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The Importance of Ojibwe Sovereignty and Cultural Preservation as Evidenced by the Wisconsin Walleye War

Introduction

The Wisconsin Walleye War was the culmination of growing racial tensions between Natives and non-Indians in Northern Wisconsin during the 1980's and 90's. The event is remembered for the methods with which non-Natives attempted to stop Ojibwe people from exercising Treaty Rights to spearfish on land ceded by the Ojibwe in the mid-1800's. But, the subsequent Ojibwe response to such attempts has allowed for the development of more culturally aware curricula in Wisconsin through Educational Act 31. It was through cultural expressions of autonomy, such as identifying as *Anishinaabe*, spearfishing, and drum circles used in counter-protest, that the Ojibwe of Lac du Flambeau were able to legitimize its relationship to ceded territories, despite concerted misinformation efforts led by narrow interests. The Minocqua news publication, *The Lakeland Times*, attempted to direct outrage over the depletion of lakes towards the Ojibwe tribes by publishing misleading articles and op-eds from "tourists" claiming that "spearfishing would destroy the Northwoods economy".¹ Opposition to Treaty Rights was displayed in a frequently aggressive, and sometimes violent, fashion. Non-Indian protesters would carry and use racially charged signage and language, throw rocks, and sometimes shoot at spearfishers in order to prevent them from expressing their Rights.

¹ Great Lakes Indian Fish & Wildlife Commission, "The Nightmare that won't go away" in *Moving Beyond Arguments: Racism & Treaty Rights* (Great Lakes Indian Fish & Wildlife Commission: Odanah, WI) 8.

Background

The Lac du Flambeau Band of Lake Superior Chippewa Indians can trace their origins to Algonquin speaking people who were called Ojibwe, before the arrival of Euro-American settlers. The Ojibwe were allied with the Ottawa and Potawatomi, two other Algonquin speaking Nations, in a confederacy called the Three Fires.² Together they collectively refer to themselves as *Anishinaabe*, which is not really translatable to English. But, it is used in a modern context as a means of placing oneself within the larger cultural context of the Ojibwe.³ By the 19th century, disease and war had caused a sharp decrease in population amongst the Algonquins in the area and forced them to consolidate into villages through a shared custom of *Midewiwin*.⁴ The Midewiwin ceremony brought people together at a time when their world was changing significantly and established a cultural unity amongst what used to be disparate groups of a similar origin. Within Anishinaabe villages, members would be given a name and clan based on their lineage that demarcated certain roles for certain clans.⁵ The Treaty of 1854 was the Treaty that established the Lac du Flambeau Reservation.⁶ This history is what informed the cultural aspects of the practice of spearfishing, and ignorance of it lead to an explosion of misguided outrage towards Native Americans.

² Phil Bellfy, *Three Fires Unity: The Anishnaabeg of the Lake Huron Borderlands* (Lincoln, NE: University of Nebraska Press, 2008) ix.

³ Larry Nesper, *The Walleye War: The Struggle for Ojibwe Spearfishing and Treaty Rights* (Lincoln, NE: University of Nebraska Press, 2002) 120.

⁴ Ibid. 32.

⁵ Ibid., 36.

⁶ Lac du Flambeau Tribe, "About Us" (Lac du Flambeau Tribe; <https://www.ldftribe.com/pages/2/About-Us/>) accessed 3/2/17

Cultural Significance of Spearfishing

The name of Lac du Flambeau, translated to “Lake of the Torches”, comes from the translation French explorers who called it such after seeing Native people holding torches that they used to locate Walleye at night.⁷ However, the term “*Waswagoning*” which also refers to the practice of spearfishing, is preferable due to its acknowledgement of its Native origins. Much of Anishinaabe culture is defined through humans’ relationship to non-humans as being one of reciprocity, in which the consumption of a non-human was an act of reverence and reaffirmed the dependent nature of mankind on nature.⁸ This is expressed through the understanding of all living things as having a personhood and an innate value. While the practice does have historical significance; spearfishing offers a means through which young Ojibwe men are able to create developmental milestones through which boys are able to transition to manhood.⁹ Through the 20th century, Ojibwe culture, among many other American Indian cultures, was targeted by initiatives meant for the express purpose of forcing their assimilation into Euro-American society. This was perpetrated through forced migrations of Native People, compromised treaties, and English-speaking boarding schools.¹⁰ As a result, cultural preservation efforts can be seen as an act of defiance. By maintaining their culture, against the wishes of the Federal Government, the Ojibwe were able to ensure their longevity into the modern era.

By the time that the Ojibwe were asserting Treaty Rights in the 80’s, the act of “violating”, or hunting/fishing in places and times that were not corroborated by DNR regulations, had become an important part of life in Lac du Flambeau as an act of rebellious

⁷ Ibid.,

⁸ Nesper, *The Walleye War*, 110.

⁹ Ibid., 93.

¹⁰ Lindsay Peterson, “*Kill the Indian, Save the Man,*” *Americanization through Education: Richard Henry Pratt’s Legacy* (Honors Theses: Colby College, 2013) 86.

autonomy, subsistence, and as a right of passage. Wisconsin, in 1879, decreed that Natives had to abide by state laws on their reservations, as well as on ceded territory.¹¹ So, in order to maintain their culture and way of life, it became necessary for Natives to “violate” the laws of the State. The practice of “violating”, which often includes spearfishing and shining, could be seen during the Great Depression as a means with which people could feed themselves and their families.¹² By asserting Treaty Rights without the permission of the DNR, Ojibwe violators demonstrated a connection to their history and denial of state control. But, those caught violating were at risk of fines and confiscation of equipment.¹³ As a result, it became necessary to violate in secret in order to maintain the cultural ties associated with the practice. In the more contemporary context of spearfishing, young boys and girls will join family members on spearfishing trips wherein they assist the spearman by holding a lantern so as to reflect the light off of the eyes of Walleye, eventually learning how to do it themselves and pass the tradition on to following generations.¹⁴ Such a system is reminiscent of traditional knowledge systems insofar as it places an emphasis on repetition as a means of learning. As such, the ability to assert Treaty Rights is not merely an issue of cultural preservation, but an issue of the right to govern and educate oneself.

Policies Affecting the Case

Treaties:

¹¹ Nesper, *The Walleye War*, 50.

¹² *Ibid.*, 52.

¹³ “Treaty Rights” Great Lakes Indian Fish & Wildlife Commission (GLIFWC)
<http://www.glifwc.org/TreatyRights/>

¹⁴ Lac Du Flambeau Tribe, “About us”.

The first of the Treaties invoked by the Ojibwe over the course of the Walleye War was signed on July 29, 1837 by Chiefs and Warrior Headsmen.¹⁵ The Treaties established the Treaty Rights that allow the Ojibwe of Lac du Flambeau to spearfish on off-reservation lakes and waterways. Article 5 of the Treaty states “The privilege of hunting, fishing, and gathering wild rice upon the lands, the river and the lakes included in the territory ceded, is guaranteed to the Indians, during the pleasure of the President of the United States”.¹⁶ The operative phrase in this article being “during the pleasure of the President of the United States”. This means that only the President of the United States can revoke and reinstate these rights at their discretion.¹⁷ The Ojibwe who signed the Treaties did so knowing what rights were important for them to retain in order to preserve their culture. The reserved right to hunt and fish was purposefully included in order to ensure that Anishinaabe would have access to the resources that they have depended on historically.¹⁸ Access to these resources, as described in the Treaties, was the focal point of the case *Lac Courte Oreilles Band, etc. v. Voigt*.

Lac Courte Oreilles Band, etc. v. Voigt:

In *Lac Courte Oreilles Band, etc. v. Voigt*, the United States Court of Appeals found in Favor of the Ojibwe Nations. In this case, it was determined that Native Peoples’ Treaty Rights were not voided by the Removal Order of 1854 due to its invalidity.¹⁹ This decision allowed for the Ojibwe to gain agency over the resources they have used for thousands of years. But, some

¹⁵ Nesper, *The Walleye War*, 50.

¹⁶ Government Printing Office, “Treaty with the Chippewa, 1837” edited by Charles J. Kappler (Washington: government Printing Office, 1904).

¹⁷ *Minnesota v. Mille Lacs Band of Chippewa Indians* 124 f. 3d 904 (1999)

¹⁸ Great Lakes Indian Fish & Wildlife Commission “Ojibwe Treaty Rights Flipbook” Great Lakes Indian Fish & Wildlife Commission (GLIFWC) <http://www.glifwc.org/publications/TreatyRightsFlipbook/index.html> 6-7.

¹⁹ *Lac Courte Oreilles Band, etc. v. Voigt* 700 F.2d 341 (1983)

people questioned the authenticity of the Ojibwe as being connected to the people who signed the Treaties. The rejection of Treaty Rights by Non-Indians led to protests throughout Northern Wisconsin in what is now called the Wisconsin Walleye War. But, to some people in Lac du Flambeau, the *Voigt* decision presented an opportunity for the other Ojibwe Tribes throughout Wisconsin, Michigan, and Minnesota to develop a plan to manage ceded lands.²⁰ The *Voigt* decision allowed Ojibwe Tribes an opportunity to learn how to better represent their interests in the political arena as well as provided them with the means to leverage their newfound political power in order to preserve their culture and sovereignty.

Analysis

Following the *Voigt* decision, local media coverage from *The Lakeland Times* served only to exacerbate racial tensions through the featuring of coverage branded as “comprehensive”. They featured articles demonstrating strong bias against Natives, with the first article following *Voigt* being titled “Ruling Allows Chippewa Indians off Reservation Hunting Anytime”.²¹ This instilled the fear that the Treaty Rights will allow the Anishinaabe to overfish and over-hunt in lakes off Reservation. *The Lakeland Times* played to the fears of the locals who rely on the tourism industry, usually in the form of outdoor recreational sports (including hunting and fishing). They continued this coverage, eventually adding statistics regarding the number and weight of fish taken by Native spearfishers.²² By presenting the total tribal take of fish, the articles implied that Natives would fish walleye to extinction on waters outside of reservations. These arbitrary numbers were merely used as a red herrings to indicate avarice on the part of the

²⁰ Nesper, *The Walleye War*, 74.

²¹ *Ibid.*, 70.

²² *Ibid.*, 79.

Ojibwe. They also played to local fears that overfishing would harm tourism in the area, and opinion pieces from tourists in Illinois served to reaffirm such beliefs.²³ In featuring these articles, and presenting it as “objective journalism”, *The Lakeland Times* was able to convince locals, ignorant of Treaty Rights, that their way of life was being threatened by Ojibwe spearfishing.

The Wisconsin Department of Natural Resources was in charge of keeping track of statistics on Ojibwe harvests as a means to exercise some state control over people asserting their Treaty Rights. They were able to exert this control through requiring tribal ID, limiting the maximum size of takable Walleye, as well as allowing only certain lakes to be spearfished on.²⁴ But, the Ojibwe, as a result of the affirmation of Treaty Rights, were able to negotiate with the DNR and work with them as a sovereign Nation, rather than a state subordinate. The Ojibwe created the Voigt Inter-Tribal Task Force in order to negotiate with Wisconsin’s DNR and work towards self-regulation.²⁵ This task force was the first step towards a greater political presence in Wisconsin and allowed for the development of a more concerted effort to challenge the misinformation spread by anti-Tribal groups.

The Lac du Flambeau Band of Lake Superior Chippewa were amongst the most willing to exercise their Treaty Rights and were very involved in defending them. Tom Maulson, a noted tribal leader during the fight for Treaty Rights, was among the first to recognize how necessary a concerted effort to maintain their rights was.²⁶ The opposition presented the Native activists as being inauthentic Indians, and that they had no vested cultural interest in maintaining the

²³ Ibid., 79.

²⁴ Ibid., 76.

²⁵ Ibid., 76.

²⁶ Ibid., 75.

wellbeing of the lands and waters of the ceded territories. Vera Lawrence, a proponent for the abrogation of Treaty Rights and tribal member of Sault Ste. Marie Chippewa, argued that the Ojibwe of Lac du Flambeau were not “full-blooded”, and thus were not the same people with whom the Treaties were made.²⁷ This point was important to protestors, because it provided an avenue to criticize Natives that did not depend on court decisions; it seemed to be a way to justify the racialization of the conflict. The Ojibwe response was to prominently and proudly display their cultural connections in order to prove the protestors wrong in their assumptions.

Anti-Treaty protestors did not act individually, but rather were quick to form organizations in order to oppose the Tribes. Among the first of these groups was Protect Americans’ Rights and Resources (PARR), which held a rally in Minocqua in 1985, supported by *The Lakeland Times*, that saw an attendance of 1,200 anti-Indian activists.²⁸ The goals of such organizations and the rallies held by them called for “[the] abrogation of treaties, termination of tribal governments, and an end to ‘special privileges’”.²⁹ The fact that many referred to Treaty Rights as “privileges” conferred upon a particular group, rather than retained rights by a Sovereign Nation, is a testament to the misinformation non-Natives have received. Among these protestors, were around 100 Native counter-protesters being led by Maulson in a drum circle.³⁰

The drum circle was a significant tool in establishing cultural credibility and proving themselves to be adherents to Native traditions while also displaying their steadfastness in the face of such ardent opposition. Utilizing traditions in such a manner helps to illustrate the value and power of cultural institutions as a means of expressing one’s agency and sovereignty over

²⁷ John Paul Leary, *The Tangled Roots of Act 31: American Indians and Curriculum Policy in Wisconsin* (Phd. diss., University of Wisconsin-Madison, 2012) 78.

²⁸ *Ibid.*, 78.

²⁹ *Ibid.*, 84.

³⁰ Nesper, *The Walleye War*, 72.

attempts at cultural colonization. While such actions did help, it did not dissuade protesters from interfering with spearfishers, which included the placement of solid concrete decoy walleyes meant to destroy the spears used by the Ojibwe (fig.1.). It was not solely the perceived threat of lake depletion that called so many to action against the Ojibwe, but also fear based on racial prejudice.

The role of racism in the conflict cannot be overstated. It was not long before protestors carried signage promoting violence against Native people. Among the most infamous of these depicts a man holding a sign that reads “Save a walleye, spear an Indian” (fig. 2.) So great were the fears that Native spearfishers would depopulate the lakes, many non-Indians forgot about their tendency to fish on Reservation lakes. Maulson spoke about the historical tendency of non-Indian fishermen to fish on Reservation waters as an indication of the racism inherent in the opposition. He went on to mention the fact that spearfishers have been shot at by protesters just because they were asserting Treaty Rights.³¹ It was not even the fact that people were spearfishing, but solely Native spearfishers. The state of Wisconsin has allowed spearfishing on Lake Winnebago, but has seen no protests there.³² Such racialized thinking was made worse by recurring declarations from *The Lakeland Times* that Treaty Rights were going to destroy the primary industry of tourism in the Northwoods. The racism exhibited by Anti-Treaty protesters is indicative of the miseducation of the people on matter of Tribal Sovereignty and history.

Lessons Learned - Applications

³¹ Nesper, *The Walleye War*, 84.

³² Great Lakes Indian Fish & Wildlife Commission, *Moving Beyond Argument: Racism & Treaty Rights* (Great Lakes Indian Fish & Wildlife Commission: Odanah, WI) 17.

One of the most clear lessons to be learned from this conflict is the role of sovereignty, and how it is expressed through Native cultural institutions. This became a focal point for action against anti-Tribal groups who questioned the authenticity of Ojibwe cultural ties to the lands ceded in the Treaty of 1854. One of the largest problems with opposition groups was a lack of understanding of how Tribal sovereignty works and that Treaty Rights were not privileges conferred to the tribe arbitrarily, rather they were reserved rights that the Anishinaabe claimed in exchange for the land given to the US (fig.3). An understanding of the relational aspect of Ojibwe culture, and how that is tied essentially to the practice of spearfishing and hunting, is key in providing educational content to instructors and students.

Educating Wisconsin students in the cultural significance of practices mentioned in Article 5 of the Treaty is of the utmost importance. However, in order to do so, it is necessary to provide the historical context of the origins and maintenance of these practices. This then would have to include material regarding the clan system and origin stories, as well as understanding the role in warfare, which extends to hunting, as a means through which Anishinaabe youth were able to achieve passage into adulthood.³³ An emphasis would need to be placed on understanding the reciprocal relationship between man and nature and the benefits such a thought system offers. It is also important to consider the political maneuverability that Treaty Rights have conferred upon the Lac du Flambeau Reservation. By being able to declare a certain amount of Walleye to be claimed, the tribe was able to gain other economic considerations, like the ability to sell licenses for outdoor recreational activities.³⁴ Treaty Rights have not just allowed Native

³³ Nesper, *The Walleye War*, 59.

³⁴ Paul A. Smith, "Wisconsin Walleye Fishing Could be Limited by Spearing Plans" (*Milwaukee Journal Sentinel*, March 18, 2013)

communities to practice their customs, but have also given them the means with which to negotiate with Wisconsin as equals.

Curricula that have come about as a result of Educational Act 31 have promoted the education of Wisconsin youth about Native Nations, but there are some issues yet. One of the largest problems stems from a lack of awareness of Native cultures amongst educators. In 2014, Educators have stated a need for both materials and professional development in order to properly teach about Wisconsin American Indian Tribes and Bands. Educators indicated that amongst the three categories listed; culture, history, and tribal sovereignty, need for both metrics ranged from 60 to 72%.³⁵ It would seem that there exists a dearth of such materials, despite the fact that including them is key to providing a quality education to Wisconsin students. Educators have pointed out the significance of the “educational importance and awareness” of native cultures, due to the fact that Native perspectives are essential in gaining an understanding of Wisconsin history as a whole.³⁶ This is because Native history is Wisconsin history, for too long have academics treated Indigenous Nations as conquered peoples, expecting them to adopt the customs of their colonizer. Such modes of thought are outdated due to their ignorance of Tribal sovereignty.

Since the conclusion of the Walleye War, Treaty Rights have still remained a topic of debate and contention. A 2012 news article from *The Lakeland Times* reports the numbers of walleyes speared by tribal spearfishers. However, the racially charged rhetoric seems to have dissipated largely, but the article still points out that there yet remains opposition to Treaty Rights. The article even notes that spearfishers are still threatened by rocks and gunshots being

³⁵ Shelly Hadley and Trechter, David, “Wisconsin Education Act 31: 2014 Administrator and Teacher Survey Report” (University of Wisconsin-River Falls, June 2014) 21.

³⁶ *Ibid.* 23.

used to scare them off of the water.³⁷ Such is proof that there is still work to be done in educating people on the subject of Treaty Rights. It would most likely be beneficial to provide accounts of off-Reservation management plans developed by Native Communities as a means of portraying how valuable resource conservation is to many communities.

Conclusion

Tom Maulson has stated “We, as Indian people, have to start to acknowledge the fact that granted it was oral history, we have to talk about our language, we have to tell people, we have to bring that back, and if we don’t we’re going to fade away just like the mist and the rain when it comes and goes.”³⁸ The Ojibwe of Lac du Flambeau were able to retain the Rights reserved by them in the Treaty of 1837 through several means. An emphasis on preservation of cultural practices and ties helped to legitimize their claims as being the same People that signed the Treaty. Through the application of direct action practices, as evidenced through the concerted effort through which spearfishers would work together while participating in spearfishing and through counter-protesting. Indirect methods were effective as well; cultural preservation promoted education initiatives, the establishment of a judiciary allowed for stronger community action, and gave the Anishinaabe leverage through which they could gain autonomy over themselves.

³⁷ Craig Turk, “Final Spearfishing Numbers Show More Than 33k Walleyes Harvested” *The Lakeland Times*, June 15, 2012.

³⁸ Tom Maulson, “Tom Maulson Lac Du Flambeau Ojibwe, Wisconsin” http://www.ojibwe.org/home/pdf/Tom_Maulson_LDF.pdf, accessed 3/2/17. 2.

Figures

Fig. 1. Concrete walleye decoy purchased at PARR Rally in Minocqua, Wisconsin, April 15, 1989



Wisconsin Historical Society, "Anti-Spearfishing Concrete Walleye Decoy"
<http://www.wisconsinhistory.org/turningpoints/search.asp?id=1590>, accessed 3/2/17.

Fig. 2.



Great Lakes Indian Fish & Wildlife Commission, "Protests",
<http://www.glifwc.org/TreatyRights/protest.html>. Accessed 3/2/17.

Fig. 3.



Great Lakes Indian Fish & Wildlife Commission "Ceded Territories" Great Lakes Indian Fish & Wildlife Commission (GLIFWC) <http://www.glifwc.org/map.html>

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