PATENTS AND TAXES, AND POOF! IT'S GONE

BY STANETTE AMY

INDIANS LIVING IN WHAT IS NOW NORTHERN MICHIGAN RETAIN NO PROPERTY RIGHTS

The Indians of what is now northern Michigan were awarded land patents from the U.S. government in the Treaty of 1836.

But to those Indians, the earth was their mother. How could they own their mother? It seemed an odd idea. Odder still was the concept that someone, somewhere, determined that after they made the treaty agreement and lived up to it, they had to pay still more money each year. But without a postal address, they received no notice of their tax assessments. Taxes went unpaid, and then they were told that because taxes were not paid, the land was no longer theirs.

Poof.

This article explores the question of whether the transfer to state ownership of certain lands allotted to Indians in the Treaty of 1855 (as an amendment to the Treaty of 1836 between the Ottawa and Chippewa Nations and the Territory of Michigan) was proper when parcels reverted to the state for nonpayment of ad valorem taxes assessed to Indian owners in fee simple.

Tribal life before contact with Europeans, with its attendant view of all life being sacred and interconnected, is contrasted with the settlers' focus on control and use of land. The history of land transfer in patent according to the Treaty of 1855 is considered in light of recent United States Supreme Court decisions and the concept of clear expression of Congressional intent to tax.

Tribal Life Before European Contact

The Ojibwe (or Ojibway/Chippewa/Otchipwe)[1] are part of an Algonquin-based language group that with the Ottawa (Odawa/Ottoway/Odahwaug)[2] and the Potawatomi[3] make up what is called the People of the Three Fires. The Ojibwe also refer to themselves as Anishnabeg (plural) or Anishnabe (singular), which translates to ''first man,'' and consider themselves the original human beings created by Gitchii Manidou, or Great Spirit/Creator. Oral tradition states that the Anishinabe came from Wabanake, a place to the East, and after a migration down the St. Lawrence Seaway that took many generations, finally arrived at the place of the Great Turtle (michi mikinock/Michilimackinac/michigigan/Michigan)[4] on the northern shore of Lake Huron, near what is now called Sault Ste. Marie. From there, they spread over the Upper Peninsula and the northern Lower Peninsula of Michigan.

The Ojibwe were hunters and fishers who supplemented their diet with gathered wild food and garden vegetables. The lifestyle was migratory and cyclic. Spring found families near rivers harvesting spawning fish. Next came a move to the sugar bush (maple tree groves) to collect sap and produce syrup and sugar. Summer encampments often formed larger villages of related families hunting, gardening, and preserving, with fall harvesting of wild rice from lakes and rivers. Winter was the time for hunting, trapping, and ice fishing.[5]

Subsistence activities, part of the ongoing of life, were viewed in a spiritual framework. All of Creation was considered to be alive. The taking of any part of it was accompanied by prayer and thanks to the spirit of the being that gave of itself for the ongoing of the people. Harvesting of plants and animals was undertaken in the amounts needed for health of the people. Because everything was seen as interrelated, overharvesting did not occur, as it would interrupt the sacred circle of life.[6]

All individuals knew the genealogy of their clan. Members of the same clan were responsible to all other members as brothers and sisters for support. Because of the prohibition of marriage within a clan, marriages were always between clans. This resulted in the husband

FAST FACTS:

- Indians living in what is now northern Michigan before the Europeans came considered land to be a gift that was not owned, governed, or controlled.
- Though the European concept of property ownership was foreign to them, land patents were allotted to Indians in the treaties of 1836 and 1855.
- These lands, which at times were taxed at twice the rate of non-Indian property, reverted to the state for nonpayment of ad valorem taxes when Indian owners, who had no postal addresses, did not receive notice of their tax assessments.
- Current law upholds the government's right to assess ad valorem taxes on lands patented to Indians—none of the Indians affected retain any ownership rights.

and wife each having a large number of people to whom they could look for support and to whom they were likewise responsible. Sharing of resources was valued highly and ensured that everyone would have necessities; everyone knew that when times were good, they would share with others, and when times were lean, resources would likewise be redistributed among all. Respect and status came from being a good person—sharing with others, which perpetuated the community and sustained its existence.[7]

After European Contact

Basic questions facing fifteenth century Europeans were, ''who are the people living on the other side of the ocean'' and ''what will our relationship be to them and their land?'' The Catholic Church responded in the spring of 1493 when the Pope issued the famous *Inter Caetera*,[8] in which the Catholic Church granted all the lands and countries the Spanish had already discovered or might discover in the future to the kings of Castile and Leon. The Pope was considered Christ's vicar on earth, so if anyone had authority to make such a grant, it would have been he.

By cloaking the political intent in religious context, the Church's mission to spread the gospel to all nations would be carried out. Spanish scholars composed the *Requerimiento*,[9] which set forth European history. It was summarily read (in Spanish) to indigenous people whenever Europeans came upon them and called on the Indians to submit themselves to the authority of Spain and the Pope or face the ''justifiable'' wrath of the Spanish army. The papal order became known as the doctrine of discovery and was used as justification for claiming title to land in the New World. When other sovereigns claimed lands, they did not always carry out their missionary work, and so the doctrine of discovery became a secular, legal theory.[10]

Early contacts between the Indians and the French explorers were cooperative and mutually beneficial, consisting of trading and later, intermarriage and the introduction of Christianity. In 1760, when the French lost the French and Indian war, the Ojibwe became subject to British policy, which was much more exploitative.[11] Even so, many Indians supported the British during the American Revolution and in the War of 1812,[12] because the British appeared less oriented toward land acquisition than did the colonists.[13] Great Britain was mainly concerned with commerce. The European view under the doctrine of discovery was that when colonial lands changed hands, the country taking control inherited the original claim, so legal title never reverted to the original owner/occupants.

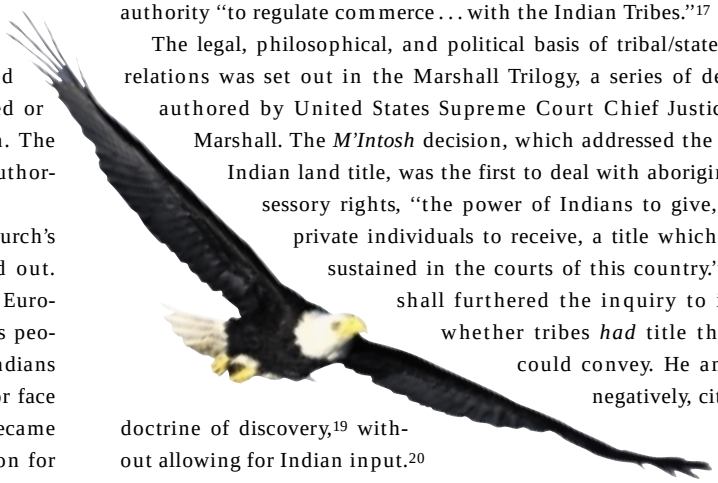
Land was considered by the Ojibwe to be a gift from Gitchii Manidou, provided for use by all. One could take what was required for sustenance and then move on, leaving the land to recover and provide for those who came after. It was not owned, governed, or controlled, but rather preserved and used by all. In contrast, early settlers came to the new world from Europe where all land was owned by the King and the moneyed. Here non-Indians viewed land as wealth; its value was in its potential for exploitation.[14]

Indians did not understand European concepts of property ownership. Their trust of the new Americans, which reflected their communal concept of property, was viewed as childlike. This ''naivete'' led colonists to believe that the Indians needed strong guidance in business matters and the protection of the government as a trustee to ensure their fair treatment, a concept that remains in force into the new millennium. Now it is expressed that land is held ''in trust'' by the government for Indians.

Legislative History

In the Articles of Confederation, Congress deemed Indian nations to be foreign powers and gave itself the power to deal with all Indian matters.[15] Congress passed legislation in 1790[16] describing Indian tribes as domestic dependent nations, ascribing a guardianship role to the federal government, and requiring federal approval of sale of Indian lands. The Indian Commerce Clause expresses Congressional authority ''to regulate commerce . . . with the Indian Tribes.''[17]

The legal, philosophical, and political basis of tribal/state/federal relations was set out in the Marshall Trilogy, a series of decisions authored by United States Supreme Court Chief Justice John Marshall. The *M'Intosh* decision, which addressed the issue of Indian land title, was the first to deal with aboriginal possessory rights, ''the power of Indians to give, and of private individuals to receive, a title which can be sustained in the courts of this country.''[18] Marshall furthered the inquiry to include whether tribes *had* title that they could convey. He answered negatively, citing the doctrine of discovery,[19] without allowing for Indian input.[20]



Indians were perceived as having control by possession. The settlers wanted control, therefore, the United States government negotiated to obtain the land by treaty. Between the 1820s and 1860s, most treaties contained title extinguishment clauses. This had the effect of disbanding the previous formal structure of the tribe and the traditional hunting and gathering means of survival. The treaties generally provided Indians with annual cash annuities, farm implements, oxen and horses, blacksmith and medical services, and Western education in exchange for the consideration of title to the

land. In 1828, Andrew Jackson became President and brought his belief in military conquest of Indians to the White House. The Indian Removal Act,[21] passed in 1830, was intended to move all tribes west of the Mississippi.

In *Worcester v Georgia*,[22] the Court determined that, by virtue of aboriginal territorial statutes, tribes were sovereign entities before the existence of the United States. This status allowed the tribes to conduct intercourse with the United States. This right is vested solely in the United States (not with individual states).

In the Treaty of March 28, 1836, between the Ottawa and Chippewa Nations and the Territory of Michigan negotiated by Henry R. Schoolcraft, Commissioner of Indian Affairs for the United States and Chiefs and Headmen of the Indian Nations, the tribes ceded land to the United States, reserving for their own use 142,000 acres in the Lower Peninsula of the territory and a large number of islands attributed to the Upper Peninsula, including "the Beaver islands of Lake Michigan for the use of the Beaver-island Indians."[23] This included Miniss Kitigan, or Garden Island. These lands were to be held in common by the tribes[24] for a term of no longer than five years, unless the United States granted an extension. This contingency was common in treaties of the time, in light of the administration's removal and relocation policy.[25]

The years between 1828 and 1887 are referred to as the Removal and Relocation period. Before this time, the American community felt that it could live peacefully with the Indians, who would eventually be assimilated into American culture. After a pattern of frontier violence had been established, President Thomas Jefferson, like so many others of his generation, rejected this idea and saw removal as the most humane way to solve the problem. Andrew Jackson first promoted the idea in his first message to Congress, on December 8, 1829, urging voluntary removal. When this did not occur, the Indian Removal Act was passed on May 28, 1830. Once again, in the name of civilizing Indians and teaching them Christianity, political and economic forces directed governmental Indian policy in the best interests of the conqueror.

Michigan became a state in 1837. In 1841, Beaver Island, a 30-mile-long island located two miles from Garden Island in Lake Michigan (set aside for five years by the above treaty), was sold to a private citizen from New York. It therefore became necessary to relocate the Indian people living on Beaver Island. Correspondence dated February 1843 from the General Land Office to the Commissioner on Indian Affairs requests information on "whether or not the Indians have been removed, or what steps, if any, have been taken by your Department for the purpose to enable this office to answer the inquiries of the Hon. Millard Fillmore . . . relative to the settlement and sale of the above Islands."[26]

In 1853, Commissioner of Indian Affairs, George Manypenny, began authorizing allotment provisions in treaties.[27] The Treaty of 1855 was such a treaty.[28] Negotiated by Manypenny and Henry Gilbert, it was an amendment to the Treaty of 1836. Signed in Detroit on July 31, it stated:

> *Article I. The United States will withdraw from sale for the benefit of said Indians as hereinafter provided, all the unsold public lands within the state of Michigan embraced in the following descriptions to wit, ...*
>
> Third. *For the Beaver Island band, High Island, and Garden Island in Lake Michigan.*
>
> *Consideration: The United States will give to each Ottowa and Chippewa Indian being the head of a family, 80 acres of land and to each single person over 21 years of age 40 acres of land and to each family of orphan children under 21 years of age containing two or more persons 80 acres of land, and to each single orphan child under 21 years of age 40 acres of land to be selected and located within the several tracts of land hereinbefore described.*[29]

After the Indian agent made lists of people in the four classes noted above, either the Indian or a representative of an orphan was to make selections of land within five years. At that point the Indian could take immediate possession of the land. The United States would hold the land in trust and issue a certificate that prohibited alienation of the land. After 10 years in trust status had expired, restriction on alienation would be withdrawn and a land patent issued. If the Indian agent reported to the President of the United States at any time during the 10-year trust period that any individual Indian was incapable of managing his affairs, the patent could be withheld by the President indefinitely. Conversely, the Indian agent could recommend that a patent be issued before expiration of the 10-year period and the President could order issuance immediately. Indian residents of the state of Michigan entitled to annuities in the 1836 treaty were eligible.

For the five-year period commencing July 31, 1860, Indians could elect to purchase land and at the end of that period non-Indians could purchase in fee simple.[30] The treaty allotted $80,000 for a government school, $75,000 for farm implements, $42,000 for blacksmithing services, and $360,000 for annuities/per capita, plus interest on the whole, all to be shared among the tribes covering the area from Sault St.

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- The detailed version of this article
- 1836 treaty between Michigan territory and Chippewa and Ottawa nations

Marie in the Upper Peninsula southward to the Muskegon River in Mecosta County in Michigan.[31]

The tribe itself was formally extinguished:

> *The tribal organization of said Ottawa and Chippewa Indians, except so far as may be necessary for the purpose of carrying into effect the provisions of this agreement, is hereby dissolved and if at any time hereafter, further negotiations with the United States [are required] . . . no general convention of the Indians shall be called, but such as reside in the vicinity of any usual place of payment or those only who are immediately interested in the questions involved, may arrange all matters between themselves and the United States . . .* [32]

Further, all claims under preceding treaties were precluded.[33]

Why would these people sign such a treaty? The Treaty of 1836 granted an annuity of cash and goods in exchange for land with a five-year right of occupancy. Negotiation of another treaty to secure additional annuities and permanent right of occupancy would appear to have been a reasonable consideration.[34] The land they were living on had been sold from beneath their feet. The increase in shipping trade and dwindling resources of game and other resources requiring large amounts of land made it both possible and necessary for Indians to rely increasingly on traded goods. Further, with the encroachment of settlers, specifically James Strang's 2,600-member religious colony who lived on Beaver Island between 1847 and 1856 (after breaking off from The Church of Jesus Christ of Latter-day Saints in 1844 and forming their own church),[35] it was necessary to trade to secure land that was otherwise being sold for homesteading.[36]

Most allotments were made according to the General Allotment Act of 1887 (GAA),[37] which was a major tool for implementing the federal policy between 1887 and 1928 of assimilating Indians into the general population while concurrently opening lands for settlement by non-Indians. It authorized a grant of predetermined acreage to people identified as Indians on the existing rolls, with a patent in fee to be issued after 25 years, at a time when the U.S. government assumed a guardianship role over Indians, who were viewed

> *as wards subject to a guardian . . . as a dependent community who were in a state of pupilage, advancing from the condition of a savage tribe to that of a people who, through the discipline of labor and by education, it was hoped might become a self-supporting and self-governed society.*[38]

The major points Congress expressed in the GAA were that state and local governments may not tax Indian reservation land without cession of jurisdiction or other federal statutes permitting it. The intent of Congress to authorize state and local governments to tax Indian reservation lands must be unmistakably clear. Congress manifested its intent to authorize taxation of reservation lands to be allotted in fee to individual Indians, thus making lands freely alienable and withdrawing them from federal protection.[39]

By 1877, Indians were losing their land for taxes after becoming involved in complex schemes orchestrated between real estate "investors" and government officials.[40] Indian lands were taxed at double the rate levied on non-Indian lands. An Emmet County official stated that the tax rate for Indian land would continue to be raised until the community had "relieved itself of the presence of Indians."[41] The question of taxation of land came to the attention of the Mackinac Agency in an 1848 letter from an Indian owner requesting "an exposition as to the law in the case of taxing."[42] In *Pennock v Commissioners*[43] the Supreme Court held that the state of Kansas had authority to tax land held in fee by an Indian and not located within Indian Country.[44] The Nelson Act of 1889[45] provided for the complete cession and relinquishment of tribal title to land in Minnesota, a complete extinguishment of Indian title. The act delineated three methods by which land could be alienated from tribal ownership.

LIST OF ALLOTTMENTS ON GARDEN ISLAND PURSUANT TO TREATY OF 1855

Subdivision		Section	Tnship	Range	Acres	Allottee
NW	SE	1	39N	10W	40 1/100	John BePeTaw
SW	SE	1	39N	10W	40 1/100	John BePeTaw
SE	SW	1	39N	10W	40 1/100	John Kane
Lot 4	NE	2	39N	10W	37 1/70	Joseph Meshkawgaw
Lot 5	SE	2	39N	10W	23 1/65	Joseph Meshkawgaw
Lot 6	SE	2	39N	10W	22 1/50	Joseph Meshkawgaw
Lot 2	NW	2	39N	10W	17 1/50	Mary Lambert
Lot 1	SE	2	39N	10W	34 1/50	Mary Lambert
Lot 1		3	39N	10W	41 1/70	NebeNay GawNayBe
Lot 4		3	39N	10W	27 1/100	NebeNay GawNayBe
NE	SE	11	39N	10W	44	Shaw Wan
NE	SE	11	39N	10W	40	Shaw Wan
SE	NW	12	39N	10W	40	Chief KayWauBeKisse
SW	NW	12	39N	10W	40	Chief KayWauBeKisse
NW	SW	12	39N	10W	40 1/100	Louis WawSaishCum
Lot 1	SW	12	39N	10W	51 1/80	Louis WawSaishCum
NE	NE	35	40N	10W	40	"Entitled"
NE	NW	35	40N	10W	40 1/100	John KeMewAwNawUm
NW	NW	35	40N	10W	40 1/100	John KeMewAwNawUm
SW	NW	35	40N	10W	40 1/100	Agustus KayTeNawBeMe
NW	SE	35	40N	10W	40 1/100	Agustus KayTeNawBeMe
NE	SW	35	40N	10W	40	William AwDayNeMe
SW	SW	35	40N	10W	40	William AwDayNeMe
NW	SW	35	40N	10W	40 1/100	Cecil PeNaySeWaw

The Burke Act of 1906[46] amended Section 6 of the GAA to provide that state jurisdiction did not attach until the end of the 25-year trust period when allotted lands were conveyed to Indians in fee simple, thereby overturning *In re Heff*,[47] which had held that allotted lands were taxable as soon as the patent was issued. It also authorized the Secretary of the Interior to determine that "any Indian allottee is competent and capable of managing his or her affairs" and to authorize a fee simple patent before the end of the trust period, upon which issuance, "all restrictions as to sale, incumbrance, or taxation of the land shall be removed."[48]

The Wheeler-Howard, or Indian Reorganization, Act of 1934[49] repealed the GAA. With it came the end of the era of allotment and assimilation and the beginning of an era of Reorganization and Self-Government. It granted the Secretary of the Interior the authority to place land in trust of the federal government for the benefit of the Indians, to add lands to existing reservations, and for those lands to be exempt from state and local taxation when in trust status.

Modern Interpretation

Taxes are the lifeblood of government, providing money for it to conduct its affairs and provide services to its citizens. Without the ability to tax, a government cannot exist.[50] In *County of Thurston v Andrus*,[51] the Court held that Omaha and Winnebago allottees' lands were exempt from state and local taxation while held in trust under the original trust patents, per the GAA. A recent case questioned the levying of ad valorem property taxes by state and local authorities on lands owned by individual members of the Saginaw Chippewa Tribe and the tribe itself. The Eastern District Court of Michigan held that taxing parcels owned by individuals is not contrary to the Nonintercourse Act,[52] because the act applies only to land acquired from, and not to land acquired by, Indian tribes, and to alienations of tribal land approved by the U.S.[53]

To authorize taxation, Congress must make "its intention to do so unmistakably clear."[54] The United States Court of Appeals for the Eighth Circuit[55] held that 13 parcels of land within the Leech Lake Tribe's reservation allotted to individual Indians under Section 3 of the Nelson Act could be taxed as long as they had been patented after the Burke Act of 1906 because its explicit mention of "taxation" expressed the requisite unmistakable intent of Congress. Parcels patented before the 1906 Burke Act, if the allotment allowed for a fee simple patent to be issued before the expiration of the trust period, would not be subject to ad valorem taxes if taxation had not been mentioned in the allotment authority. The categorical approach is that state and local authorities may not tax Indian reservation land, "absent cession of jurisdiction or other federal statutes permitting it."[56]

Justice Clarence Thomas' opinion in *Leech Lake* clarified the *Yakima* decision, as well as *Goudy v Meath*,[57] a 1906 case in which the Court held that "land, allotted and patented in fee to individual Indians and thus rendered freely alienable after the expiration of federal trust status, was subject to county ad valorem taxes even though it was within a reservation and held by either Indians or a tribe."[58] In *Goudy*, the President had authorized patents to individual members of the Puyallup Tribe. The Treaty of March 16, 1854,[59] provided that such fee-patented land "shall be exempt from levy, sale, or forfeiture" until the state legislature, under a directive of Congress, authorized taxation.

However, when the trust period ended, the county taxed the land. Although there was no express repeal of the tax exemption provided in the treaty, the Supreme Court held "that Congress may grant the power of voluntary sale, while withholding the land from taxation or forced alienation may be conceded . . . but while Congress may make such provision, its intent to do so should be clearly manifested." The *Goudy* Court reasoned that it would "seem strange [for Congress] to withdraw [federal] protection and permit the Indian to dispose of his lands as he pleases, while at the same time releasing [the lands] from taxation." Such Congressional intent to counteract taxation, which normally runs with the ownership of land in fee, would have to be clearly manifested. The *Goudy* Court found the alienability of the lands to be the focus of the taxation question.

> INDIANS DID NOT UNDERSTAND EUROPEAN CONCEPTS OF PROPERTY OWNERSHIP. THEIR TRUST OF THE NEW AMERICANS, WHICH REFLECTED THEIR COMMUNAL CONCEPT OF PROPERTY, WAS VIEWED AS CHILDLIKE.

The *Leech Lake* Court clarified its holding in *Yakima*, stating, "*Yakima*, like *Goudy*, stands for the proposition that when Congress makes reservation lands freely alienable, it is 'unmistakably clear' that Congress intends that land to be taxable by state and local governments, unless a contrary intent is 'clearly manifested.'" Both cases establish Congressional intent that reservation lands conveyed in fee to Indians are to be subject to taxation.[60] It is to be noted that the Court failed to explain why this interpretation should control over the canon of construction that ambiguous statements are to be construed in favor of the tribe.[61] Further, Congress has passed no law authorizing states to impose such taxes.

The parcels of land on Miniss Kitigan (Garden Island) were transferred according to treaty on August 19, 1875, proceeded through certification status, and became owned in fee simple after passage of the required amount of time. A title search conducted in Charlevoix County[62] revealed that parcels not alienated reverted to the state of Michigan for nonpayment of ad valorem taxes beginning in 1884. Most transfers occurred by or before 1921, many during World War I.[63]

Conclusion

The district court in the *Saginaw Chippewas* case found that the Treaty of 1855 did not show an "unmistakably clear" Congressional intent to authorize state taxation.[64] Nevertheless, ignoring canons of construction requiring that ambiguous treaty statements are to be construed in favor of the tribe, the United States Supreme Court effectively overruled the holding in *Saginaw Chippewas* that states are without power to tax reservation lands and reservation Indians without "unmistakably clear" Congressional intent. Justice Thomas cited *Goudy,*[65] a turn of the century case, to clarify the decision in *Yakima* and substantiate its holding in *Leech Lake,*[66] stating that, by implication, Congress had expressed "unmistakable intent to tax," yet the Court inferred the "unmistakable intent" from the lack of statutes prohibiting taxation. It should be obvious that Congress cannot express unmistakable intent by implication.

Unless a truer rationale is found to sustain such analysis, it is to be expected that such holdings will be challenged in the future. At this point in the development of the law, however, state assessment of ad valorem taxes on lands patented to and held by Indians in fee simple is authorized, although the authorization does not appear to rest upon a clear legal footing. After this recent decision, none of the allottees of the parcels on Garden Island retain any ownership rights.

Poof.

A more detailed treatment of this subject is available on the Web at www.michbar.org/journal/home.cfm. ✦

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Footnotes

1. Frederic Baraga, *A Dictionary of the Otchipwe Language* (1973).
2. Virgil J. Vogel, *Indian Names in Michigan* 8, 9 (1986).
3. Id. at 6.
4. Id. at 111.
5. See generally, George L. Cornell, *People of the Three Fires,* 82 (1988). See also, Thomas Vennum, Jr., *Wild Rice and the Ojibway People,* 3 (1988).
6. Id. 78–79.
7. Id. 77, 83.
8. See Francis G. Davenport, Ed, *European Treaties Bearing on the History of the United States and its Dependencies in 1698,* Carnegie Institution of Washington Publication No. 254 61–63 (1967).
9. See Vine Deloria, Jr. and David E. Wilkins, *Tribes, Treaties and Constitutional Tribulations* citing Lewis Hanke, "The 'Requerimiento' and Its Interpreters," *Revistade Historia de América,* vol. 1, 25–34 (1939).
10. See generally Vine Deloria, Jr. and David E. Wilkins, *Tribes, Treaties and Constitutional Tribulations,* 1–5.
11. David Zin, *Taxation of American Indians in Michigan* 2 (1997).
12. The Treaty of Ghent, Dec. 24, 1814, art. 8, 8 Stat. 200, 202, which concluded the War of 1812, made it clear that tribes were involved on the side of the British.
13. Id.
14. Peggy B. Johnson, *The Takings Debate,* addendum to *The Takings Issue in the Local Government and Watershed Context.* 1995 Det. C.L. Rev. 17, 30.
15. Articles of Confederation and Perpetual Union, Art. 9.
16. Trade and Intercourse Act of 1802, 1 Stat. 137.
17. US Const, art I, § 8, cl 3.
18. *Johnson v M'Intosh,* 21 US (8 Wheat.) 543, 572 (1823).
19. See, e.g., John P. Lowndes, *When History Outweighs Law: Extinguishment of Abenaki Aboriginal Title,* 42 Buff. L. Rev. 77, 96 (1994). See also *Worcester v Georgia,* 31 US (6 Pet.) 515, 543–44 (1832).
20. But see *Mitchel v US,* 34 US (9 Pet.) 711 (1835) cited in Felix S. Cohen, *Handbook of Federal Indian Law,* Rennard Stickland et. al. eds., 472 (1982 ed.) (Indian land sale to whites made with consent of the sovereign, distinguished from *Johnson v M'Intosh,* which was considered an illegal land transfer). See also *Lone Wolf v Hitchock,* 187 US 553 (1903).
21. 4 Stat. 411.
22. 31 US (6 Pet.) 515 (1832).
23. Treaty with the Ottawa and Chippewa nations of Indians, March 28, 1936, Art. 3.
24. The tribes themselves were holders of the land rather than individual tribal members.
25. Vine Deloria, Jr. and Clifford M. Lytle, *American Indians, American Justice,* 6 (1983).
26. Letters Received by the Office of Indian Affairs, 1824–1881, United States Office of Indian Affairs, Mackinac Agency (Entry 78 Publication M6 U5 Reels 402–411, Frames 511–512), National Archives and Records Service, Washington, D.C.
27. Allotment is a term of art in Indian law meaning a selection of specific land awarded by the U.S. government to an individual allottee from a common holding authorized either by treaty or statute. See *Affiliated Ute Citizens v United States,* 406 US 138, cited in 41 Am. Jur. 2d Indians § 79 (1995).
28. Treaty between the United States of America and the Ottawa and Chippewa Indians of Michigan, July 31, 1855.
29. Supra 1855 Treaty, Art. 1, Sec. 3.
30. Supra 1855 Treaty, Art. 1, Sec. 3.
31. Id., Art. II.
32. Id., Art. V.
33. Id., Art. III.
34. See, generally, Vine Deloria, Jr. and Clifford M. Lytle, 5.
35. Interview with Bill Cashman of the Beaver Island Historical Society (September 4, 1999), *Times and Seasons* 5:631, 652, 655 (August 26, 1844).
36. See Charlevoix County Record Book #3, pp 75–76 (patents issued to homesteaders).
37. 25 USCA 331–58.
38. Ex Parte Crow Dog, 109 US 556 (1883).
39. 25 USCA 381, 348.
40. Charles E. Cleland, *Rites of Conquest* 254 (1992).
41. Bruce A. Rubenstein, *Justice Denied: An Analysis of American Indian-White Relations in Michigan, 1855–1889* (1974) (unpublished Ph.D. diss., Michigan State University).
42. Letters Received by the Office of Indian Affairs, 1824–81. United States Office of Indian Affairs, Mackinac Agency (Entry 78 Publication 3 M 605, National Archives and Records Service, Washington, D.C.
43. 103 US 44 (1880).
44. Indian Country is a term that refers to "the sphere of influence in which Indian traditions and federal laws passed specifically to deal with the political relationship of the United States to American Indians have primacy. The term originated in the popular designations of the lands beyond the frontier, . . . and moved from a popular conception to a highly technical legal term." See Vine Deloria, Jr. and Clifford Ml Lytle, 58. It is defined by statute. 18 USC 1151.
45. 25 Stat. 642.
46. 25 USCA 349.
47. 197 US 488 (1905).
48. Id.
49. 25 USCA 461, et. seq.
50. Stephan L. Pevar, *The Rights of Indians and Tribes,* 153 (1983).
51. 586 F2d 1212, cert den 441 US 952.
52. 25 USCA 177.
53. *United States ex rel. Saginaw Chippewa Tribe v Michigan,* 882 F Supp 659 (ED Mich 1995).
54. *Montana v Blackfeet Tribe,* 471 US 759, 765 (1985), quoted in *County of Yakima v Confederated Tribes and Bands of Yakima Nation,* 502 US 251, 258 (1992). See also 18 USCA 1151 (a), (b).
55. *Leech Lake Band of Chippewa Indians v Cass County, Minnesota,* 108 F3d 820 (CA 8, 1997).

56. *Cass County, Minnesota v Leech Lake Band of Chippewa Indians,* 524 US 103; 118 S Ct 1904, 1908; 141 L Ed 2d 90, 97 (1998), citing *Yakima*, at 258, (quoting *Mescalero Apache Tribe v Jones*, 411 US 145, 148).
57. 203 US 146 (1906).
58. *Cass County v Leech Lake,* 118 S Ct 1904, 1909.
59. 10 Stat. 1043.
60. *Cass County v Leech Lake,* 118 S Ct 1904, 1909, citing *Goudy,* 203 US 146, 149.
61. Charles F. Wilkinson and John M. Volkman, *Judicial Review of Indian Treaty Abrogation: ''As Long As Water Flows or Grass Grows Upon the Earth''—How Long a Time Is That?* 63 Cal. L. Rev. 601 (1975), reprinted in David H. Getches, Charles F. Wilkinson and Robert A. Williams, Jr., *Cases and Materials on Federal Indian Law* 4th Ed. 129–131 (1998). See also *County of Oneida v Oneida Indian Nation,* 470 US 226 (1985), *Arizona v California*, 373 US 546 (1963), *Alaska Pacific Fisheries v United States,* 248 US 78, 89 (1918), and *Winters v United States*, 207 US 564, 576–77 (1908).
62. The land was originally in Manitou County, Michigan, which no longer exists. It became part of Emmet County and was later part of a trade with Charlevoix County. Emmet and Charlevoix Counties were no longer a patchwork. As Garden Island is 30 miles out in Lake Michigan, it could reasonably be assigned to either county.
63. At which time the natural resources on these lands became extremely valuable to the government.
64. 882 F Supp 659, 663, 668 (ED Mich 1995) (nevertheless holding land taxable based on its finding that the lands at issue were not "reservation lands").
65. 203 US 146 (1906).
66. 118 S Ct 1904 (1998).