader,²¹ Michigan statehood,²² the offer of “Ottawa Island” Indians to sell Drummond Island,²³ and Commissioner Elbert Herring’s request that Schoolcraft explore the possibility of acquiring land “north of the Grand River.”²⁴

Kelly did not make clear that Augustin Hamlin at L’Arbre Croche offered to sell Chippewa lands north of Lake Michigan, not their own. Kelly also failed to describe the relative importance of these “improbable events” on Secretary Cass’s December, 1835, decision to move from desultory discussions of modest lands sales to a massive cession of tribal lands in Michigan. In Kelly’s view, no single actor or interest group apparently advocated successfully for any particular outcome. Kelly reinforced this interpretation by employing the passive voice in much of his historical narrative of the events leading

¹⁹ Kelly, 85.

²⁰ Ibid., 72.

²¹ Ibid., 75.

²² Ibid., 77.

²³ Ibid., 78.

²⁴ Ibid., 79

up to the treaty sessions in Washington, D. C. in March, 1836. He noted, for example, that following Herring's August 29, 1835, letter to Schoolcraft, "events moved rapidly toward a cession."²⁵ He does not explain who moved these events. Later in the fall of 1835, as Schoolcraft made his way east, Kelly reported that "word was received about overtures to other Indian groups in the cession area that had been set in motion prior to his departure."²⁶ He failed to explain who set these events in motion. The memorial Hamlin delivered to Secretary Cass on December 5 struck Dr. Kelly as significant, but, he added, "whether it accurately represented the thoughts of Apokisigan and the others in the delegation is unknown."²⁷ And finally, Kelly noted that "Shortly after Schoolcraft arrived in the Capital a decision was made to treat with the Indians for the cession of all their lands in the southern peninsula."²⁸ Kelly did not specify the decision maker or the process by which he reached his decision. Up to this point in Kelly's narrative he identified no central actor, only a series of "improbable events." But from December, 1835 forward—after "a decision was made"—Kelly identified a central actor: "Schoolcraft now immediately set in motion a call for delegations...."²⁹

By contrast, Professor Theodore Karamanski's narrative employed the active voice. In his narrative of events leading up to the Washington treaty conference. Karamanski asserted that:

Selling land to obtain the time and resource with which to undertake ... an adaptation [to a new era] was a bitter pill recognized by many Ottawa and Chippewa. ... It was the chiefs of L'Arbre Croche, more than any other *Anishinabe* leaders, who understood the great challenge posed by the United States, and they pioneered the search for accommodation.³⁰

Furthermore, Karamanski's narrative identified the source of this new tribal wisdom: a

²⁵ Ibid., 79.

²⁶ Ibid., 85.

²⁷ Ibid., 88.

²⁸ Ibid., 88.

²⁹ Ibid., 88.

³⁰ Karamanski, 54.

“Catholic revival”³¹ that he claimed swept the area in the 1820s and 1830s. “In accepting Christianity,” Karamanski wrote, “Ottawa and Chippewa were making a conscious and considered attempt to change their lives for the better.”³²

There is no persuasive evidence for the presence of this “revival.” Karamanski based his assertion on several pieces of evidence:

First, Karamanski wrote that in 1816 an agent reported the Ottawas had “progressed considerably in the arts of agriculture....”³³ The government agent also noted that the community had turned aside invitations to join an anti-American alliance. The agent apparently did not mention Christianity specifically (or Catholicism), but Karamanski implied without evidence that “progress” towards agriculture and a rejection of anti-Americanism indicated a readiness to shift religious loyalties. He produced no evidence to link interest in agriculture with a turn to Catholicism or Christianity.

Second, Karamanski reported that in 1820 Jedediah Morse, an orthodox Congregationalist recently retired from his pulpit in Charlestown, Massachusetts, delivered a “hell fire” sermon to some Ottawas at L’Arbre Croche, telling them the choice before them was “Civilization or ruin.”³⁴ Morse traveled to the Ottawa settlement with George Boyd, the agent at Mackinac, who used the occasion to complete a land sale agreement with the band for the St. Martin Islands. This evidence is not compelling. Not only was Morse’s visit brief—he spent one day and one night at L’Arbre Croche—but his audience was unmoved. Karamanski did not report that in his sermon the Congregationalist preacher urged his audience to “attend to what I have said.” He told them that he was continuing on to Green Bay and would return to Mackinac in a few weeks. “There let me meet a delegation of your chiefs with your answer,” he told them, “that I may communicate it to your Great Father the President.” Morse added to the text

³¹ Karamanski, 57, 61. Karamanski describes the onset of a “wave of interest in Christianity along the L’Arbre Croche coast” during “the early 1820s” on page 56 but notes that it “took a turn toward Catholicism, perhaps because of the memory of Jesuit missionaries among the Ottawa during the seventeenth and eighteenth centuries.”

³² Karamanski, 58.

³³ Karamanski, 54.

³⁴ Karamanski, 55.

of his sermon: “To this speech no answer was received, my stay at Mackinaw on my return being too short to give the chiefs necessary notice.”³⁵ Karamanski did not quote this passage in his report. Karamanski also failed to explain the Indians’ failure to respond to Morse.

Third, Karamanski reported that in 1821 Ottawas south of the Grand River lost their land in the Treaty of Chicago. Karamanski acknowledged that no one from L’Arbre Croche attended the treaty sessions. He therefore provided no evidentiary basis for his speculation that the 1821 agreement “was a chilling reminder for the Ottawa and Chippewa of the need to change and adapt to circumstances.”³⁶ Karamanski provided no Native voice as evidence of the tribes’ knowledge of or reactions to this treaty.

Fourth, Karamanski wrote that “Sometime in the early 1820s, an Ottawa named Andowish, who had lived among the Stockbridge Indians, returned to L’Arbre Croche.” In the aftermath of this visit, at a time not specified, “a wave of interest in Christianity spread along the L’Arbre Croche coast.”³⁷ Karamanski does not specify the exact nature of this “wave” of interest, nor does he identify the exact locations along the “coast” where it swept ashore. Karamanski relied on Andrew Blackbird’s memoir, History of the Ottawa and Chippewa Indians, published in Ypsilanti, Michigan in 1887, for this information. Recalling events of his childhood more than sixty years earlier, Blackbird reported that Andowish had “joined the Catholic religion out there with the Stockbridge Indians” and that the young man had come from “somewhere near Montreal.” The “Stockbridge Indians” were a group of Christian converts who gathered at the Massachusetts town of that name in the eighteenth century and adopted a form of evangelical Protestant Christianity. Their only association with Montreal came during their service as allies of the British in the Seven Years War during the final assault on

³⁵ See Jedediah Morse, A Report to the Secretary of War on Indian Affairs (New Haven: S. Converse, 1822), 14; Appendix, 14.

³⁶ Karamanski, 55-56.

³⁷ Karamanski, 56.

that city.³⁸ Blackbird's errors call this evidence into question. Karamanski also failed to note in this section that the Ottawas had been exposed to Catholicism since the seventeenth century and some tribal members had followed the teachings of the Jesuit missionaries from early contact until the Jesuit expulsion from North America in the eighteenth century.

Fifth, Karamanski recounted how "Apokisigan [aka Apawkausegun], chief of the Seven Mile Point band, visited Metis relations on Mackinac Island and solicited their help in obtaining a missionary." Also, "Ausegonock [aka Assigninack] ...returned to his home 'expressly to act as missionary....'"³⁹ These undated events were also recounted by Andrew Blackbird, Assigninack's nephew, in his memoir, published sixty years after the events in question. The significance of Blackbird's statements are undercut somewhat by the fact that Jean Baptiste Assigninack (1768-1866), while he was born at L'Arbre Croche, spent most of his long life in Canada. Assigninack left L'Arbre Croche as a young man, fought with the British in the War of 1812 and worked for the Indian Department in Canada as an interpreter. He returned to Michigan in 1827 to assist in the conversion of the Ottawas to Catholicism. But, disappointed by the absence of an ordained priest and by the poor results of his ministry, he left again for Canada in 1830 and did not return.⁴⁰ Karamanski described Assigninack's arrival at L'Arbre Croche, but not his rapid departure.

Sixth, Karamanski wrote that in 1823, "after the Indian-initiated revival had begun," (a curious assertion given the absence of dates for the two previous sets of "events") a Catholic priest drafted a petition to the United States asking for support for a mission school.⁴¹ A priest arrived six years later and afterward "Catholic Ottawa formed their own village." Karamanski identified no Indian voices raised to support the priest's

³⁸ See T. J. Brasser, "Mahican," in Bruce Trigger, Handbook of North American Indians, v. 15, The Northeast (Washington: Government Printing Office, 1978), 207-9.

³⁹ Karamanski, 56-57. These events are not dated in Karamanski's narrative.

⁴⁰ "Jean Baptiste Assigninack," Dictionary of Canadian Biography, v.IX (Toronto: University of Toronto Press, 1976). ****Not provided or available in the DB.**

⁴¹ Karamanski, 57.

actions or to lobby on behalf of the priest's petition. He did not describe the size of the Catholic village.

Seventh, Karamanski reported that in 1833 Bishop Frederic Rese of Detroit (who in 1836 would support Augustin Hamlin's trip to Washington, D.C.) visited L'Arbre Croche and reported a mission that included "sixty-one houses and 1200 inhabitants. The people were largely temperate, industrious, and well-instructed...."⁴² Karamanski undercut this impressive statement two pages later in his narrative when he wrote that Rese's estimate had been made "with some exaggeration."⁴³ Karamanski did not explain how these Christian Ottawas could have lived with an average of twenty people for each of their "sixty-one houses." Karamanski also failed to report that Rese, a German-born priest, left Michigan in 1837, and asked his superiors to replace him.⁴⁴

Eighth, Karamanski noted that Andrew Blackbird, an Ottawa Catholic, wrote in his 1887 memoir that "at that same time 'many Indians began to be stationary; they did not go south [to winter trapping grounds], as heretofore....'"⁴⁵ Karamanski also reported that Blackbird recalled that the priest at this time spent considerable effort instructing his fellow tribesmen "in the manners and customs of the white men." Since the Ottawas had received instructions from Catholic missionaries for more than 150 years at the time these undated events supposedly occurred, they in themselves do constitute significant evidence.

In the very next paragraph of his narrative, Karamanski buttressed his evidence for what he at that point identified as the Ottawas' "conscious and considered attempt to

⁴² Karamanski, 57.

⁴³ Karamanski, 59. The confusion is compounded in Karamanski's next sentence in which he wrote that the Grand River Ottawas reported—apparently accurately—200 converts out of a population of 900. All reports agree that the strongest opposition to the 1836 treaty came from the Ottawas of Grand River.

⁴⁴ Henri De Courcy and John Gilmary Shea, *History of the Catholic Church in the United States* (New York: P.J. Kennedy, 1896), 584. Karamanski did not add to his narrative the fact that Henry Schoolcraft included a vaguely anti-Catholic reference to Bishop Rese in his memoirs. Schoolcraft recalled that in November, 1836, he encountered Rese in Detroit. The Bishop ("a short, club nosed, smiling man, of a quizzical physiognomy") asked him "what I supposed was the cause of the press for the treaty appropriations for education by Protestant missions." The Indian agent replied, "I supposed the conversion of the souls of the Indians constituted the object of these applications. 'Poh! Poh!' said he, 'it is the money itself.'" Schoolcraft, *Personal Memoirs*, 550; ****Not provided; see 011657 in the DB for an alternate copy.**

⁴⁵ *Ibid.*, 57.

change their lives for the better” by citing a “case in point,” the story of Chusco, a Chippewa traditional religious figure who “experienced a spiritual reawakening” in 1834 and gave up his “medicine bag, manitos, and implements of sorcery.”⁴⁶ Henry Schoolcraft, who himself underwent a Protestant “awakening” during a revival on Mackinac Island in the winter of 1834-1835, was the source for this “case.” Moreover, Chusco’s “reawakening” took place at Mackinac, more than thirty miles from L’Arbre Croche. The actions of a Protestant Chippewa (recounted by an evangelical Protestant Indian agent in his memoirs years after the fact) does not constitute persuasive evidence that the Catholic Ottawas undertook a “conscious and considered attempt to change their lives.”⁴⁷

The preceding evidentiary chain apparently inspired Karamanski’s conclusion. While he did not employ the word “revival” again as he had a few pages earlier in his narrative, he did write at this point that:

The number of true converts among the Ottawa and Chippewa is perhaps impossible to estimate accurately but it is clear that a significant number, probably a larger percentage of Ottawa than Chippewa, did accept the new faith and with it made a commitment to adopt a new lifestyle. These people had less commitment to the endangered fur trade than the traditionalists.⁴⁸

Karamanski buttressed this very general conclusion to a “new faith” (again ignoring the presence of Catholic missionaries among the Ottawas since the seventeenth century) by repeating tales of conversion from Protestant missionaries who worked with Chippewas on the Upper Peninsula. He used evidence from Reverend Jeremiah Porter (a Presbyterian missionary at Sault St. Marie from 1831 to 1833 who often lived with the Schoolcraft family)⁴⁹ and Abel Bingham (a Baptist missionary stationed at Sault St.

⁴⁶ Ibid., 58.

⁴⁷ For Schoolcraft’s conversion experience, see Richard Bremer, Indian Agent, Wilderness Scholar (Mt. Pleasant Michigan: Clarke Historical Library, Central Michigan University, 1987), 153.

⁴⁸ Ibid., 59.

⁴⁹ See Jeremiah Porter, “The Earliest Religious History of Chicago,” in Early Illinois (Chicago: n.p., 1881), 5, 54-55. Porter (1814-1900) ministered primarily to non-Indians at the Sault and left for Chicago when the soldiers at Fort Brady were transferred to Fort Dearborn in 1833. He later wrote that with that transfer “a majority of my church were going....” In Chicago, Porter founded that city’s First Presbyterian Church.

Marie who worked with Chippewas near Tahquamenon on the Upper Peninsula. Schoolcraft's biographer, Richard Bremer, describes Bingham as a "dogmatic" missionary who was largely unsuccessful. He noted that the Baptist, who never learned Ojibwe, "preached lengthy sermons of a tedious character that could not have awakened many Indian hearts."⁵⁰

Karamanski did not cite Richard Bremer's description of Abel Bingham's ineffectiveness, nor did he describe Jeremiah Porter's short tenure in Michigan. At this point in this narrative, however, he did cite statements by "Assigninack, the influential lay Catholic evangelist" whose three year sojourn at L'Arbre Croche provided part of his evidence for a Catholic "revival" there.⁵¹ His report did not mention Assigninack's departure from L'Arbre Croche six years prior to the 1836 treaty sessions in Washington, D.C.⁵²

Karamanski's narrative is not persuasive. He provides no evidence to indicate the Indian community's reaction to the Reverend Jedediah Moses's stark 1820 proposition that the Ottawas and Chippewas of Michigan had only one choice: "civilization or ruin." Historians should not position themselves with Reverend Morse and other clergy and assume that any evidence of movement away from traditional lifeways constitutes a step towards "progress." In the 1820s Catholicism was not a "new faith" to the Ottawas of Michigan. Moreover, Native curiosity about Christianity, interest in education, farming or draft animals, or the formation of new villages is not persuasive evidence the Indians of Michigan were, on their own, moving towards a decision to sell their lands to "buy time." Such categorical and speculative reasoning apparently inspired Karamanski to conflate the words of Augustin Hamlin and "the Ottawa" and to equate this Catholic Ottawa's goals with the views of his community. From Karamanski's evolutionary perspective, Hamlin's offer to sell lands on the Upper Peninsula of Michigan represented

⁵⁰ Bremer, 150.

⁵¹ Ibid., 59, 60, 62.

⁵² See discussion of Assigninack on page 15, above. ***Seems to mean page 13 of this preprint.*

the “voice” of the Ottawas. According to Karamanski, Hamlin’s “memorial” (written in Detroit—“where they consulted with Catholic bishops”—in late 1835) “reflects more closely than any other document the thinking of one of the Ottawa and Chippewa groups on the eve of the treaty.”⁵³ Karamanski’s single-minded narrative does not include sufficient specific evidence to support this sweeping conclusion about this large, diverse, and geographically-scattered group of Native Americans.

Augustin Hamlin may have written his memorial without input from Bishop Rese in Detroit, and he may have represented some of the people at L’Arbre Croche. But other actors were at work to bring about a treaty conference in Washington, D.C. in early 1836. The decision to expand land cession talks to cover the entire peninsula was taken in Washington. Independent of Hamlin’s memorial. Michigan’s senators and other elected officials, together with Lewis Cass in the War Department, were eager to acquire title to tribal lands across the state. The leadership of the American Fur Company sought payment for debts. Agent Schoolcraft sought payment of his family’s debts as well as a new and more powerful position in the U.S. government. And Native leaders sought the restoration of blacksmith shops and cash to pay off their debts to the fur traders.

There is no credible evidence that would sweep this array of forces aside and assert instead either that the treaty sessions were produced by a “series of improbable events” or by the Catholic “revival” at L’Arbre Croche. Augustin Hamlin’s memorial did not set this array of actors in motion and the document reveals little about the variety of motives and points of view of the Ottawa and Chippewa participants in the Washington, D.C. proceedings.

4. The Significance of the “Power of Sale”

Dr. Kelly and Professor Karamanski consider the “Power of Sale” document signed by various Ottawa and Chippewa men in early 1836 to be significant. Karamanski

⁵³ Karamanski, 69.

wrote that the document “may have reminded the Mackinac area delegates [to the Washington, D.C. proceedings] of the support back home for a treaty....”⁵⁴ To Kelly the document revealed “there was little apparent difficulty in obtaining the consent of the Indians at Sault St. Marie and Michilimackinac.”⁵⁵ Kelly also argued that the language in the “Power of Sale” document was consistent with other treaties of the era which “had essentially the same meaning: once the land passed from the ownership of the United States, the Indians’ right to hunt ceased.”⁵⁶

Contrary to Professor Karamanski’s assertion, the “Power of Sale” document did not indicate “support back home for a treaty” The “Power of Sale” document is not a credible indicator of community attitudes towards, and understanding of, the impending land cession. Second, contrary to Dr. Kelly’s assertion, the language of the “Power of Sale” document is not consistent with other government descriptions of Ottawa and Chippewa hunting rights conveyed in meetings with tribal leaders prior to and following the negotiation of the treaty. Those communications did not convey “essentially the same meaning” to the Indian participants.

From Professor Gregory Dowd’s report, it is clear that the “Power of Sale” document was sent from Washington, D.C. by Henry Schoolcraft to John Clitz with a covering letter on December 28, 1835. Dowd appears to be the only expert who was able to locate a copy of the document. He found it filed with Schoolcraft’s personal papers at the Library of Congress in Washington, D.C.⁵⁷ My report incorrectly stated that Schoolcraft left the document behind when he left for Washington in early November, 1835. The signed “Power of Sale” document was sent back to Washington on February 17, 1836 and was received by Schoolcraft during the treaty sessions, sometime after they opened on March 15 and before March 23. Taking into account the four-week interval for an express message to travel between Washington, D.C. and Mackinac in mid-winter,

⁵⁴ Karamanski, 86.

⁵⁵ Kelly, 90. ****Kelly's page numbers do not match these footnotes. See page 92 for quote.**

⁵⁶ Ibid., 107. ****See page 111 for quote.**

⁵⁷ Dowd, 172, footnote 83.

it appears that the “Power of Sale” document probably reached John Clitz during the last days of January, 1836. Clitz then would have spent no more than three weeks (the period from late January to February 17) collecting signatures from, as he put it, “as many of the chiefs and men as was practicable to obtain at this inclement season of the year.”⁵⁸

Thirty-two men signed the “Power of Sale”; five or six of these men had already been selected by the government to travel to Washington and the remainder appear not to have been significant tribal leaders.⁵⁹ Given the fact that it was written in Washington, D.C. and signed by an apparently random group of twenty-six people at the agency headquarters at Mackinac during three weeks in the middle of winter, this document cannot be taken seriously as an expression of community sentiment or community understanding of the terms of the 1836 treaty.

While Dr. Kelly asserted that all the terms used in early nineteenth century treaties and treaty discussions “had essentially the same meaning,” and, therefore, documents such as the “Power of Sale” should be read as clarifying the language of the final treaty, Henry Schoolcraft appears to have believed differently.⁶⁰ Interestingly the phrase “surveyed and sold” does not seem to appear in the transcripts or accounts of any of Schoolcraft’s direct communications with Indian people prior to, or during, the treaty conference. What is more, Schoolcraft appears never to have used the phrase in face-to-face meetings with tribal leaders. The phrase only seems to appear in written communications with Schoolcraft’s superiors.

When Schoolcraft’s brother in law William Johnston met personally with his uncle, Iawba Wadick and another “chief” at Sault St. Marie in November, 1835, Johnston explained the proposed treaty would contained “this provision, they to have a full right to hunt on the ceded lands as long as they were unoccupied....”⁶¹

Four months later when the tribal delegations gathered in Washington, D.C.,

⁵⁸ Hoxie, 50.

⁵⁹ Ibid., 50.

⁶⁰ Kelly, 107. ****See page 111 for quote.**

⁶¹ See Hoxie, 50.

Schoolcraft told them in their opening meeting together that the proposed treaty would grant “the usual privilege of residing and hunting on the lands sold till they are wanted.”⁶² The final treaty language—“until the land is required for settlement”—echoed that phrase.

Three months after the treaty was signed in Washington, D.C., Schoolcraft faced tribal delegates at Mackinac who were troubled by the Senate’s unilateral revision of the agreement’s original language. Later the agent wrote that he comforted the assembled leaders by reminding them of “the practical operation of the provision, contained in the 13th article of the Treaty, which secures to them indefinitely, the right of hunting on the lands ceded ... until the land is required for settlement.”⁶³

By contrast to this series of face-to-face encounters, the phrase “surveyed and sold” appeared in the “Power of Sale” document written in Washington, D.C. in December, 1835 and was seen by very few tribal leaders prior to the signing of the final treaty in March, 1836. A variation on that phrase next appeared in a letter from Schoolcraft to Secretary Cass on July, 13, 1836. Reporting on his first ratification meeting, he told the secretary that he had explained to the Indians that they would have the right “to reside on their proposed reservations ... until the lands shall be required for actual survey and settlement....”⁶⁴ Schoolcraft was referring here to the temporary reservations provided for in the 1836 treaty and not to hunting rights in general. He was also paraphrasing himself to his superior, and he did not claim to be reporting the precise language he used at the meeting.

The phrase “surveyed and sold” appeared next in early 1837 in a letter from Schoolcraft to his new boss, the fiercely pro-removal Commissioner of Indian Affairs, Carey Harris. Schoolcraft told Harris that during the negotiation of the Treaty of 1836 he had explained to the Indian representatives present that “as fast as the lands were

⁶² See Hoxie, 56.

⁶³ See Hoxie, 62.

⁶⁴ See Hoxie 61-2.

surveyed and sold” their right to hunt would “cease.”⁶⁵ In the same letter the newly-appointed Superintendent of the Indians of Michigan also told his new boss that in his discussions with tribal representatives at Mackinac four months after the treaty was signed in Washington he had used the term settlement “in its ordinary meaning to denote the act or state of being settled....” It is significant that Schoolcraft did not report having also discussed the “ordinary meaning” of the term “surveyed” with the assembled delegates.

This absence is not evidence, but Schoolcraft’s correspondence indicates a clear pattern: the phrase “surveyed and sold” appeared fleetingly and, it seems, only in self-serving documents generated far from the Native American communities of Michigan or intended for communication among white people exclusively. Interestingly, in 1839, two years after Schoolcraft used the phrase “surveyed and sold” in his letter to Commissioner Harris, he wrote in his annual report that the Indians had apparently decided to “throw themselves upon the usufructuary right to the ceded territory, secured to them by the 13th article of the treaty”⁶⁶

To illustrate the pattern of appearance and disappearance of the phrases used to describe the Ottawas and Chippewas’ rights to hunt under the 1836 treaty, it is useful to recall the documents that contain language describing that right. Here are the available documents written prior to the signing of the Treaty of Washington on March 28, 1836, that refer specifically to hunting rights on ceded lands:

a. Henry Schoolcraft to Major Cobb, September 23, 1835: Schoolcraft described the possible terms for a land sale. These would include “the right to hunt and live on the tract, until it is required.”⁶⁷

b. Henry Schoolcraft to Commissioner, November 3, 1835: He reported replies from tribal leaders “favorable to a cession, on liberal considerations, with reservations,

⁶⁵ Hoxie, 67-68.

⁶⁶ Hoxie, 71. See also, Dowd, 211-218.

⁶⁷ See Dowd, footnote 61, p.161.

and a defined right of hunting on the lands sold.”⁶⁸

c. William Johnston to Henry Schoolcraft, November 17, 1835: The agent’s brother-in-law reported that “two chiefs” from the Chippewa community at Sault St. Marie had indicated a willingness to cede lands to the United States, “with this provision, they have a full right to hunt on the ceded lands as long as they were unoccupied....”⁶⁹

d. John Clitz to Commissioner, November 17, 1835: Captain John Clitz reported on a meeting with leaders at Mackinac in which the Indians declared that they wished to “have a full right to hunt on ceded lands, as long as they are unoccupied.”⁷⁰

e. “Power of Sale” document written in Washington and sent to John Clitz on December 28, 1835: “Privileges of hunting upon the [ceded] land, and of residing upon it ... to be secure ... [until land was] “surveyed and sold by the government....”⁷¹

f. Opening statement of Henry Schoolcraft at treaty proceedings, March 15, 1836: In exchange for the land cession, Schoolcraft promised “the most liberal terms,” including “the usual privilege of residing and hunting on the lands sold until they are wanted....”⁷²

Second, described below are the documents written in the period immediately after the signing of the Treaty of Washington that refer specifically to hunting rights on ceded land.

a. Henry Schoolcraft to Lewis Cass, July 18, 1836. The agent noted that Indian resistance to the revised treaty “has finally yielded, on a consideration of the practical operation of the provision, contained in the 13th article of th Treaty, which secures to them indefinitely, the right of hunting on the lands ceded, with other privileges of occupancy, until the land is required for settlement.”⁷³

b. Henry Schoolcraft to D.A. Lyman et al, February 27, 1837: The agent told

⁶⁸ See Hoxie, footnote 86

⁶⁹ See Hoxie, footnote 93.

⁷⁰ See Dowd, footnote 63, p. 162.

⁷¹ Kelly, footnote 195, p.89. ****See page 91 and footnote 196 for the quote and citation.**

⁷² Hoxie, footnote 107.

⁷³ Hoxie, footnote 123.

these white settlers in the Grand River country that the Indians' rights on ceded land "ceases the moment any part of it becomes private property."⁷⁴

c. Henry Schoolcraft to Commissioner, February 27, 1837: The agent told his superior that with regard to hunting rights on ceded land, he had explained to the Ottawas and Chippewas at Mackinac in July, 1836 that "as fast as the lands were surveyed and sold ... this right would cease." In this letter Schoolcraft also reported that he had overcome Indian resistance to the treaty and its revisions by using the key term settlement "in its ordinary meaning to denote the act or state of being settled...."⁷⁵

Prior to the signing of the treaty, the phrase "surveyed and sold" appeared only in the "Power of Sale" document sent to Mackinac in December, 1835. Following the signing of the treaty, the phrase "surveyed and sold" only appeared in communications among white people or in Schoolcraft's reports to his superiors. There is no documentary evidence that the phrase "surveyed and sold" was ever specifically discussed in face to face meetings with tribal leaders.

5. Attorney General Butler's Opinion

State experts Kelly and Karamanski understand that the April, 1837 Attorney General's Opinion clarified the meaning of Article XIII of the Treaty of Washington. Noting that Commissioner Harris asked Schoolcraft to publicize the opinion "throughout the state," Kelly suggests the ruling was intended to have a general application and was not "local and temporary" as Schoolcraft had indicated in his initial inquiry to the Indian Office.⁷⁶ Karamanski agreed with this position but added the remarkable suggestion that even though the Attorney General's Opinion was not communicated to the Ottawas in the area, "the actions of the Indians comported with the government's understanding of their rights...."⁷⁷ The absence of widespread conflict between settlers and Native Americans

⁷⁴ Hoxie, footnote 136.

⁷⁵ Hoxie, footnote 138.

⁷⁶ Kelly, 126; ****See pages 131-132 for quotes.** Hoxie, 67.

⁷⁷ Karamanski, 127.

in the Grand River indicated to Karamanski “a strong sentiment toward cooperation,” and perhaps a revival of “a new less durable type of “middle ground” in southwestern Michigan.⁷⁸

My report provided an alternate view of the Attorney General’s April 20, 1837 opinion. My view emphasized the opinion’s focus on one portion of the lands ceded in 1836 and on the unusual set of circumstances taking place there—in particular the short interval occurring there between the “survey” and “sale” of the lands in question. I also stressed the self-serving nature of the opinion; Butler was personally invested in Michigan real estate and wished to encourage the rapid spread of agricultural settlements there.⁷⁹ I did not address a historical question that now comes into focus in the wake of Professor Gregory Dowd’s report.

Professor Dowd revealed that the initial inquiry sent to Agent Schoolcraft in early 1837 did not come from a group of disinterested citizens. Dowd showed that “Lyman, Rathbone and Finney” were developers: men invested in the economic future of the area and involved in real estate, merchandising and the newspaper business. This information makes it clear that the local white petitioners were concerned primarily with the squatters and, specifically, that they feared these squatters would disrupt the smooth transfer of public lands to large syndicates such as the American Land Company. “Leading citizens ... had good reasons to oppose squatting,” Dowd wrote. The link to legal definitions of Indian land tenure were clear: “if Indians possessed rights to the ceded lands until the moment of public sale, their continued legal presence ... might provide a disincentive to squatting. Hoping for such a ruling, (that would essentially block squatters from filing

⁷⁸ Ibid., 127, 129. While historians are free to use concepts from one period in descriptions of another, Karamanski’s assertion here is not consistent with the monograph he cites. Richard White’s, The Middle Ground, states explicitly that his concept applied to the period prior to 1815. Interestingly, White concluded his book by recounting how in 1824, Lewis Cass’s secretary (and business partner) Charles Trowbridge, had interviewed Tecumseh’s brother, the Shawnee Prophet, for a government survey. White used the incident, in which Trowbridge “dutifully recorded” the old man’s stories, then “filed them away and forgot them,” to conclude his book. White wrote, “the middle ground itself had withered and died.” Richard White, The Middle Ground (New York: Cambridge University Press, 1991), 523.

⁷⁹ See Hoxie, 69-70.

preemption claims) the Grand Rapids' citizens had turned to the federal government.”⁸⁰ “The contest,” Dowd wrote a few pages later, “was not a simple one between Indians and squatters, but a complicated triangular conflict among Indians, squatters, and speculators.”⁸¹

Dowd's assertions prompt a new historical question: why did federal authorities, asked by Schoolcraft about an incident that he assured them was “local and temporary,”⁸² decide to address the question with a wide-ranging Attorney General's Opinion? Why make a local dispute the subject of an administration policy statement? There had been no widespread violence on the Michigan frontier and there was no potential “Black Hawk”-type rebel leader lurking among the Ottawas and Chippewas. The initiative for this ruling appears to have come from Commissioner Harris and the officials of the new Van Buren administration. And, significantly, it is in his letter to Commissioner Harris on February 27, 1837, that Schoolcraft retrieved and revived the “surveyed and sold” language last seen in the “Power of Sale” document sent to Mackinac in the winter of 1835-6. This new language—which had never been an explicit part of the previous spring's discussions—would now become Schoolcraft's phrase of convenience to prevent preemptionists from disrupting his and his business associates' plans for the Grand River valley. As Dowd wrote, “Schoolcraft and Butler reinterpreted the article (Article XIII) in the context of unfolding events and in the presence of propertied citizens.”⁸³

The information provided by Dowd—and confirmed by Susan Gray in her expert report—solves the riddle of why officials at the highest level of the Van Buren administration saw in Schoolcraft's “local and temporary” incident an opportunity to issue a formal statement with regard to preemption. The goal was to “stem the tide of preemption certificates threatening to wash over the General Land Office.” Gray adds, “The American Land Company did not deal in preemption certificates ... preemption was

⁸⁰ See Dowd, 257-261; quotations are at 261.

⁸¹ *Ibid.*, 263.

⁸² Quoted in Hoxie, 67.

⁸³ Dowd, 269.

bad business for the company.”⁸⁴ This argument need not reduce Butler, Schoolcraft and Cass to the level of corrupt inside traders. As Dowd wrote, these business men also believed that blocking preemptionists would preserve order in the Grand Valley and preserve the federal government’s role in the peaceful transformation of tribal lands to densely-settled agricultural communities.⁸⁵ But the government officials’ personal and political interests clearly inclined them to support using this local dispute as an occasion to enunciate a broad statement discouraging preemption. That broad statement would be best made by the Attorney General of the United States.

6. Corrections and Clarifications

a. Henry Schoolcraft was eager to see densely-settled agricultural communities spread across the new state of Michigan, but he knew that the agricultural potential of the Upper Peninsula and the northern portion of the Michigan peninsula was extremely limited. It is true that Schoolcraft predicted an expansion of agriculture “from the south to the north,”⁸⁶ but it is also true that Schoolcraft understood there were limits to that process. More important, the Ottawa and Chippewa leaders who agreed to the 1836 treaty (excluding those from Grand River) knew the Michigan landscape better than any government official. They knew agriculture would never become the primary source of subsistence in their homelands. They therefore understood Article XIII as a continuing provision, insuring them an ongoing source of food and sustenance.⁸⁷

b. Contrary to the implication of Dr. Kelly’s statement in his report, the Saginaw Chippewas were not removed from Michigan as a consequence of their treaty with the United States, signed in 1836. The tribe remains in the state to this day.⁸⁸

c. Contrary to Dr. Kelly’s assertion, “Maskigo and Grand Traverse” are not

⁸⁴ Susan Gray, Expert Witness Report, 40, 41.

⁸⁵ See Dowd, 268-9.

⁸⁶ See Hoxie, 65.

⁸⁷ For more on the pessimistic view of the north country at the time of the Treaty of Washington, see Charles Cleland, “Report on the Treaty Relations Between the Ottawa and Chippewa Indians and the United States,” 88-89. ****See pages 87-88.** The implications of this assessment are discussed at page 144.

⁸⁸ See Kelly, 110. ****See pages 114-115.**

“different names for the same band.”⁸⁹ The treaty document clearly lists Maskigo (or Muskegon) as a separate community.⁹⁰

d. Contrary to Dr. Kelly’s assertion, Susan Johnston’s father, Waubojig, was not the Ojibwe leader who “migrated from Chequamegon Bay in Lake Superior to the Sault.”⁹¹ The man who led the migration to the Upper Peninsula of Michigan was Susan’s brother (Waubojig’s son), Waiskee, also called Iaw bawaudick. He is the man whose departure for Washington, D.C. during the winter of 1835 both surprised and enraged the local leaders at Sault St. Marie.⁹² The Chippewa leaders who protested Schoolcraft’s relatives’ departure had lived at Sault St. Marie far longer and had a more legitimate claim to leadership there.

7. Conclusion

Reviewing the expert reports submitted by Dr. Kelly and Professor Karamanski has not altered my opinion that Article XIII of the 1836 Treaty of Washington provided the Ottawas and Chippewas who signed it with a “right of hunting on the lands ceded with the other usual privileges of occupancy” that would cease only when particular tracts of land became subject to settlement by agriculturalists who formed densely-populated communities of farmers and businesspeople. This “ordinary meaning” of the term “settlement” is the most reasonable definition to employ when assessing the meaning of Article XIII. That “ordinary meaning” reflects the Native American leadership’s desire to preserve their subsistence patterns and lifeways while accommodating the demands of American expansion. This “ordinary meaning” also reflects the United States government’s ongoing structural obligation—despite pressures

⁸⁹ See Kelly, 100, ff.219. ****See Page 102 for footnote 219.**

⁹⁰ See Hoxie, Appendix B, 2; ****Not provided.** or 4 Stat 491. ****Probably incorrect. See 7 Stat. 491.**

⁹¹ See Kelly, 67. ****See page 68 for quote.**

⁹² See Hoxie, 50-51; See Cleland, 77-78. It should be noted that Dr. Cleland believes the second Johnston relative from Sault St. Marie at the Washington, D.C. negotiations, Waubojig, was Waiskee’s brother. It seems clear to me, particularly from James Schoolcraft’s letter to his brother inquiring about the journey of “Waiskee and son,” that this younger Waubojig was Waiskee’s offspring. See Hoxie, 52, especially ff. 96. My use of the pronoun “he” in the second paragraph on page 51 of my report may be misleading; it refers to “Waiskee” and not to Susan Johnson’s father.

exerted by land speculators, politicians and missionaries—to mediate between tribes and white settlers.

The evidence provided by state experts for an alternative interpretation of events is not persuasive. The treaty can hardly be explained as the result of an “improbable” series of events. Moreover the evidence for a widespread Ottawa and Chippewa religious revival that inspired a decision to trade “land for time” is fragmentary and unpersuasive. The argument for a “revival” among the Indians of northern Michigan in the early nineteenth century does not make sense because it reduces complex human communities to “factions” of “traditionalists” and “progressives.” This highly speculative theory also requires the adoption—on faith, rather than evidence—of a belief that reports of scattered instances of religious change from self-serving missionaries constitute proof of an ecumenical, Protestant-Catholic “revival” in the north woods.

Given the evidence, the only reasonable conclusion one can reach is that the Native leaders who negotiated the Treaty of Washington in 1836, despite being manipulated, coerced and ignored by a cabal of government agents, fur traders, land developers and politicians, insisted on the insertion of the phrase “until required for settlement” in the agreement. They insisted on this unique treaty language because they knew it would allow them to continue to support their families with traditional hunting and gathering activities. Insisting on this language would not prevent them from later combining hunting and fishing with wage labor or agriculture; it simply preserved their long-standing lifeways in the face of a concerted campaign by powerful American officials to take title to their lands and use lands with agricultural potential for the expansion of settlement (and, for many, to turn a personal profit in the process).

It is striking that in the wake of the 1836 treaty, the subsistence patterns, cultural traditions and locations of Indian communities in Michigan—particularly in the Upper Peninsula and northern portions of lower Michigan—were marked more by persistence than by rapid change. With the exception of some of the Grand River Ottawas living near white settlements, Ottawa and Chippewa people in the treaty area continued to live

where they had been prior to 1836 and to subsist in ways that were similar to what had obtained before the agreement. Wage labor increased over time, as did adherence to the teachings of Christian missionaries, but the Native communities of the area continued to live in distinct enclaves.

Finally, there is no reasonable alternative to the common sense proposition that the Ottawas and Chippewas of Michigan understood the concept of densely-settled agricultural settlement and hunting rights. The absence of large-scale white agricultural settlements in northern Michigan meant to them that their hunting rights would continue indefinitely. There is no evidence that the Indians of Michigan stopped hunting once ceded lands were surveyed while there is evidence that Native people moved away from—and stopped hunting on—lands that became part of densely-occupied white settlements.

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