8 The White Backlash and Beyond

The 1983 *Voigt Decision* evoked bitter denunciations from white hunting and fishing groups. Supported by generally anti-Indian whites, these groups claimed the Indians would wantonly wipe out all fish and game. Especially objectionable to sportfishers and hunters are the traditional practices of spearing, gill-netting, and "shining" (night hunting) employed by the Chippewas who are more concerned with following their traditions and with efficient harvests than with sport. Opponents of the *Voigt Decision* consider it "unjust" for the Chippewas to have "special privileges" denied other Wisconsin residents—like longer hunting seasons and the right to shoot deer from vehicles—just because of some "old treaties." Charging that Indians have "more rights" today than white citizens, irate critics of treaty rights argue Indians and whites should enjoy "equal" rights, that treaty rights must be abolished. As far away from the reservations as Milwaukee, one hears stories about drunken Indians peddling deer from their pickup trucks at taverns "up north." Anti-Indian sentiment oozed from bumper stickers proclaiming "Save a Deer, Shoot an Indian" and "Spear an Indian, Save a Muskie." An unofficial notice circulated in the Ashland County Courthouse declared "open season on Indians" with "a bag limit of 10 per day." A 1984 newspaper headline summed up the situation this way, "North Woods Steaming with Racial Hostility" (*Milwaukee Journal* 1984c; O'Conner and Doherty 1985).

Strong opposition to federal court pronouncements on Chippewa hunting and fishing rights spurred protest and violence at boat landings throughout northern Wisconsin during every fishing season since 1983. Some whites, fearing Indians would destroy all fish and ruin tourism, have argued that Indian treaties and reservations are relics of the past. Such fears have been exacerbated by the fact that per capita income in the region has lagged behind the rest of the state by as much as twenty percent, and northern Wisconsin's unemployment rate has nearly doubled the statewide average during some months. In addition, the efficient Chippewa methods of harvesting fish for subsistence—using gill nets and spears—upset many non-Indian sportfishers who find themselves limited by very strict state regulations. Bait shops in northern towns have sold "Treaty Beer" with labels protesting Indian spearfishing and claiming to be the "True Brew of The Working Man" (*Fig. 34*), and many restaurants and taverns display and dispense literature attacking spearfishing and calling for the abrogation of Chippewa treaties (*Fig. 35*). The peaceful harvesting of fish by Chippewa spearfishers has been disrupted by non-Indians hurling rocks, insults, and racial epithets like "timber niggers," waving effigies of speared Indian heads and signs with slogans like "Save Two Walleye, Kill a Pregnant Squaw," and using large motorboats trailing anchors to capsize Indian boats. Treaty protesters have also placed concrete fish decoys in lakes to break the spears of Chippewa fishers. Chippewa women singing religious songs in support of the spearers have faced what one reporter has aptly called "a gauntlet of hate"

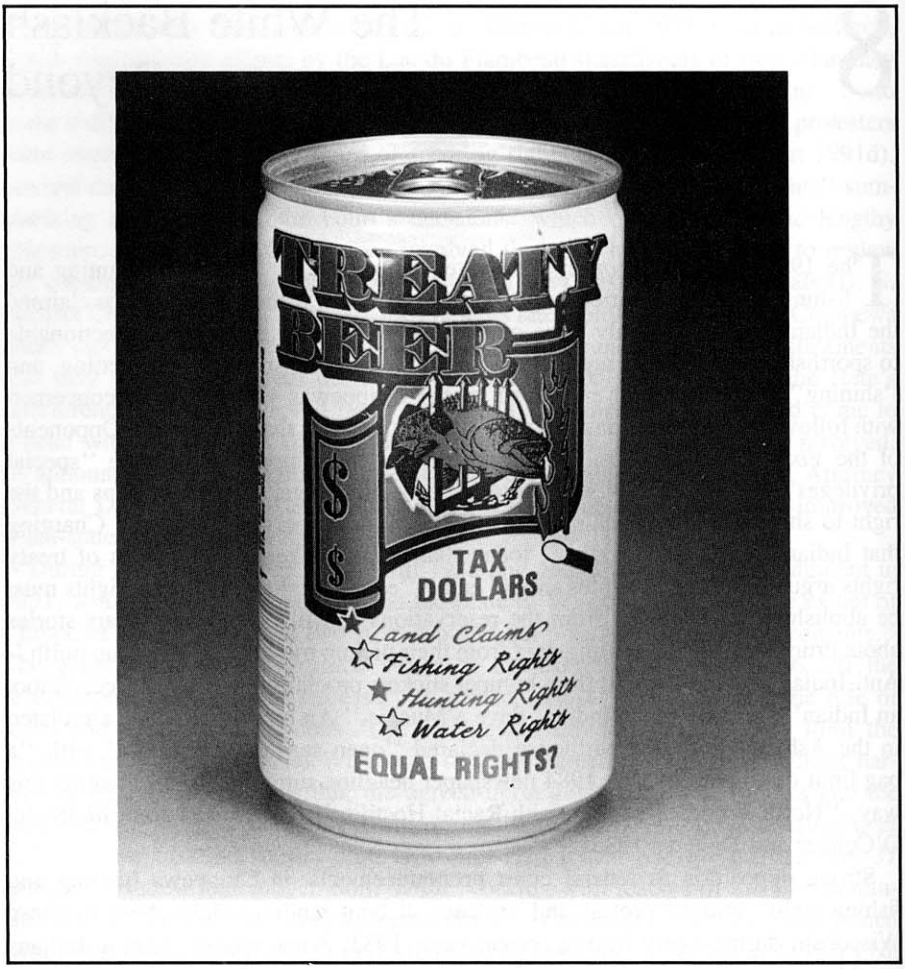

Fig. 34. *Treaty Beer.* Distributed for the Stop Treaty Abuse (STA) organization in Minocqua, this beer has been sold in northern Wisconsin taverns as the "True Brew of the Working Man." Called racism in a can by treaty supporters, the product label protests Indian spearfishing. Photograph by Jason Tetzloff. Reprinted with permission.

as some demonstrators jeer and shout vicious taunts, racial slurs, and threats while others blow whistles in continuous shrill blasts in their ears. Even Indian schoolchildren have been harassed. One school with a large Indian enrollment has received bomb threats (Fixico 1987, 498-507; Vennum 1988, 276-77; O'Conner and Doherty, 1985; Wilkinson 1987, 72; Strickland *et al.* 1990, 1; *Milwaukee Journal* 1989a, b; *Milwaukee Sentinel* 1990d; *Masinaigan* 1991c, 8; *Wisconsin State Journal* 1990c, 11; *Eau Claire Leader-Telegram* 1990g).

Non-Indian eyewitnesses including members of the U. S. Civil Rights Commission, the state's Equal Rights Council, and state legislators have compared the acts of violence against spearfishers at boat landings in northern Wisconsin in recent years to the racial violence against blacks that rocked Milwaukee in the 1960s (*Capital Times* 1986; *Milwaukee Sentinel* 1989b; *Masinaigan* 1990d). Protesters in

Fig. 35. *Spear This!* A poster found in a tavern in the Eagle River, Wisconsin, area before the 1987 Chippewa spearfishing season. From Great Lakes Indian Fish and Wildlife Commission ({c.1989}, 15). Reprinted with permission.

Vilas County near the Lac du Flambeau Reservation have been so unruly that some Indians refer to it as "Violence County" (*Wisconsin State Journal* 1990a). U. S. Interior Department official Patrick Ragsdale said he was "appalled" and "disgusted" by the language protesters used at the boat landings (*Milwaukee Sentinel* 1989a). Archbishop William Wantland of the Episcopalean Diocese of Eau Claire observed, "of all the states I've lived in in this Union, Wisconsin is the most racist. I grew up in the South. And I said that before the *Voigt Decision* was handed down.

It's obvious—the racism, the hatred, the bitterness, the prejudice.'' Recently, Wantland reflected on the increasing hostility toward Indians since 1983: ''I felt I was caught in a time warp this spring in Wisconsin. I thought I saw the 50s and 60s. I thought I saw Selma and Little Rock and Montgomery'' (*Masinaigan* 1990f, 7-8). In June of 1989, University of Wisconsin-Eau Claire History Professor James Oberly raised this question for the nation to ponder, ''How could a northern state with a progressive tradition {like Wisconsin} become such hospitable ground for flagrant racism?'' (Oberly 1989b, 844).

The white backlash of the 1980s in Wisconsin actually had its roots in the 1970s. Concern over the Wisconsin Supreme Court's 1972 ruling in *State* v. *Gurnoe* (see Chapter 7) led some six hundred sportfishers to form an organization known as Concerned Sportsmen for Lake Superior. Fearing the Bad River and Red Cliff Bands would use the Court's recognition of their fishing rights in Lake Superior to deplete the lake's supply of trout, walleye, and whitefish, the members of Concerned Sportsmen argued that Indians had to ''be subject to the same tough commercial fishing regulations as white men'' (*Milwaukee Journal* 1972a, b). In 1973, Republican Reuben La Fave of Oconto, claiming he was only interested in the ''welfare'' of the Indians, introduced a resolution in the state senate calling for the Department of Natural Resources to ''purchase'' the fishing rights of the Chippewas. In response to the resolution, the *Capital Times* of Madison editorialized, ''anytime the whites profess interest in the Indians it is time for these native Americans to keep their backs against the white pine and their peace pipes hidden'' (1973).

While Indian commercial fishing in Lake Superior was of growing concern to some groups in Wisconsin in the early 1970s, the conflict between state wildlife regulations and treaty-protected hunting and fishing rights of Indian tribes came to a head in the State of Washington. A brief review of what has been referred to as ''the opening salvo in this century's 'treaty wars' '' (*Christian Science Monitor* 1987), and the public reaction to it will help place the situation in Wisconsin from 1974 to the present in its larger context.[57]

In 1974, Judge George Boldt of the U. S. District Court for the Western District in Washington ruled in *United States* v. *State of Washington* that Indian tribes had the treaty right to up to one-half of the salmon and steelhead trout harvest, both the right to catch the fish and the right as governments to be involved in the actual regulation of the resource. Popularly known as the *Boldt Decision,* the case had taken three and a half years of litigation involving testimony from fourteen Indian tribes, the State of Washington Departments of Fisheries and Game, and various commercial and sportfishing organizations. Judge Boldt based his decision not only on the ''facts'' existing at the time of the litigation but also on an exhaustive historical examination of events and information going back to the actual treaty negotiations (U. S. District Court 1974). Public reaction to the ruling included the appearance of bumper stickers, buttons, and T-shirts with anti-Boldt slogans and open defiance of the ruling by non-Indian fishers (U. S. Commission on Civil Rights 1981, 71). The State of Washington promptly appealed the decision, but the U. S. Court of Appeals for the Ninth Circuit upheld Boldt (1975) and the U. S. Supreme Court declined to review the case (1976). After spending nearly a decade on costly appeals and countersuits, state officials finally embarked on the path of co-management by which the federally recognized Indian tribes and the state are partners in the

management of timber, wildlife, and fish (U. S. Commission on Civil Rights 1981, 70-100; Olson 1984; *Wisconsin State Journal* 1990c, 47; Cooper and Stange 1990, 52).

The *Boldt Decision,* together with a shift in federal Indian policy toward greater self-determination for Indian tribes and the growing Indian militancy of the early 1970s described earlier, alarmed some segments of American society (Olson 1984, 511). Indeed, one account of the treaty rights controversy written in the mid-1970s referred to Indian treaties as an "American nightmare" (Williams and Neubrech 1976). Anti-Indian editorials and articles claiming that federal officials were "obsessed" with providing "goodies" to Indians and other minorities appeared in both the local and national media. "We have found a very significant backlash that by any other name comes out as racism in all its ugly manifestations," Republican Senator Mark Hatfield of Oregon advised his colleagues on the U. S. Senate Select Committee on Indian Affairs in 1977 (U. S. Commission on Civil Rights 1981, 1). In 1978, an article in *Newsweek* magazine spoke of a "Paleface Uprising" spreading from Maine to Washington state as Indians "earned that ultimate badge of minority success—a genuine and threatening white backlash" (Boeth *et al.* 1978, 39).

The leading anti-Indian lobbyist group was the Interstate Congress for Equal Rights and Responsibilities (ICERR). This organization sprang into existence in 1976 arguing that Indian political power and treaty rights were antithetical to the American system of equality. The outgrowth of a meeting in Salt Lake City, Utah, of anti-treaty rights representatives from ten western states, the ICERR attracted considerable attention in other regions as well. Indian interests, ICERR spokespersons argued, must give way to those of the larger society. "We seek just one thing," commented founder Howard Grey, "that is equal rights for all people living under the Constitution of the United States and the 14th amendment . . . the 14th amendment gives equal rights for all people; that's all we're requesting." ICERR lobbyists worked hard to persuade local and national legislators to introduce bills calling for the abrogation of Indian treaties, the removal of tribal jurisdictional powers, the reversal of favorable judicial rulings on Indian treaty rights, the restriction of Indian access to natural resources, and the elimination of eastern Indian land claims (U. S. Commission on Civil Rights 1981, 1, 9-10).

The "equal rights" rhetoric of ICERR and other anti-treaty groups since the 1970s distorts a very important fact. Contrary to the arguments of such organizations, there is no conflict between Indian treaty rights and the guarantee of "equal protection of the laws" under the Fourteenth Amendment to the U. S. Constitution. Congress unilaterally declared *all* native-born American Indians citizens of the United States in 1924. This was done as further recognition of the voluntary contributions of Indian veterans of World War I who had received citizenship in 1919. Indian treaty rights and property rights remained unaffected (U. S. Congress 1919, 1924; Cohen 1982, 639-40, 644-46). "It is no more a denial of my 14th amendment rights that Indians continue to receive the benefits of the agreement they made {in a treaty}," Seattle attorney and Indian law specialist Alvin Ziontz told the U. S. Commission on Civil Rights in 1977, "than it is a denial of my rights that any groups that sold land to the United States Government get paid for their land." The federal courts and the Civil Rights Commission have reached the same conclusion, but anti-treaty rights groups continue to stress the need for "equal rights" for non-Indians and Indians. ICERR members ignore the status of Indians as members of

tribes with which the United States has had a long history of government-to-government relationships. Instead, the ICERR and similar groups portray Indians as members of a racial minority receiving "special" privileges at the expense of non-minority citizens because of century-old documents that are supposedly no longer relevant (U. S. Commission on Civil Rights 1981, 9-12).

The ICERR and similar organizations of the 1970s were the forerunners of such Wisconsin anti-treaty groups in the 1980s as Equal Rights for Everyone (ERFE, Hayward), Wisconsin Alliance for Rights and Resources (WARR, Superior), Butternut Lake Concerned Citizens (Butternut), Protect Americans' Rights and Resources (PARR, Minocqua-Park Falls), and Stop Treaty Abuse (STA, Minocqua).[58] The primary goals of these organizations are the abrogation of Chippewa treaty rights and the dissolution of reservations. ERFE, led by Paul A. Mullaly of Hayward, appeared shortly after the *Voigt Decision*. Decrying the Chippewa off-reservation deer season as "a rape," Mullaly openly threatened Indian hunters. ERFE was the forerunner of other organizations, including PARR, whose leaders responded to the resumption of Chippewa spring spearfishing in 1985 by protesting the alleged "rape" of the fish population in northern Wisconsin by the Chippewas (U. S. Commission on Civil Rights 1981, 180; *PARR Issue* 1987, 1991v; Wisconsin Advisory Committee 1989, 24; *Masinaigan* 1991c, 8).

PARR, which has attempted to become an umbrella organization for many other anti-treaty rights groups, has very actively lobbied state and federal officials for the abrogation of Indian treaties. At PARR's first National Convention in Wausau on March 28th to 29th in 1987, some five hundred people from as many as thirteen states and two Canadian provinces met to call for the abrogation of Indian treaties, the dissolution of Indian reservations, and an end to "special privileges" for Indians (*Eau Claire Leader-Telegram* 1987a, b; *Christian Science Monitor* 1987, 6). Former newspaper editor and newly selected executive director Larry Greschner of Woodruff referred to treaty rights as "a sacred cow" and warned:

> There isn't enough milk in that sacred cow to go around if it's not handled very carefully. Because the natural wonder of our land and a billion dollar sports-tourism industry can easily be transformed into a tiny fraction of that value once those resources have been killed, cut, wrapped, frozen and processed. And we will have traded our children's birth right for a futile gesture of remorse. (Greschner 1987)

PARR National Executive Director at Large Wayne Powers of Bloomer warns that Wisconsin will become "the home of the dead seas" if Indian treaty rights are not curtailed (*PARR Issue* 1991m). When presented with data indicating that, contrary to PARR news releases, Indian spearfishing and hunting is *not* endangering the state's resources or tourism industry, the organization's leaders usually return to the equal rights theme that has been the rallying cry of anti-treaty rights groups since the *Boldt Decision* (*Fig. 36*). "When you have separate rules for different colors living side by side, you're bound to have conflicts," Greschner stated in 1988 (*Racine Journal Times* 1988). "Our position," PARR cofounder Wayne Powers stated in 1990, "is not a few fish and a few deer—it's equal rights" (*Eau Claire Leader-Telegram* 1990f, 2A).

The same arguments have been made by other anti-treaty groups. Equal Rights for Everyone President Mullaly claims that the treaty rights issue in Wisconsin "is

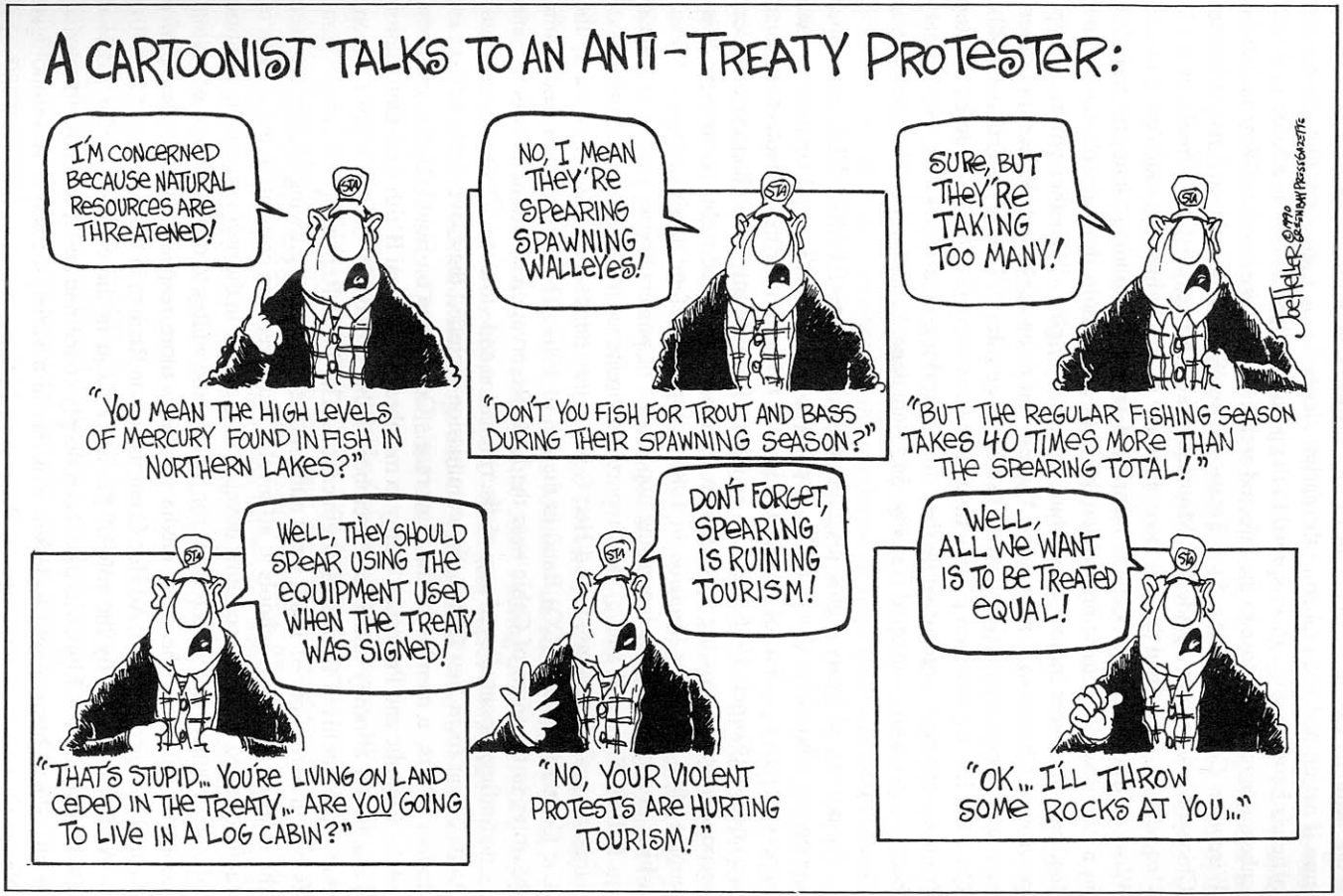

Fig. 36. *A Cartoonist Talks to An Anti-Treaty Protester.* Cartoon by Joe Heller, *Green Bay Press Gazette,* copyright 1990. Reprinted with permission.

not a natural-resources issue, it is a rights issue." He says "there can be no special treatment of a race in a democratic society." In reference to the entire treaty rights issue, Mullaly claims, "Like cancer this situation would have been much easier to cure if action had been taken in the earlier stages . . . . I am sorry that our elected officials have let this cancer spread to the point that it is almost uncurable {*sic*} and unbearable to those close to the infected area" (*Eau Claire Leader-Telegram* 1984a; *Wisconsin Counties* 1985). Stop Treaty Abuse (STA) leader Dean Crist, a former Chicagoan who now resides in Minocqua, also argues that the "real" issue is "equality." Described by his own attorney as a "lightening rod" on northern Wisconsin boat landings, Crist has marketed Treaty Beer (called "hate and prejudice in a can" by detractors) and undertaken other efforts to draw people to the boat landings to protest Indian spearfishing and treaty rights. "Whether you're a Chippewa or a Chinaman," he asserts, "when you're on the water Wisconsin conservation laws pertain and you have to fish by those rules" (*La Crosse Tribune* 1990). Crist and his organization portray the Chippewas as freeloaders who are benefitting from government largesse while the "true" working men—to whom STA's treaty beer is supposedly marketed (see Fig. 34)—are denied equal rights (*Wisconsin State Journal* 1990c, 21).

Supporters of treaty rights disagree with members of PARR, STA, and other opponents who claim that "the basic point is not fish—it's equal rights." As one supporter puts it, "But, of course, the issue *is* fish and other treaty-protected Indian resources" (Cornell 1986, 124). A number of prominent non-Indian civic leaders responded to the growing opposition to Chippewa reserved rights in northern Wisconsin after the *Voigt Decision* in 1983 by openly defending those rights. Meanwhile, concerned by the increasing appearance of posters urging people to "Spear an Indian, Save a Walleye" and reports of threatened violence and actual acts of violence against Indians, an Ad Hoc Commission on Racism was convened by the Lac Courte Oreilles (LCO) Band in the fall of 1984. The commission held public hearings in the town of Cable near the LCO Reservation to examine evidence and issue findings about alleged acts of discrimination and violence. Chaired by educator Veda Stone from Eau Claire, the commission included the Governor's advisor on Indian affairs, a member of the Governor's Committee on Equal Rights, members of the Catholic and Protestant clergy, a member of the B'nai B'rith Anti-Defamation League, an attorney and Board member of the Wisconsin Civil Liberties Union, and representatives from higher education. The Final Report of the commission, issued in November of 1984, cited numerous examples of growing racism; stressed the roles of churches, schools at all levels, and parents in combating the growth of racism; called for state economic development efforts in the north; urged the creation of state, county, and local forums for Indians and whites to discuss issues of mutual concern; and urged the mass media to play a more responsible role (*Eau Claire Leader-Telegram* 1984b; Ad Hoc Commission on Racism in Wisconsin 1984, 5-30).

As demonstrated by the role of the LCO Band in the creation of the Ad Hoc Commission, the Chippewas have been deeply concerned about the mounting white hostility and have sought to lessen tensions in a variety of ways. Anthropologist Nancy O. Lurie, an authority on Wisconsin Indians, noted in the mid-1980s that most Chippewas living on the six reservations in the state are determined not to abuse their treaty rights and are as devoted as white residents, if not more so, to protecting the resources in the northern third of Wisconsin. The harvest of fish by

non-Indians since the *Voigt Decision* has consistently been several times that of Indians. In those lakes where fish production is down, moreover, the culprit has been pollution and habitat degradation by whites, not excessive harvesting by Indians, or for that matter, non-Indians. Since 1984, Chippewa leaders have worked through the Great Lakes Indian Fish and Wildlife Commission (GLIFWC) headquartered at Odanah to gather natural resources data, to develop legal codes for protecting fish and wildlife, and to implement a system for dealing with those Indians who fail to comply (*Fig. 37*). GLIFWC spokesperson Walter Bresette optimistically commented in 1984 that "following the {Voigt} decision, what the tribes are responsible for is basically the management of those resources in the region." While there are some non-Indians who believe that Indian participation in the management of the region's natural resources would benefit all Wisconsinites, anti-treaty groups and State officials have resisted such efforts (Lurie 1985, 379; *Wisconsin Sportsman* 1985, 42; Wilkinson 1990, 4; *Milwaukee Journal* 1984a; *Wisconsin State Journal* 1990c, 55; Michetti 1991).

Under LCO VI, the Chippewas were to be free from state regulation of off-reservation harvesting of walleye and muskellunge so long as they enacted "a management plan that provides for the regulation of their members in accordance with biologically sound principles necessary for the conservation of the species being harvested" (U. S. District Court 1989, 1060). There have been charges that the state has attempted to indirectly regulate the Chippewas by restricting bag limits of non-Indian fishers, which in turn has led to an escalation in the hostility of protesters at the boat landings. After Crabb's ruling in LCO VI, DNR officials cut creel limits for non-Indian anglers. The public perception, which critics charge DNR did little to correct, was that Indian spearing depleted the fish and caused the lower limits for anglers (*Wisconsin State Journal* 1990c, 7, 16).

Legal scholars Rennard Strickland of the University of Oklahoma and Stephen J. Herzberg of the University of Wisconsin-Madison are among those who believe that the DNR has attempted to circumvent the court's ruling in LCO VI. In a report prepared at the request of members of the U. S. Senate Select Committee on Indian Affairs in 1990, Strickland, Herzberg, and University of Wisconsin-Madison Juris Doctor candidate Steven Owens concluded that

> . . . Denied the right to *directly* regulate the Chippewa by the courts, {Wisconsin DNR officials} have attempted to *indirectly* regulate the Chippewa by restricting the bag limits placed on non-Indian fishers, which they have done by manipulating fish population estimates (termed "voodoo biology" by several observers). Since the Chippewa have historically been sensitive to the needs of non-Indians, the state uses bag limits to place pressure on the Chippewa to "voluntarily" restrict their treaty rights. Under this approach the state can contend, "But we are not regulating the Chippewa, we're regulating the non-Indians." (Strickland *et al.* 1990, 9 n. 19)

Judge Crabb's findings in LCO VI support these conclusions. Acknowledging that the DNR will impose additional restrictions on fishing in the next few years, following a comprehensive long-term fisheries plan it developed in the late 1970s, Crabb commented:

> These restrictions would have been imposed even if the tribes' treaty rights had not been judicially recognized. It is purely fortuitous that the time of their implementation came shortly after the start up of Indian spring spearing. (U. S. District Court 1989, 1047)

Fig. 37. *Tribal and Great Lakes Indian Fish and Wildlife Commission Game Wardens at Work, 1990.* The wardens are checking the size and sex of fish taken by spearfishers. After state officials prohibited Indians from exercising their usufructuary rights off reservation for most of the twentieth century, the Chippewas resumed harvesting fish on lakes and rivers in ceded territory in northern Wisconsin in 1985 under an interim agreement with state officials pending further resolution of treaty rights in court proceedings. Photograph by Jason Tetzloff. Reprinted with permission.

Citing Crabb's remarks as evidence, LCO Tribal Chair Gaiashkibos charges the DNR with duplicity. "Exercising our rights off-reservation gives the DNR their out. They lower the bag limit for non-Indian people and put the blame on the Chippewa" (Michetti 1991, 7).

Chippewa spearfishers have actually voluntarily limited their harvest every season since the *Voigt Decision* so non-Indians could fish the lakes of northern Wisconsin. The Chippewas have also taken an active role in fish rearing and stocking programs. In fact, the lakes on the Lac du Flambeau reservation are heavily stocked by the Indians, who permit non-Indians to take 90% or more of the *on-reservation* walleye catch. Other Chippewa bands also maintain hatcheries and stock *off-reservation* lakes with fish, many of which are caught by non-Indians (Strickland *et al.* 1990, 10, 10 n. 21; *Masinaigan* 1990g).

The opposition of some non-Indians today to the exercise of Indian hunting and fishing rights in northern Wisconsin must be viewed in the context of the legal and moral obligations of American citizens to uphold Indian treaty rights as the "supreme Law of the Land" as stipulated in Article 6, Clause 2 of the American Constitution:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and *all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding*. {emphasis added}

Anti-treaty rights groups in Wisconsin, especially PARR, erroneously claim there is no constitutional basis for treaty making with Indian tribes and that existing Indian treaties are no longer valid. Three historical events are often cited as evidence that tribal sovereignty is a fiction: Chief Justice John Marshall's reference to Indian tribes as "domestic dependent nations" in the early 1830s, the ending of treaty making under the 1871 Indian Appropriations Act, and the granting of U. S. citizenship in 1924. PARR Chair Larry Peterson claims that Indian sovereignty is a "fabricated" concept and that Indian treaty rights are merely "court-granted" privileges resulting from "ludicrous court decisions" that cater to Indian "greed." PARR's newspaper editor Jerry Schumacher argues that the courts have erred in basing their decisions on Indians' "oral understanding of treaties" since "the Indians understood them as written." In a manner reminiscent of the Communist-baiting tactics of U. S. Senator Joseph McCarthy in the 1950s, PARR's newsletter prominently displays a list of "Traitors to the Constitution," claiming that U. S. and state legislators, teachers, church leaders, and others who recognize tribal sovereignty deserve the label "traitor" (*PARR Issue* 1991c, d, e, f, g, j, k, l, n, o, p, r, s, t).

In presenting their case against tribal sovereignty, PARR's spokespersons seriously distort the historical record. While Chief Justice Marshal did refer to the Cherokee Nation as a "domestic dependent nation" in 1831, he did not deny the existence of a government-to-government relationship between the Cherokee Nation and the United States. Marshall's characterization of Indian tribes recognized their "peculiar" relationship with the United States—i.e., that of nations existing *within* the borders of states of the Union. Marshall acknowledged that the Cherokee Nation

constituted "a distinct political society" that was "capable of managing its own affairs" with "unquestionable" right to its lands (U. S. Supreme Court 1831). The following year, Marshall ruled that Georgia could not intervene in the Cherokee country within its borders because federal—not state—jurisdiction extended over Indian country. According to Marshall, status as a domestic dependent nation did not preclude treaty making by the Indians with the United States nor lessen American obligations to uphold treaty commitments:

> The constitution, by declaring treaties already made, as well as those to be made, to be the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian nations, and consequently admits their rank among those powers who are capable of making treaties. The words "treaty" and "nation" are words of our own language, selected in our diplomatic and legislative proceedings, by ourselves, having each a definite and well understood meaning. We have applied them to Indians, as we have applied them to other nations of the earth. They are applied to all in the same sense. (U. S. Supreme Court 1832, 559-60)

PARR leaders also distort the intent of the Indian Appropriations Act of 1871. The legislation, which abolished future treaty making for domestic political reasons as noted in Chapter 5, unequivocally stated that "nothing herein contained shall be construed to invalidate or impair the obligation of any treaty heretofore lawfully made and ratified with any such Indian nation or tribe" (U. S. Congress 1871). Similarly, while Congress made all Indians U. S. citizens for reasons outlined earlier in this chapter, it specifically stipulated that "the granting of such citizenship shall not in any manner impair or otherwise affect the right of any Indian to tribal or other property" (U. S. Congress 1924).

As demonstrated in Chapters 2-5, there is overwhelming evidence that oral explanations of treaty provisions by U. S. treaty commissioners and interpreters did not always match the written provisions. Chief Justice Marshall's colleague, Associate Justice John McLean, remarked in the 1832 case mentioned above: "how the words of the treaty were understood by this unlettered people, rather than their critical meaning, should form the rule of construction." Believing that treaties with Indian tribes represented "more than an idle pageantry," Justice McLean reminded American citizens of his day of the "binding force" of the agreements and of the "principles of justice," which dictated that the United States uphold its commitments (U. S. Supreme Court 1832, 582-83).

While some Wisconsinites have joined or supported the various backlash groups like PARR and STA mentioned earlier, voices of moderation have appeared. Some non-Indians have attempted to set the record straight on the actual amount of tribal harvesting of fish and game and the impact on tourism. A Minocqua motel owner, for example, urged Wisconsinites to separate fact from fiction: "my biggest concern is that people think the Indians are shooting all the deer . . . . It hasn't happened. The Indians aren't catching and spearing all the fish that swim . . . and they aren't shooting that many deer" (*Milwaukee Journal* 1984c). He was correct on both counts. The Chippewa deer harvest (*Fig. 38*) is minimal compared either to the entire deer population or to the harvest by state-licensed hunters; it is smaller even than the annual road kill in the ceded territories (Busiahn 1989a). Similarly, Chippewa spring spearfishing, which resumed in 1985 under intensely monitored conditions, has never come close to approaching the impact that sportfishing has on

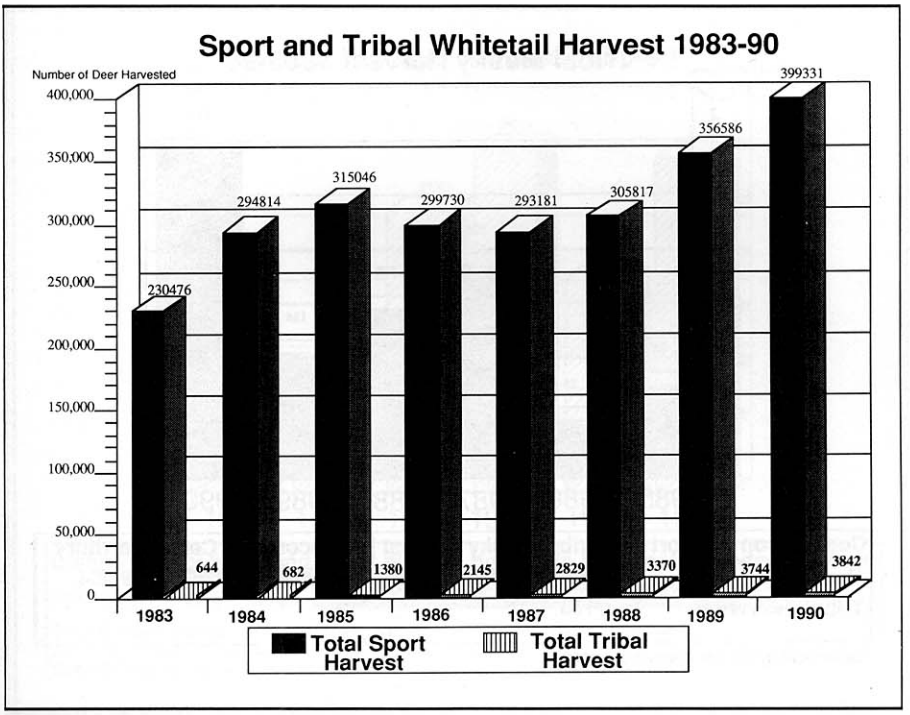

Fig. 38. *Chippewa White-Tailed Deer Harvest, 1983–90.* Data courtesy of the Great Lakes Indian Fish and Wildlife Commission (GLIFWC) and of the Bureau of Wildlife Management of the Wisconsin Department of Natural Resources (DNR). The graph compares the DNR's record of the registered sport whitetail harvest and GLIFWC's record of the tribal whitetail harvest. Because the difference between sport and tribal harvests is so great, the tribal harvest barely registers on the graph. Graph courtesy of the University of Wisconsin-Eau Claire Media Development Center.

the fish population in northern Wisconsin (*Figs. 39-40*). Contrary to the information released by anti-treaty rights groups, eighty percent of the fish speared during the 1990 spearfishing season were males (*Masinaigan* 1990h, 11). Considering the small number of fish actually taken annually by tribal spearfishers in comparison to that taken by anglers, former head of the DNR District Office in Spooner Dave Jacobson has observed that "there is virtually no possibility that tribes can destroy the resource" (*Isthmus* 1990, 9).

Attempts have also been made to set the record straight as to the impact of Chippewa off-reservation fish and game harvests on tourism. Director of the Wisconsin Division of Tourism Dick Matty has recently stated that, contrary to the reports issued by anti-treaty groups, there has been "*no real negative impact*" on tourism as a result of Indian spearfishing. Chamber of Commerce officials in northern communities like Minocqua and Boulder Junction report that tourism is thriving. What is having a greater impact on tourism in the north than Indian spearfishing or deer hunting harvests according to tourism experts such as Rollie Cooper of the University of Wisconsin-Extension Recreation Resource Center are (1) the failure of resort owners to market their facilities in response to demographic trends such as the growth of two-income households, an aging population, and an increased

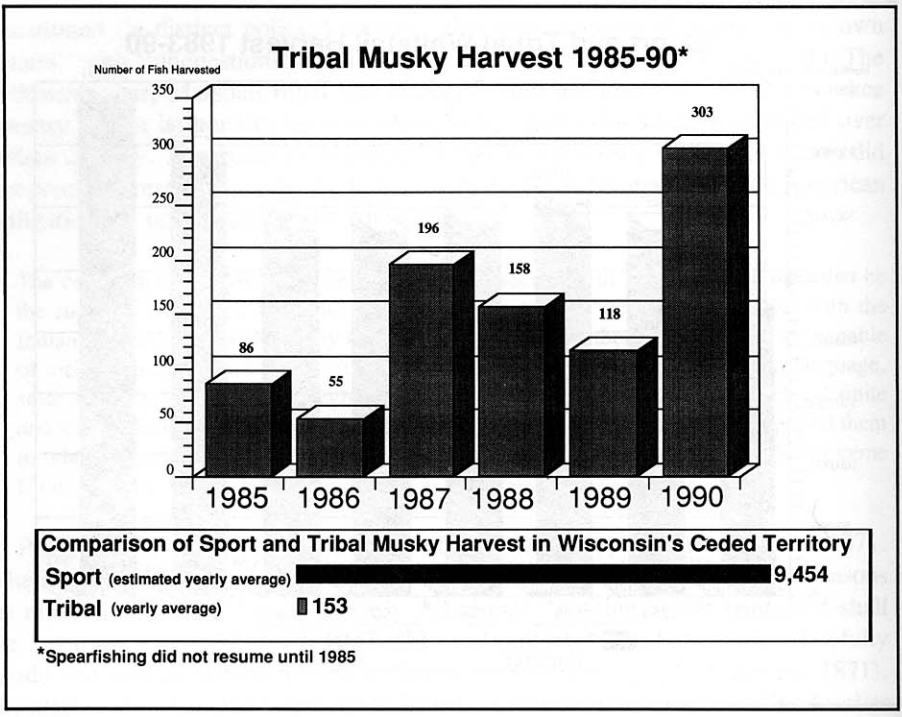

Fig. 39. *Chippewa Muskellunge Harvest, 1985–90.* Data courtesy of the Great Lakes Indian Fish and Wildlife Commission (GLIFWC) and of the Bureau of Fisheries Management of the Wisconsin Department of Natural Resources (DNR). Graph courtesy of the University of Wisconsin-Eau Claire Media Development Center.

number of single-parents families, (2) the declining quality of resorts due to their age or the failure of owners to make improvements, and (3) the poor public image given to Wisconsin by the actions and words of anti-treaty rights demonstrators at the boat landings (Thannum {1990}, 15-17; *Masinaigan* 1990c, and 1990h, 7).

Despite the efforts mentioned above, there is still a great deal of misinformation and many misunderstandings about Chippewa treaty rights issues across Wisconsin. A recent survey conducted by the St. Norbert College Survey Center and Wisconsin Public Radio concluded, for example, that only 30% of the respondents knew that the Chippewa Indians are limited in the number of fish and game they can harvest. The public's lack of accurate information has made it easier for anti-treaty rights leaders to exploit the fears and frustrations of their neighbors, especially during the hard economic times in the north since the *Voigt Decision*. During this period, the adjusted gross income in many northern Wisconsin counties failed to reach the State's 1983 average. In addition to its lower income level, the north suffers from high seasonal unemployment rates. Such conditions create an excellent breeding ground for anti-Indian propaganda. As resource development specialist Jim Thannum has observed, "ignorance, poor economic conditions, and fear of the unknown" in the north have helped to create a hostile environment for Indian treaty rights in recent years (Thannum {1990}, 10-13).

In addition to attempting to correct misinformation about Indian fishing and hunting harvests, some residents of the state including the leaders of numerous

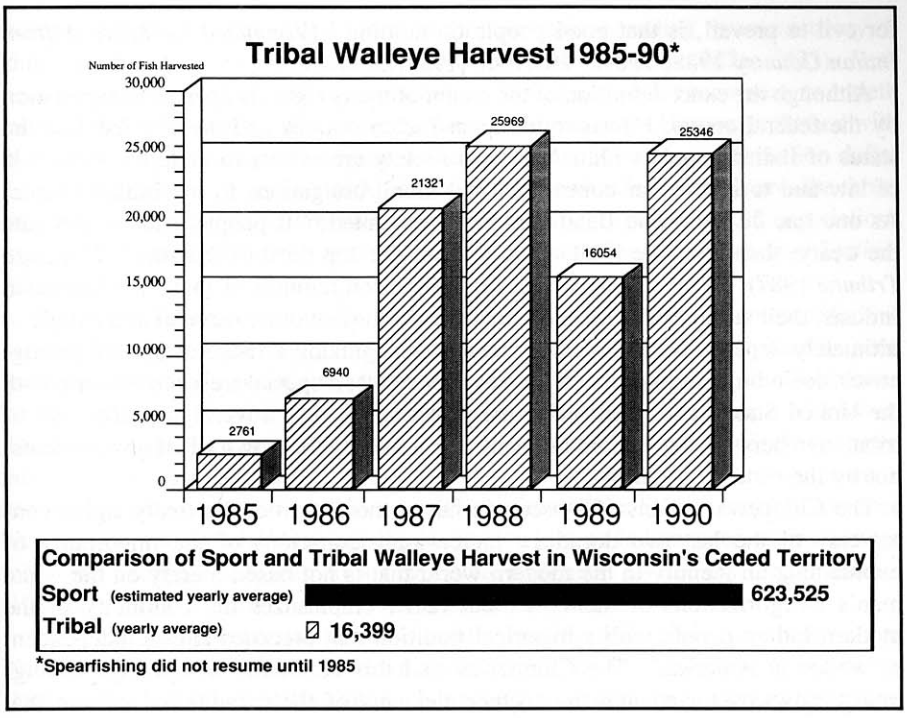

Fig. 40. *Chippewa Walleye Harvest, 1985–90.* Data courtesy of the Great Lakes Indian Fish and Wildlife Commission (GLIFWC) and of the Bureau of Fisheries Management of the Wisconsin Department of Natural Resources (DNR). Graph courtesy of the University of Wisconsin-Eau Claire Media Development Center.

religious organizations have reacted to the violence at boat landings, the marketing of Treaty Beer, and other signs of growing racism by peaceful, non-confrontational observation at the boat landings and by speaking out in support of Indian treaty rights and tribal sovereignty. The purpose of such "witnessing" is to convey calm in the midst of tension and to demonstrate non-Indian support for treaty rights (Midwest Treaty Network {1990}; *USA Today* 1990, 2A; *Wisconsin State Journal* 1990a; *News from Indian Country* 1990g).

Perhaps the most prominent of the treaty support organizations is Honor Our Neighbors' Origins and Rights (HONOR), a coalition of individuals, human rights groups, church organizations, and other groups. The organization began in Wausau, where in February of 1988 a group of Indians and non-Indians responded to the increasing intensity of anti-Indian rhetoric and activity by meeting to affirm the constitutionally recognized government-to-government relationship that has been the cornerstone of American federal Indian policy. Under the coordination of Sharon Metz of the Milwaukee-based Lutheran Human Relations Association of America, HONOR organized itself as a coalition of individuals and groups dedicated to positive actions promoting peace, harmony, and intercultural understanding. Members speak of the Chippewa treaties as a matter of national honor, hence the name of the organization. HONOR's promotional literature quotes the following statement by eighteenth-century English statesman Edmund Burke: "The only thing necessary

for evil to prevail, is that good people do nothing'' (*Vanguard* 1988; *News from Indian Country* 1988, 1989b; HONOR {1989}).

Although the exact definition of the extent of treaty rights is open to interpretation by the federal courts, efforts to abrogate Indian treaties and thereby redefine the status of Indian people within American society are efforts to undermine the rule of law and to ignore our contractual and moral obligations to the Indian people. As one Lac du Flambeau Band member commented, ''if people want to abrogate the treaty, then abrogate it all. Give us back the top third of the state'' (*Chicago Tribune* 1987). Legal scholar Charles F. Wilkinson reminds us that ''for American Indians, their survival as a people—mark down those words, survival as a people—ultimately depends on 19th-century treaties recognizing a range of special prerogatives, including hunting, fishing, and water rights; a special trust relationship with the United States; and, ultimately, the principal of tribal sovereignty, the right of tribal members to be governed on many key issues by their own tribal governments, not by the states'' (1990, 4-5).

The Chippewa Indians of Wisconsin have emerged from the treaty rights controversy of the last two decades ''increasingly conscious of the importance of maintaining an identity in the modern world that is not based merely on the white man's categorizations of them . . . but rather emphasizes the continuity of the modern Indian people with a historical tradition that precedes and is independent of whites in America.'' The Chippewas find this continuity in hunting, fishing, ricing, powwows, and numerous other elements of their traditional culture that ''serve not only as structural and cultural supports of the Chippewa entity but also become transformed into symbolic devices for explicit furthering of ethnic distinctiveness'' (Paredes 1980, 406-07, 410). As a Lac du Flambeau Chippewa Indian commented in the summer of 1989, ''spearing fish in the spring is what got me in touch with my heritage. Part of it meant food. Getting food on the table to eat, to live. But part of it, connected to eating and living, is being Chippewa.'' Indeed, Chippewas argue that *they* are ''the endangered species'' in northern Wisconsin. ''If we give up our ways,'' they contend, ''we die'' (Kenyon 1989, 18, 22, 30).

Despite the important relationship between reserved treaty rights and the ethnic consciousness of the Chippewa people, some influential Wisconsinites including Attorney General Donald J. Hanaway began pursuing efforts in April of 1987 to seek a negotiated out-of-court, long-term settlement between the state and the Chippewa bands. Although some media spokespersons have loosely referred to the Thompson administration's efforts as aimed at securing an outright cash ''buy-out'' of Chippewa hunting, fishing, and gathering rights, Hanaway sought an agreement by which the Chippewas would curtail or lease their harvesting rights in exchange for economic and other forms of assistance from the state (*Milwaukee Journal* 1987b; Hanaway 1989, 8-10; *Wisconsin State Journal* 1990c, 5).

In order to help Hanaway in bringing the Chippewas to the negotiating table, Republican Congressman Frank James Sensenbrenner, Jr. of Menomonee Falls introduced legislation in the U. S. House of Representatives during July 1987 calling for the abrogation of off-reservation usufructuary rights in Wisconsin (U. S. Congress 1987a, b). Sensenbrenner may have been inspired in part by a comment made by Judge Doyle during the LCO III trial. Doyle, who clearly recognized the ''practical dilemma present in the ceded lands'' and the emotional dimensions of the treaty-rights issue, stated on February 18, 1987, that a ''practical'' solution would

come not through court action but through negotiations leading to a new treaty or through unilateral congressional action (U. S. District Court 1987a, 1433). Sensenbrenner defended his bill by remarking, "the treaties don't recognize twentieth century life in America." The congressman's timing assisted Hanaway. Armed with a "carrot" from the governor—his willingness to negotiate a multi-million dollar lease of treaty rights—and a "stick" from Representative Sensenbrenner—the threat of "serious efforts" to secure enactment of the Abrogation Bill should negotiations stall in Wisconsin, Hanaway worked hard to secure a settlement (*Milwaukee Sentinel* 1987).

Governor Thompson publicly called Sensenbrenner's bill "counterproductive when negotiations are going on," but Republican Senator Robert Kasten soon provided the state's negotiating team with yet another "stick." Kasten threatened to withhold federal aid if the Chippewas did not negotiate a settlement. Moreover, Democrat State Representative Mark D. Lewis of Eau Claire accused the governor himself of heavy-handedness in the negotiations with the tribes. Lewis, chair of the Trade, Industry, and Small Business Committee of the State Assembly, claimed that the governor was holding legislation creating jobs on Indian reservations hostage until the Chippewas agreed to a negotiated settlement (*Wisconsin State Journal* 1987; *Green Bay Press Gazette* 1987a, b; Lewis 1987).

Negotiations between state officials and the leaders of the Mole Lake reservation, the poorest of the six Chippewa reservations in Wisconsin (*Wisconsin State Journal* 1990c, 10), led to a tentative agreement offering ten million dollars to lease their usufructuary rights over a ten-year period. On January 14, 1989, the Mole Lake Indians overwhelmingly rejected the offer. Frustrated by this turn of events, Attorney General Hanaway acknowledged that the prospect of achieving such a settlement with other bands in the near future was equally gloomy (Hanaway 1989, 8-10).

Several months after the Chippewas of the Mole Lake reservation rejected the state's offer, Representative Sensenbrenner again introduced legislation in the House calling for the abrogation of Chippewa usufructuary rights in Wisconsin. Nevertheless, there were "clear messages" that neither Congress nor the President would abrogate treaties. As a result, the Thompson administration continued to work toward leasing Chippewa usufructuary rights (U. S. Congress 1989a, b; Hanaway 1990, 12).

In 1989 Al Gedicks of La Crosse, Executive Secretary of the Wisconsin Resources Protection Council, charged that Governor Thompson had "a hidden agenda" for continuing to push a "buy-out" arrangement. According to Gedicks, Secretary of Administration James R. Klauser, the governor's top aide and point man on treaty issues, was eager to have the Chippewas lose their legal standing to intervene in any court challenges to proposed mining operations in ceded territory. Claiming that Klauser formerly lobbied for Exxon, which in the early 1980s had proposed a zinc and copper mine near Crandon, Gedicks questioned the governor's motivation and urged the Chippewas not to give up any rights that would weaken their legal clout against environmental threats from mining interests. Gedicks's remarks undoubtedly found a sympathetic audience among Chippewa leaders who have long suspected that anti-treaty rights organizations have "an agenda far broader than just spearfishing." In particular, some Indian leaders have openly asserted that these groups may be associated with or bankrolled by big companies interested in mineral

rights in the state. Whatever the validity of such fears, suspicions, and accusations, Governor Thompson continued to seek a negotiated settlement (*Milwaukee Journal* 1989c; Gedicks 1985, 180-89, 1989, 8; *Wisconsin State Journal* 1990c, 9, 17, 37).

When anti-treaty rights protesters broke through police lines during the 1989 spearfishing season, the *Milwaukee Journal* urged Governor Thompson to call in the National Guard (1989a). The rowdy crowds at the landings exceeded that of the previous year by ten times, and State Republican Party Chair Donald K. Stitt of Port Washington urged the Republican governor to "strongly consider" declaring a state of emergency and closing off northern lakes to spearfishers *and* anglers (*Capital Times* 1989c). Thompson took a different approach. He made an unprecedented appearance in Judge Crabb's courtroom to personally request the issuance of an injunction to halt Indian spearfishers (*Capital Times* 1989b).

Crabb refused to grant the Governor's request. Commenting that it was her obligation "to enforce the law and the rights of all people under the law," Crabb addressed the charge made by anti-treaty protesters that the Chippewas had *more* rights than non-Indians:

> Many people in the northern part of the state complain that the tribes are accorded unequal rights because they are permitted to hunt, fish, and gather in ways denied to the non-Indian population. The fact is, however, that the tribes do not have unequal rights. They have the same rights as any other resident of the United States to enter into contractual agreements and to go to court to enforce their rights under those contracts. In previous phases of this litigation, it has been found that the Chippewas gave up the ceded territory but retained rights to hunt, fish, and gather. Those rights are not in question now. As those rights relate to the spearing of walleye, they are circumscribed by the Department of Natural Resources' determination of a biologically safe catch. In addition, and I emphasize this, they have the same rights as any other resident of this state to seek the state's protection in exercising their lawful rights.

The judge argued that "the fact that some {non-Indians} are acting illegally and creating unjustified fears of violence does not justify abridging the rights of those {Indians} who have done nothing illegal or improper." Referring to the "constitutional underpinnings" of American society, Crabb refused to permit "violent and lawless protests" to determine the rights of Indians in Wisconsin. "What kind of country would we have if brave people had not faced down the prejudiced, the violent, and the lawless in the 1960s? What kind will we become if we do not do the same today," she asked in rebuffing the Governor (*Wisconsin State Journal* 1989b).

Judge Crabb's popularity among protesters at the boat landings can be surmised from a slogan on one of their signs—"Save a Walleye, Spear A Crabb" (*Wisconsin State Journal* 1990c, 35). Although Governor Thompson failed in his efforts to obtain a court order ending the spearfishing season, his worst fears went unrealized. Cold weather helped reduce crowds and cool tempers at the boat landings. Thompson aide Klauser remarked, "fortunately, Mother Nature cooperated better than Mother Crabb" (*Capital Times* 1989d).

Meanwhile, Governor Thompson's assertion to Judge Crabb that state law enforcement officers were "unable and in some cases, unwilling, to guarantee the protection of the tribes in the exercise of their lawful rights" especially angered treaty supporters. Some commentators suggested that instead of proposing to spend

Fig. 41. *Stop Putting Your Head Under That Poor Man's Club!* Cartoon by Bill Sanders, *The Milwaukee Journal.* Reprinted with permission.

a million dollars for promoting tourism in the north the Governor should earmark funds for law enforcement to protect Chippewa spearfishers and to arrest, prosecute, and incarcerate those who would deny them their rights (*Wisconsin State Journal* 1989b, c). The administration apparently had other ideas about the best way to handle the Chippewa treaty rights controversy.

In October of 1989, after months of intense bargaining, Wisconsin Attorney General Hanaway and a team of negotiators reached a tentative settlement with the Lac du Flambeau Chippewa Band, the heaviest spearers in northern Wisconsin (*Fig. 41*). If the Indians agreed to give up gill netting, as well as most of their spearfishing rights and reached an agreement with the state on outstanding issues pertaining to hunting, trapping, and gathering, Hanaway offered them annual payments of about 3.5 million dollars and other economic incentives for a ten-year period with a renewal option for five-year periods by mutual agreement. Estimates of the total cost ranged from 42 to 50 million dollars. According to top Thompson aide James Klauser, "the cost would be paid out of surplus revenue and would require no tax increase" (*Green Bay Press Gazette* 1989; *Milwaukee Sentinel* 1989c; Lac du Flambeau Band and State of Wisconsin 1989).

Before the Lac du Flambeau pact with the state came up for a vote on the reservation, Lac Courte Oreilles Tribal Chair Gaiashkibos and Bad River Tribal Chair Donald Moore went on record against the arrangement (*Milwaukee Sentinel* 1989d). "Our rights are not for sale and they're not for lease. What other tribes

Fig. 42. *Thomas Maulson, Walleye Warrior.* Maulson, an active spearer, says of PARR and similar anti-treaty groups, "All these guys are lacking are the white sheets" (*Capital Times* 1986b, 25). Photograph by Mary Beth Berg. Reprinted with permission.

do is their business," Gaiashkibos said (*Capital Times* 1989e). Opposition to the proposed settlement led officials of the Great Lakes Indian Fish and Wildlife Commission (GLIFWC) to replace Lac du Flambeau Tribal Chair Michael W. Allen with Bad River Tribal Chair and "buy out" critic Donald Moore as the GLIFWC chair. At the same time, Lac du Flambeau Tribal Attorney Kathryn Tierney resigned under pressure from the other Chippewa bands as lead counsel for the Chippewa treaty rights trial pending in federal court (*Milwaukee Sentinel* 1989e).

On October 25, 1989, members of the band stunned state officials by rejecting the multimillion-dollar pact by a vote of 439 to 366. Thomas Maulson (*Fig. 42*), a leader of the off-reservation spearfishing group Wa-Swa-Gon, told a jubilant crowd outside the tribal hall after the votes had been counted that "the 'Walleye Warriors' will be back" (Hanaway 1990, 11; *Wisconsin State Journal* 1989d, f).

Governor Thompson, Attorney General Hanaway, Administration Secretary Klauser, and DNR Secretary C. D. "Buzz" Besadny were caught off guard by the news. The vote was obviously a major setback to proponents of a negotiated settlement.

But efforts to secure such an arrangement would continue. Thompson and his aides told a group of editors and publishers two days after the balloting at Lac du Flambeau that Indian treaty rights remain the biggest problem facing the State of Wisconsin (*Wisconsin State Journal* 1989f, 1990c, 2). DNR Secretary Besadny had publicly stated weeks earlier that "we can—and we must—support a negotiated settlement. The treaties will not be abrogated and the Chippewa will never agree to a buyout. There can only be a lease arrangement" (Besadny 1989, 7). Former Dane County District Attorney James E. Doyle, Jr., the son of the late U. S. District Court judge who ruled against the Chippewas in 1978, called for a reopening of efforts to reach a negotiated settlement as he challenged Attorney General Hanaway in the 1990 election (*News from Indian Country* 1990f).

While many politicians support a negotiated settlement of Chippewa reserved rights as a means of ending the annual treaty rights controversy centered around the Indian spearfishing season in northern Wisconsin, there has also been talk about cooperative efforts between state conservation officials and the Chippewa bands in managing natural resources. In particular, attention has focused on the so-called "Washington model." As noted earlier, Washington State was embroiled in its own treaty rights controversy following the *Boldt Decision* in 1974. But while the treaty rights issue has been raging in Wisconsin since 1983, Indian tribes in Washington have worked with state and federal government officials as well as with private recreational and commercial fishing interests to manage fish populations with excellent results. Between 1974 and 1987, for example, salmon harvests increased by nearly thirty percent and steelhead harvests increased by almost seventy percent. Bruce Stewart, a fish pathologist who left Wisconsin's DNR to work in Washington State, claims that "Washington is 10 years ahead of Wisconsin" in terms of cooperation between Indians and state government in managing various resources (*Appleton Post-Crescent* 1989; *News from Indian Country* 1989a, 1990a; Thannum {1990}, 20; *Wisconsin State Journal* 1990c, 54, 56).

Traditional Chippewa culture reinforces cooperation rather than competition in hunting, fishing, and gathering, and the Indians have a long history of sharing resources with non-Indians (Strickland *et al.* 1990, 27). Lac du Flambeau spearfishing organizer Thomas Maulson, an avid opponent of the Thompson administration's abortive negotiated settlement, reminded an Eau Claire audience in 1990 that Indians have willingly shared the natural resources of North America "from the first day white people stepped foot on this continent." Non-Indians, he argued, need to understand the "cultural aspect," the fact that spearfishing is "important to American Indian heritage" (*Eau Claire Leader-Telegram* 1990d, 1A). Recently the national president of Trout Unlimited, Inc., Robert Herbst, a veteran of conflicts involving Indian treaty rights in the states of Washington, Minnesota, and Alaska, observed "there are now global environmental concerns, which demand our united attention. The magnitude of problems we jointly face make it imperative that we act as partners for the good of the resource itself, and not for the selfishness in each of us." For these reasons, Herbst's organization has moved from a position of opposing Indian treaty rights to one of stressing the cooperative management of resources (Kerr 1990a, 14).

Some supporters of cooperative management reacted very positively to the interest shown in 1990 by U. S. Senate Select Committee on Indian Affairs Chair Daniel K. Inouye in helping to resolve the treaty dispute in Wisconsin. Inouye, who had

mediated the dispute in Washington State years earlier, indicated that his goal in the Wisconsin controversy was to "resolve this matter, not only amicably and fairly, but with justice to the Native Americans" (*News from Indian Country* 1990b, 13). In an editorial entitled "Inouye Riding to Rescue State from its Rednecks," *Capital Times* associate editor John Patrick Hunter deftly summed up the thinking of many advocates of cooperative management: "if the white establishment, here and in Washington, accepts the Indian nations as equal partners, then perhaps an agreement can be reached on fishing and timber cutting, without the explosive confrontations that have disgraced Wisconsin in recent years" (1990b).

Suggestions that the Chippewa Indians co-manage natural resources with State officials infuriate anti-treaty rights groups (*PARR Issue* 1991u, v). In 1990 when State Assembly Speaker Democrat Thomas Loftus of Sun Prairie, who opposes spearing of spawning fish, endorsed co-management as an answer to the strife over Chippewa treaty rights, Governor Thompson's aide James Klauser and DNR Secretary "Buzz" Besadny ruled out the approach as practiced in the state of Washington. Declaring co-management to be "probably illegal" under the state constitution, Klauser claimed it would take legislative action or a referendum changing the constitution to make the approach legal (*Wisconsin State Journal* 1990b, c, p. 55; *Milwaukee Sentinel* 1990f). "It will be a cold day in hell," Attorney General Hanaway told a legislative committee, before voters would agree to share authority for natural resources management with the Chippewas. In responding to Hanaway's comment, Great Lakes Indian Fish and Wildlife Commission executive director Jim Schlender poignantly observed, "the affect of all the attention on the term co-management has been to divert attention from the need to develop consensus and meaningful cooperation in managing the resources" (*News from Indian Country* 1990e).

Many Wisconsinites remain suspicious of what some continue to call the "special rights" of the Chippewas, and some state and county officials continue to search for ways to "modernize" Indian treaties and to curtail those rights. Between January 18th and 20th of 1990, for example, representatives of the Wisconsin Counties Association (WCA) and Wisconsin Administration Secretary James Klauser met in Salt Lake City, Utah, in closed session with county officials from a dozen states to discuss strategies for dealing with treaty rights issues. WCA Executive Director Mark Rogacki told reporters he was hopeful the meeting would lead to a coalition that would pressure Congress to rewrite nineteenth-century treaties. The organizers of the meeting were widely criticized in the press for refusing entry to several Wisconsin Indian county officials.[59] Indians picketed the meeting, calling the conferees "cockroaches hiding from the sun" (*Capital Times* 1990a; *Eau Claire Leader-Telegram* 1990a; *Milwaukee Sentinel* 1990a; *Wisconsin State Journal* 1990a; *Christian Science Monitor* 1990).

The Salt Lake City meeting took place as Indian law specialist Douglas Endreson of San Francisco addressed the members of the State Bar of Wisconsin at their mid-winter convention in Milwaukee. While Secretary Klauser and Wisconsin county officials discussed ways to circumvent the treaty rights of Indians, Endreson advised Wisconsin attorneys that solutions to treaty rights conflicts would not come about until states officially recognized treaties as "existing, viable, live documents, with live people on both sides" (*Milwaukee Sentinel* 1990b). Endreson's comments received reinforcement a few days later from the U. S. Commission on Civil Rights.

The Commission issued a formal report condemning documented cases of discrimination against Chippewa Indians in northern Wisconsin and reminding Wisconsinites that Indian treaty rights are protected by the U. S. Constitution as part of the "supreme Law of the Land" (*Eau Claire Leader-Telegram* 1990b).

The actions of the Wisconsin Counties Association described above are of particular concern since justice for the Indians depends largely on the willingness of opinion leaders in the majority society to learn about the evolution of treaty rights and to respect the continuation of those rights. Unlike non-Indian Americans, the most cherished civil rights of Indian people are not based on equality of treatment under the Constitution and modern civil rights laws. Rather, treaty rights and tribal sovereignty are of the utmost concern (Wilkinson 1990, 4-6).

Non-Indians in Wisconsin must come to understand that legal and moral considerations recognized by early American leaders are as pertinent today as when the Chippewa treaties were originally negotiated. Upon returning from the ill-received conference in Salt Lake City, Secretary of Administration Klauser claimed that he had gained a stronger appreciation for the Indian position. "I came back and ordered textbooks and started reading them," he said. Klauser's reexamination of the issues led him to remark, "the significance of the treaties is much greater than I understood months ago. I don't see the treaties as being the problem" (*Wisconsin State Journal* 1990c, 4). As the Equal Rights Commission of the Governor of the State of Wisconsin editorialized in the first issue of its newsletter in 1988, "the state, both as a people who live within its border and as a government, must have a conscience" with respect to the reserved rights of the Indians (*ERC Conscience* 1988, 2).

Recent events make it clear that the federal government must also have a conscience if the Wisconsin Chippewa Indians are to receive redress for more than a century of injustices. In her October 11, 1990, ruling denying the Chippewas damages against the State of Wisconsin, Judge Crabb acknowledged, "after more than sixteen years of litigation during which this court and the Court of Appeals for the Seventh Circuit have determined that the State of Wisconsin has violated plaintiffs' treaty rights for over 130 years, plaintiffs are left with no means of recovering monetary damages from the state except in the unlikely event that the United States joins this suit on their behalf." Crabb's ruling, as she herself recognized, "leaves the plaintiff tribes without an adequate remedy for the wrongs they have suffered" (U. S. District Court 1990b, 922-23).

Today, to quote Judge Crabb, the prospect of a federal resolution of the Chippewas' claim against the State of Wisconsin for redress of their grievances remains "as elusive as most of the promises made to them over the years" (*Eau Claire Leader-Telegram* 1990i, 2A). Although spoken by a member of a Southern Indian tribe, the following words of Cherokee Chief John Ross during the removal crisis in Georgia in 1831 seem appropriate for the present controversy over Chippewa hunting and fishing rights and claims against the State of Wisconsin for violating those rights:

> . . . President {George} Washington and his successors well understood the constitutional powers of the General Government, and the rights of the individual states, as well as those belonging to the Indian Nations, and that the treaties made under their respective administrations with the . . . {Indians} were intended to be faithfully & honestly regarded

> on the part of the United States; and that the judicial power would extend to all cases of litigation that might arise under those treaties. (Ross 1831, 227)

Chippewa hunting and fishing rights are part of "the supreme Law of the Land." Applying the words of Chief Justice John Marshall in the 1832 Supreme Court case of *Worcester* v. *The State of Georgia* to Chippewa treaty rights in Wisconsin, we must remember that the Lake Superior Chippewa people constitute distinct communities, occupying their own territories, with boundaries accurately described, in which the laws of Wisconsin have no right to enter, but with the assent of the Chippewa people themselves, or in conformity with treaties, and with the acts of Congress.

The Chippewa bands, like the Cherokee people Marshall was speaking about in 1832, constitute distinct political communities having the right to make their own laws and be governed by themselves without the interference of state government except in those areas specifically provided by federal laws or federal court decisions. As "domestic dependent nations," using Marshall's words, the Chippewa bands have lost the sovereign power to treat with nations other than the United States, but they retain the right to have the meaning of treaty clauses resolved in their favor whenever the meaning is in doubt (Cohen 1982 222, 241-42). They also have the right, as Lac Courte Oreilles Tribal Chair Gaiashkibos recently commented, to decide that their reserved rights "are not for sale, not for lease" (*Masinaigan* 1990e).