

Controversies and Cases: The Indigenous Peoples of Michigan

Slide 1: Introduction

There are 12 federally recognized Native-American tribes in Michigan: Bay Mills Indian Community; Grand Traverse Band of Ottawa and Chippewa Indians; Hannahville Potawatomi Indian Community; Huron Potawatomi, Inc.; Keweenaw Bay Indian Community Tribal; Lac Vieux Desert Band of Lake Superior Chippewa Indians; Little River Band of Ottawa Indians; Little Traverse Bay Band of Odawa Indians; Pokagon Band of Potawatomi; Saginaw Chippewa Indian Tribe; Sault Ste. Marie Tribe of Chippewa Indians; and the Matcheбенashshewish Band of Potawatomi. The 2000 census calculates the American Indian population of Michigan to be 58,479, making it the state with the tenth largest population of Native Americans in the United States (<http://factfinder.census.gov> and The Michigan Commission on Indian Affairs: Annual Report 1998). This number is believed to be an underestimation, with the population being cited by the governor and others at closer to 65,000. The numbers constitute less than one percent of the entire population in Michigan, but Native Americans are an ethnic minority that has had an enormous impact on social organization and legal interpretation. They are a people, however few or many, who have left an indelible mark on Michigan society and law.

Slide 2: 19th Century Treaties

During the 19th century, seven treaties were signed that constituted the basis for the creation of the state of Michigan. In November of 1807, the [Chippewa, Potawatomi, Ottawa, et al Nation](#) signed a treaty that ceded the Detroit area [to the United States](#). In September of 1819, a treaty was signed by the Chippewa relinquishing mid-Michigan and nearly half of eastern northern Michigan. In 1821 the [Chippewa, Ottawa, Potawatomi](#) signed a treaty relating to lower western Michigan. The Potawatomi signed a treaty in September of 1828 concerning the western most tip of lower Michigan. The Ottawa, Chippewa signed a treaty completing the formation of the lower peninsula. Two treaties signed in 1836 by the Menomini Nation and then the Ottawa, Chippewa, followed by the final treaty in 1842 with the Chippewa of the [Miss.](#) and Lake Superior finalized the state boundaries by adding the Upper Peninsula. (The Michigan Commission on Indian Affairs: 1998 Annual Report)

"Each of the Treaties had a specific purpose related to the cession of Indian-owned land, to the United States, for the purpose of establishing the state. In 1837, the sovereign state of Michigan became a reality as a direct result of the Treaties" (Michigan Commission on Indian Affairs 1998). Signed nearly 200 years ago, these treaties were not only the foundation for the creation of the state, but they continue to be a strong factor in deciding issues such as tribal sovereignty, reparations, fishing rights, and gambling. Treaties have also come to play an enormous role in the relations between Native Americans and state and federal governments. In *United States v Michigan*, 1979, the U.S. Supreme Court ruled that a "treaty with Indians must be construed as the Indians would have understood it...(it) must be construed liberally in favor of Indians so that Indians are not wholly disadvantaged by the strength and resources of the United States" (471 F.Supp 192). In essence, when any legal case involving treaties and the rights of Native Americans is decided by a court, how Native Americans intended the treaty is a factor, but never the sole determinant.

State and federal legal proceedings of the last part of the 20th century have greatly affected not only Native Americans but all citizens of the state of Michigan. There has been great anger and tension, especially concerning fishing rights, between non-tribal citizens and Native Americans. Understanding what rights are in place and their legal foundation can foster greater acceptance and peace between all races.

Slide 3: Tribal Sovereignty

All interactions between Native-American tribes and the United States government are based on the concept of tribal sovereignty. The Legislative Research Division defined tribal sovereignty as “the inherent right of the tribe to govern itself.” It further explained that:

This right is predicated on the fact that prior to European colonization, tribes conducted their own affairs and needed no outside source to legitimate their powers or actions. Once the Europeans arrived in North America, they claimed dominion over the lands they found, thus violating the sovereignty of the tribes already living there. As a consequence, Native Americans in Michigan retain a host of special rights, including gaming, hunting and fishing, and higher education tuition waivers.

With the foundation of tribal sovereignty, a firmly entrenched legal reality upheld repeatedly by the U.S. Supreme Court, Native Americans have the grounds to address a wide variety of other issues.

Slide 4: Fishing and Hunting Rights

One of the greatest struggles between Native Americans and the Michigan government comes from the controversy over fishing rights. This issue is of special importance in Michigan because of the profitability of the industry to the state. There has long been friction between the state and Native-American fishers who have resisted attempts to be regulated. The following cases indicate “the severity of the clash between private rights and the state’s power to reasonably regulate the exercise of such rights for the public good and the environment” (26 WnL 795).

One of the first cases involving fishing and hunting rights was *People v Chosa*, in 1930. Northern Michigan waters were, and are, a renowned tourist location for fishing and white citizens were concerned by the presence and actions of Native Americans. James L. Chosa and Basil Attikons, both Chippewa, were convicted of violating state fish and game laws on Keweenaw Bay on Lake Superior. Based on the treaties of 1836, 1842, and 1855 the defendants argued that Chippewas retained the rights to fish and hunt off-reservation. Their claim was that only the President of the United States could limit Indian hunting and fishing rights. The Michigan Supreme Court ruled that although treaties established the rights of the Indians to hunt and fish on reservation land, they were subject to the game laws of the state and that game regulation was an exercise of the sovereignty of the state, not the President. (Michigan Indian Rights Controversy and 252 Mich 160). The decision utilized a very rigid interpretation of the treaties and minimized the validity of treaties for Native Americans. The state and sport fisherman were relieved to know that Michigan had dominion over the actions of Native-Americans in the Great Lakes.

In 1971, the ruling in *People v Jondreau* overturned the ruling given in *People v Chosa*. William Jondreau had been convicted for illegally catching four trout from the same Bay that

Chosa and Attikons had fished. The Court held “that the state’s fish and game regulations could not be applied to the Chippewa and Ottawa Indians protected by the treaties of 1836 and 1855 whether on or off the reservation because these treaty rights took precedent over state laws by the virtue of the Supremacy Clause of the United States Constitution.” Significantly, treaties were interpreted by the Court to take into consideration what Native Americans had intended or desired at the time of signing, rather than by the strict wording of the document. (MIRC and 364 Mich 539). Two questions remained: did treaty rights apply to off-reservation sites and when treaties did not specifically mention fishing rights did Native Americans still retain them? This controversy demanded further legal action for resolution.

Slide 5: The 1970s

The early 70s would intensify the controversy when the Department of Natural Resources banned gill nets, the most common method of fishing for Native Americans, in an attempt to conserve the commercial game fishing industry. Albert LeBlanc was arrested for using a gill net and fishing without a commercial license and found guilty in a local district court; the court of appeals reversed the decision. The case ultimately went to the Michigan Supreme Court, which upheld the reversal. There were several questions raised by this case: 1) the license requirement, 2) regulation of treaty rights, and 3) state prohibition of gill nets. It was found that the license requirement did violate treaty rights but the ramifications and scope of state regulation were not addressed. (MIRC and 399 Mich 31).

The legal battle culminated in *United States v State of Michigan*. Judge Noel Fox of the Federal court ruled in a fashion that was considered stunning. *Michigan Out-of-Doors* summarized the case by stating, “Litigation leading to the landmark decision dates to 1973 when the federal government filed suit on behalf of the Chippewas against Michigan, alleging that the state was interfering with the Indians’ right to fish under 19th century treaties by arresting them for violating state fishing regulations” (July 1979 p32). The decision expanded the provisions set forth in *People v LeBlanc*. Where the Michigan Supreme Court had been wary to tread in 1976, Judge Fox boldly forged ahead in “what has been called the most far-reaching Indian rights decision” (MIRC/8). Fox concurred with Native Americans, ruling that they had never given up their fishing rights through treaties and that their rights took precedence over the state’s right to regulate fishing. This decision did little to rectify the tensions and suspicions between Native Americans and sports fisherman. It was a complicated case that involved great legal maneuvering, but ultimately the United States Supreme Court refused the case and the decision stood.

Slide 6: Gill Nets

Gill nets have been used in the Great Lakes since 2500 B.C. Discussions of Native-American fishing rights inevitably lead to the topic of gillnets. They are undoubtedly the traditional tool of Native Americans, but commercial and sports fisherman, along with the DNR, see the tool as having many adverse affects on the environment and fish populations. The main argument against the use of gillnets is that they are non-selective and are believed to lead to depletion of certain fish species.

Slide 7: Consent Agreement

The Consent Agreement of 1985 afforded the most hope for future relations between Native Americans and sports fisherman. “The agreement sought to achieve the following aims: accommodation of Indian rights, protection of the fishery, and cessation of Indian-white hostilities”(MIRC/11). To date, the Agreement has been mostly successful and was renewed in 2000, demonstrating that tribes and the State seem to have reached a tentative peace.

Slide 8: Gambling

Another issue of particular concern in the state of Michigan is the question of gaming rights. In the past five years, casinos have become a commonplace sight in the state, but many residents vaguely remember the conflict and difficulty that preceded their existence. Establishing casinos on reservations within Michigan was a complicated process that involved not only the U.S. Supreme Court but also a 1988 act of Congress known as the Indian Gaming Regulatory Act (IGRA). The nuances of the compact between the states and tribes were just recently questioned with the establishment of the three private casinos in Detroit. Whether you gamble or not, there is little doubt that this issue affects everyone in Michigan.

The dilemma began with an innocent enough game, Bingo. The state of Michigan decided to take certain tribes to court for failure to obtain a license for high stakes Bingo. Once again, the foundation of the suit was to explore what rights the state had to regulate tribal activities. The gambling issue was based less on specific treaties, as in the fishing suit, and more on the intrinsic concept of tribal sovereignty. While Michigan attempted to resolve the issue, the same question was being asked on a national level. It would be the federal government that would assist each state in answering the question of the extent of tribal sovereignty in two ways: first with the U.S. Supreme Court decision in *California v Cabazon Band of Mission Indians* and second with the Congressional Act that resulted in IGRA. The *Cabazon* decision allowed for Native Americans to participate in gambling without interference from the state as long as the activity was allowed by the state. In Michigan, Bingo was legal and therefore Native Americans were allowed to conduct high stake games. IGRA classifies gambling in three categories. Class III prohibits casino gambling unless it is legal in the state and the tribe enters into a compact with the state (Gaming & Casino Oversight 1). IGRA forced the state of Michigan, which allowed gambling, to enter into good faith negotiations with tribes. The combination of *Cabazon* and IGRA on the national level made it possible for tribe-sponsored gambling in Michigan.

Slide 9: Native American Casinos

[This map shows the location and number of casinos run by Michigan tribes currently operating in the state of Michigan.](#)

Slide 10: Negotiations

In the state of Michigan, compact negotiations began in 1989 and took almost four years to resolve due to a disagreement in the use and legality of slot machines. Governor Blanchard, followed by Governor Engler, refused to “allow electronic games of chance in the compacts. Both Administrations believed that these games did not meet the test of being authorized by State law” (Griffin 2). It would be a case that did not involve Native Americans that would

effectively allow for games of chance to be included in negotiations. *Primages v Liquor Control Commission* confirmed that electronic games of chance were legal in the state of Michigan. That *Primages* decision gave compact negotiations the resolution needed to conclude amicably on August 30, 1993. Though IGRA forbade states to impose taxes beyond the deferment of regulation, the tribes agreed to pay state and local government eight percent of the “net win, the amount wagered minus the payout to the players” (Gaming & Casino Oversight 2). Native Americans negotiated casinos with slot machines and conceded to share the profits as long as they had the exclusive right to operate slot machines.

Slide 11: Detroit Casinos

Detroit casinos further added to the complex nature of state and tribal interaction. The governor refused to permit off-site casinos for tribes so a vote, for the fourth time, went before the city of Detroit to allow private casinos. The proposal was passed and three licenses were issued for casinos in the city. With three private casinos now allowed to operate, all with games of chance, the question arose as to whether tribes still had to pay the eight percent of net win to the state. *Sault Ste. Marie Tribe of Chippewa Indians v Engler* in 1998 stated that “Michigan Indian tribes still hold the exclusive right to operate electronic games of chance in Michigan despite enactment of the Michigan Gaming Control and Revenue Act authorizing and the granting of up to three licenses for casino gambling in Detroit” (146 F.3d 367). For the time being, there seems to be another lull in the struggle between tribes and the State.

Slide 12: Conclusion

Issues such as tribal sovereignty, fishing rights, and gambling extend beyond the realm of Native American concerns. There are many others affected by the issues discussed in this presentation. The decisions of the Michigan Supreme Court, as well as the U.S. Supreme Court, have ramifications far beyond the tribal community. There can be little doubt that understanding the basis for the status quo can help enlighten all members of our society and might aid in greater peace between Native Americans and non-Indian people. The Michigan Supreme Court has and continues to play a vital role in the lives of each and every citizen in Michigan, and Native American rights are just another lens through which to view the magnitude of that role.

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Photos

1. Gillnet Photo: Vertical File at the Library of Michigan; Indian: Fishing and Hunting Rights
2. Treaties Photo: Michigan Commission on Indian Affairs: 1998 Annual Report
3. Casinos Photo: A History of Indian Gaming in Michigan: Prepared by Jerry Griffin