End Notes

1. Chippewa mixed-blood writer William Warren refers to Chippewa lands in Wisconsin and Minnesota as "blood earned country" (1849, 20) due to their "ancient bloody feud" (1850, 95) with the Sioux. For source material on Chippewa-Sioux relations collected by an amateur historian from the Chippewa Valley, see Bartlett (1929, 1-66).

2. For information on the government trading houses, see Peake (1954); Plaisance (1954); Prucha (1984, 1: 115-34); and Viola (1974, 6-70).

3. Jefferson followed a similar approach in the South; see Satz (1981, 9-10).

4. At the Fond du Lac negotiations in 1827, for example, the treaty commissioners collected British medals and flags and gave Indian leaders and others they chose to recognize American flags and medals (Edwards 1826, 460-61, 473-74; Schoolcraft 1851, 245; Viola 1974, 145; Warren 1885, 393). Interpreter William Warren reflected on the incident years later as follows:

   At the treaty of Fond du Lac, the United States commissioners recognized the chiefs of the Ojibways, by distributing medals amongst them, the size of which were in accordance with their degree of rank. Sufficient care was not taken in this rather delicate operation, to carry out the pure civil polity of the tribe. Too much attention was paid to the recommendation of interested traders who wished their best hunters to be rewarded by being made chiefs. One young man named White Fisher, was endowed with a medal, solely for the strikingly mild and pleasant expression of his face. He is now a petty sub-chief on the Upper Mississippi.

   From this time may be dated the commencement of innovations which have entirely broken up the civil polity of the Ojibways. (Warren 1885, 393-94)

   For a history of the use of peace medals in American Indian diplomacy, see Prucha (1962a; and 1971).

5. Lawrence Taliaferro was appointed at Fort Snelling in 1819, and Henry Rowe Schoolcraft was appointed at Sault Ste. Marie in 1822 (Hill 1974, 162, 166). As late as 1837 Governor Dodge referred to the Wisconsin Chippewas as follows: "They live remote from our military posts, and have but little intercourse with our citizens, and have had no established agent of the Government to reside with them any length of time" (Dodge 1837b, 538).

6. Grant Foreman (1946) has studied the removal of Indians from Ohio, Indiana, and Illinois. I have briefly examined the removal of Indians from the Old Northwest as part of a larger study of Jacksonian Indian policy (1975) and have reviewed the situation in the Old Northwest in more detail as a test case of Jacksonian policy (1976). Useful articles on individual Indian tribes and bands from the Saint Lawrence lowlands and the Great Lakes riverine regions appear in Trigger (1978).
Francis Paul Prucha's account of the removal of the northern Indians during the Jacksonian era unconvincingly argues that the emigration of these tribes was merely a "part of their migration history" and stresses federal paternalism in Indian affairs (Prucha 1984, 1: 243-69). Excellent maps and accompanying text dealing with the removal of the Indians from the Great Lakes region appear in Tanner (1987). For a recent analysis of the contrast between the rhetoric and reality of Jacksonian Indian policy that includes references to Wisconsin, see Satz (1991).

7. In 1911, the Iowa Journal of History and Politics reprinted a version of the treaty proceedings that originally appeared in volume 1, numbers 11 and 14 of the Dubuque Iowa News (1837, 408-28). The 1911 publication, however, is not a verbatim reproduction of the original handwritten copy (Van Antwerp 1837) on file in the National Archives and Records Service, which was utilized in this study (see Appendix 1).

8. The sutlers were civilian businessmen appointed by the War Department to sell items not furnished soldiers by the subsistence or quartermaster departments.

9. The First Infantry arrived in Florida in November of 1837 and departed on August 4, 1841. For information on the Seminole Indian War and the role of the First Infantry, see Mahon (1985).

10. For an example of one effort to open a mill along the Chippewa River in 1836, see Dousman (1836); Stambaugh (1836); Chippewa Chiefs (1836); Harris (1836); and Young and Robinson (1838).

11. References to documents included in the Appendices are highlighted in italics immediately after the related text. Frame numbers are provided instead of page numbers for items on microfilm.

12. Anthropologist James A. Clifton contends La Trappe's comments indicate the willingness of the Pillager and other Minnesota bands to sell the pinelands in Wisconsin, which were useless to them, while reserving from sale the deciduous forests. In addition, Clifton views later efforts of the Chippewas to clarify the meaning of La Trappe's words as evidence the Pillagers had inserted the qualification into the official record in order to be able to later "dodge undesirable ramifications of the agreement or to reopen negotiations" (Clifton 1987, 12).

13. The mixed-blood population among the Chippewas and other Wisconsin Indians never emerged as so socially cohesive a group as the Metis of central Canada. White traders not only seemed to prefer mixed-blood wives but they also took steps to educate and employ their children (Kay 1977, 329). On the significance of the mixed-bloods among the Chippewas, also see Brunson (1843a).

14. The document has recently been published with editorial notes and an historical introduction by a Canadian linguist; see Nichols (1988).

15. Governor Henry Dodge referred to William Warren as a man with "much influence" over the Chippewas who was "well qualified" to serve as an interpreter
(Dodge 1847b, 1086). A knowledgeable St. Paul trader referred to Warren as "the only correct interpreter in the Chippewa nation" (Rice 1847). For additional information on Warren, see Babcock (1946).

16. On the value of oral traditions in understanding the past, see Buffalohead (1984, xiv).

17. Strickland, Herzberg, and Owens (1990, 7 n. 13) define this term as follows: "A usufructuary right is the right of a person (or group) to enjoy, use, or harvest something to which that person does not have actual title. This principle is an established part of anglo-American law and is not limited to the treaty-rights sphere. Any person (or group) may reserve a usufructuary right in property they sell or give to another. This usufructuary right is then protected under property and contract law principles. For example, any landowner is able to convey a piece of land and lake to another, but provide in the sales contract that the seller and his heirs will be able to fish in the lake forever. If this is done, under contract and property law principles the seller may use the courts to enforce the promise made between the parties at the time of sale."

18. For information on Copway, see Smith (1988).

19. For information on the origins and use of the annuity system by federal officials as a means of social control, see Satz (1975, 104-05, 134, 143, 145, 222, 230, 246-48, 276-77, 279 n. 3, 293).

20. Historian Paul W. Gates claims that prior to the 1837 Chippewa Treaty, "the government was well ahead of the land buyers in the negotiations for Indian cessions, the surveying of the ceded lands, and the public offering of the lands" in Wisconsin. By September 30, 1836, Indian title had been surrendered to 18,512,437 acres, surveys completed on 8,679,605 acres; some 4,807,307 acres had been offered for public sale, and the government had sold 1,5051,921 acres (1969, 306 n. 1).

21. There are conflicting opinions on the extent of forest cover and deer population densities in early northern Wisconsin; compare Habeck and Curtis (1959), with Schorger (1953).

22. In 1840 Wisconsin territorial delegate John Doty informed Congress: "The Territory of Wiskonsan has as many lakes within her borders as the Empire State, and bids fair, from her fine forests, her copper, her lead, her iron, her zinc, her incomparable fish, her fertile soil, and, above all, her proverbially salubrious climate, to at least equal any other portion of the republic" (Doty 1840, 5).

23. In 1862, a committee of the U. S. Senate reported that the copper region acquired in 1842 contained "the richest and most extensive deposits of that metal yet discovered in the world." See U. S. Senate Committee on Military Affairs and the Militia (1862, 3). For an interesting account of excavations of early sites and illustrations of artifacts found, see Griffin (1961).
24. The worship of copper by the Lake Superior Chippewas attracted the notice of many white visitors from the 1600s to the 1800s. For an interesting account of religious ideas about copper held by the Chippewas and the impact of those ideas on the life of a member of the Ontonagon Band, see Peters (1989).

25. Kemble’s factory, the West Point Foundry Association chartered in 1818 opposite West Point on the Hudson River, became so successful in the manufacture of military weapons that it received the special patronage of the federal government (Schulze 1933, 317).

26. The American Board of Commissioner of Foreign Missions was a Boston-centered missionary society comprised largely of Congregationalists and Presbyterians. The Board supported more Indian missionaries in the period between the War of 1812 and the Civil War than any other Protestant missionary society. For additional information, see Phillips (1954); and Berkhoffer (1965).

27. Although Armstrong’s reminiscences contain some factual errors, his comments about the 1842 promise of continued usufructuary rights based on good behavior is supported by statements from contemporaries, as noted above. Also see U. S. District Court (1978, 1323 n. 1, 1327). For rebuttals of Clifton’s arguments by Wisconsin Attorney General Don Hanaway and by University of Wisconsin-Stevens Point history professor David Wrone, see respectively Eau Claire Leader-Telegram (1988b, c).

28. In writing about what the Chippewas thought of the Treaty of 1842, historian Mark Keller erroneously claims that “there is no mention of dissatisfaction with the terms of the eventual pact in government records. This is not unusual, for what few government records exist were made by government employees, and none mention the negotiations” (Keller 1981, 10).

29. Anthropologist James Clifton cites Martin’s letter to support a statement in his text concerning Stuart’s promise that the Chippewas would not have to leave for a very long time (Clifton 1987, 36 n. 43), but he then ignores the letter when he attacks Armstrong’s credibility (Clifton 1987, 36 n. 44). Armstrong’s point is precisely that made by Martin in 1842, so there is indeed “‘independent’ contemporaneous evidence to support Armstrong’s claim. Other examples are cited in the text.

30. For information on Black Bird, see Morse (1857, 344-49).

31. In his memoirs, Brunson speaks of his “resigning” from office due to “intimations” that he refused to be a party to a “palpable fraud” Stuart committed by claiming Indians not party to the treaty had agreed to its terms (Brunson 1872-79, 2: 206-07).

32. In 1849, Commissioner of Indian Affairs Orlando Brown referred to the Sioux in Minnesota as “a wild and untamable people” who were “the most restless, reckless, and mischievous Indians of the Northwest; their passion for war and the
chase seems unlimited and unassuageable; and so long as they remain where they are, they must be a source of constant annoyance and danger to our citizens, as well as to the Indians of our northern colony, between some of whom (the Chippewas) and themselves there exists a hereditary feud, frequently leading to collisions and bloodshed, which disturbs the peace and tranquility of the frontier, and must greatly interfere with the welfare of the Indians of that colony, and with the efforts of the government to effect their civilization" (1849, 944).


34. The congressional report of the Chippewa agent refers to Pahpogohmony as the seventh location. As a result of conversations with Helen Hornbeck Tanner, editor of the Atlas of Great Lakes Indian History (1987) and Chippewa scholar Richard St. Germaine, I have determined that Pahpogohmony is most likely a mistranslation of Pequaming.

35. There has been some confusion concerning the publication of this order. Legal scholars Rennard Strickland and Stephen J. Herzberg and law student Steven R. Owens, who mistakenly attribute the order to President Millard Fillmore, claim it was never published and that it is only available through the National Archives and Records Service in Washington (Strickland 1990, 4 n. 5). The document is available in published form (see Fig. 18). In 1941, attorney Charles J. Kappler included the order in his published compendium of Indian laws under a section entitled “Executive Orders Relating to Indian Reservations,” where it appears under the heading “Minnesota” (5: 663) apparently because the order was issued in response to a request from Minnesota Territorial officials as noted in Chapter 4.

36. Luke Lea (1810-1898) had no prior experience in Indian affairs. He should not be confused with his uncle, the elder Luke Lea (1783-1851), who was an Indian agent at Fort Leavenworth from August 1849 until June 1851 (Trennert 1979; Hill 1974, 67).

37. For information on Copway, see Smith (1988).

38. Reports on the mortality at Sandy Lake vary from seventy to nearly two hundred (Hall 1850b; Clifton 1987, 25). A report from the Lake Superior News and Mining Journal reprinted in the East asserted that “hundreds” died during the winter of 1850-1851 “in the miserable region to which the Government would remove them” (New York Times 1851a).

39. Watrous was eventually removed from public office for political reasons rather than for his conduct as Indian agent (Hall 1853; Clifton 1987, 38 n. 76).

40. The St. Croix and Mole Lake Bands were not provided reservations in the 1854 treaty. Not until the mid-1930s did the federal government recognize these bands and set aside land for them in northern Wisconsin (Lurie 1987, 21; Danziger 1979, 153-55).
41. Manypenny, who served as Commissioner of Indian Affairs when the 1854 treaty was negotiated, later rebuked federal removal efforts. His words, while general in nature, seem relevant to the abortive efforts to remove the Chippewa that preceded the establishment of the Chippewa reservations: "In numberless instances removals have been brought about, not because there was a necessity for them, but with a view to the plunder and profit that was expected to result from the operation" (Manypenny 1880, 134).

42. In passing the Indian Appropriations Bill for 1871-72 in March of 1871, members of the U. S. House of Representatives demonstrated their general disillusionment with the administration of Indian affairs and their jealousy of the Senate's role in ratifying treaties by attaching the following rider to a sentence providing funds for the Yankton Tribe of Sioux Indians, "Provided, That hereafter no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty: Provided, further, 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, 566; Priest 1942, 96-102, 244; Prucha 1984, 1: 531-33). The United States continued to deal with Indian governments through agreements (requiring House and Senate approval), statutes, and executive orders, which recognized rights and liabilities virtually identical to those established by treaties before 1871 (Cohen 1982, 107, 127-28). In 1924, when Congress made all Indians citizens of the United States, it again preserved their rights as tribal citizens (U. S. Congress 1924, 253).

43. The contract with William Rust of Eau Claire was renegotiated in 1873 because a counter offer had raised public questions about the terms (Kinney 1937, 255; Shifferd 1976, 22).

44. The petition was presented to Indian Commissioner William P. Dole who logged it with the notation "the same old chronic complaint" and then returned the document to the delegation (Draper (1882)). A subsequent visit by the delegation to U. S. Senator James R. Doolittle of Wisconsin also failed to bring results (Warren 1882).

45. The Wisconsin Supreme Court based its decision on evidence that President Taylor had issued a Removal Order in 1850. According to the Court:

... There was offered and received in evidence that which was certified to be a copy of an executive order of removal purporting to be signed by President Taylor February 6, 1850.

We find no grounds upon which the validity of such a document or its competency as evidence can properly be questioned. That it evidently was not presented and offered in evidence in the two [U. S. Supreme Court] cases just above quoted cannot detract from its validity now when offered and properly received. What was said by way of recital in those two cases ... must of course extend no further than the facts presented in each. We must therefore hold that any form of title to this land then possessed by them ... was ceded by the Indians under the treaty of 1842-43, and their right of occupancy, so far as it would interfere with the lawful occupancy of those claiming by patent from the...
United States is concerned, was terminated upon said executive order of 1850. (Wisconsin Supreme Court 1927, 474)

For the details of this case involving the effort of two children and a grandson of a member of the Fond du Lac Band to recover possession of Wisconsin Point—a narrow, sandy peninsula extending northeasterly from the City of Superior in Douglas County into Lake Superior long occupied by members of the band and visited during the summer months by white campers—see Wisconsin Supreme Court (1927).

46. The actual title of the forty-eight-page Wheeler-Howard Bill was “A bill to grant to Indians living under Federal tutelage the freedom to organize for the purposes of local self-government and economic enterprise; to provide for the necessary training of Indians in administrative and economic affairs; to conserve and develop Indian lands; and to promote the more effective administration of justice in matters affecting Indian tribes and communities by establishing a federal Court of Indian Affairs” (Prucha 1984, 2: 957). Congress approved a weakened version known as the Indian Reorganization Act in 1934. Hailed by its supporters as the Indian Magna Charta, its adoption marked the climax of a bitter contest waged throughout the 1920s between what one scholar calls “Indian protectors and reformers” led by John Collier and Gertrude Bonnin and “obscurantists and exploiters” led by Albert B. Fall and Charles H. Burke (Gibson 1980, 529). For additional information, see Hertzeberg (1971, 179-209); Philp (1977, 1-160); Prucha (1984, 2: 940-68). On the Indian congresses convened by Commissioner of Indian Affairs Collier and Indian opinion on the Wheeler-Howard Bill, see Philp (1977, 145-56); Prucha (1984, 2: 955-61); Deloria and Lytle (1984, 101-21).

47. On the rise of Indian activism as a social movement, see Day (1972).

48. The importance of the media during the events at Wounded Knee in 1973 was noted and criticized in Time (1973); D. Smith (1973); and in Schultz (1973). For an example of how the media’s frame of reference sometimes impedes the recording of reality and actually helps to create events, see Landsman (1988).

49. Northern States Power (NSP) had not fulfilled the original terms of its fifty-year lease, which required the removal of Indian graves and homes when the dam was built in 1921. By 1924, NSP had flooded nearly fifteen thousand acres of federal land comprising the Chippewa Flowage, including sixteen thousand acres of Chippewa land on the Lac Courte Oreilles Reservation. Under NSP’s control, the fluctuating water level of the flowage destroyed three Indian wild rice beds that had previously supplied food and significant amounts of income, and threatened the Chippewa communal economy of hunting, fishing, and wild rice gathering in other ways as well (Lurie 1987, 55-56). At the 1989 annual meeting of the Economic and Business History Society, historian James Oberly argued, “nearly seven decades . . . [after NSP received the original lease], there is strong feeling among the LCO Chippewa that what took place in 1921 and after was truly the crime of the century” (1989a, 13).

50. The Warriors had claimed the vacant property for the Menominee tribe to use as a hospital. They apparently drew their inspiration from the take-over of the
Bureau of Indian Affairs in Washington and the Wounded Knee confrontation in South Dakota. The incident ended only after Governor Patrick J. Lucey deployed the Wisconsin National Guard (Lurie 1987, 54-55).

51. The Chippewas did not seek the broader right of engaging in usufructuary activities on privately owned land (U. S Court of Appeals 1983, 365 n. 14).

52. In numbering the Chippewa court cases, I am following Bichler (1990a).

53. At the time of the nineteenth century treaties, the Chippewas had long engaged in commercial activities and had long served, to use Judge Doyle’s words, as “participants in an international market economy.” As Doyle observed, “commercial activity was a major factor in Chippewa subsistence.” Indeed, “the Chippewa were aware of the principles of the Euro-American market economy. They understood competition and the ramifications of the fluctuations of supply and demand, as well as the value of tangible goods and services.” Although the Chippewas were “clearly engaged in commerce throughout the treaty era,” they “developed an economic strategy that incorporated both their traditional economy and the market economy in such a way that they were able, on the one hand, to transact business with non-Indians who were participating in the Euro-American market economy and, on the other, to transact social and political relations with one another in the traditional manner” (U. S. District Court 1987, 1428-30).

54. After Judge Crabb’s white-tailed deer ruling of May 9, 1990, there was uncertainty as to whether the Chippewas were still entitled to the entire safe harvest or whether the fifty-fifty split for deer also referred to other resources such as fish (Bichler 1990b). For Crabb’s Final Judgment, see Appendix 7.

55. The Eleventh Amendment, ratified in 1798, provides that “the judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.”

56. The agreements have been made on the basis of biological assessments obtained from both the state and tribal biologists (Great Lakes Indian Fish and Wildlife Commission [c. 1988], 2). Judge Barbara Crabb observed in 1989:

The department [Department of Natural Resources] has negotiated a number of interim agreements with the tribes covering the harvesting not only of walleye and muskellunge, but other species of fish, deer, small game, migratory birds, bear, and wild rice. Its wardens, along with other state and local law enforcement officers, and GLIFWC [Great Lakes Indian Fish and Wildlife Commission] personnel, have monitored the agreements to ensure that Indian hunters and fishers have been able to implement their treaty rights. The department has done this in the face of intense opposition from individuals and groups opposed to the recognition and implementation of Indian treaty rights, with only the most modest amount of federal assistance in the form of funding for some assessment projects. It is to the tribes’ credit that they have adopted an equally cooperative attitude toward the implementation of their rights. It has not been an easy time for them, either. The tribes and their members have been subjected to physical and verbal abuse over the
recognition of their treaty rights, most publicly when they have attempted to exercise their treaty rights to spearfish, but not only then. Harassment has become a way of life for them.

Tribal members have negotiated and entered into a series of interim agreements with the state that have circumscribed their rights to accommodate state concerns, despite their understandable impatience to reap the benefits of treaty rights that they have been forced to forgo for so many years.

Each tribe has joined the Great Lakes Indian Fish and Wildlife Commission; each plaintiff tribe is also a member of the Voigt Inter-Tribal Task Force. GLIFWC has hired trained fisheries biologists who participate in the State-Tribal Technical Working and Biological Issues Groups that have produced the working papers and biological issues stipulations so helpful to the court, to treaty rights negotiators, and to fisheries managers. GLIFWC wardens have participated with DNR wardens and other state and local law enforcement officers in the monitoring and enforcement of the tribal fishing efforts under the interim agreements.

Both the tribes and the officials of the State of Wisconsin responsible for implementing the tribes’ treaty rights can take pride in their accomplishments over the last six years. They deserve widespread recognition and appreciation for their efforts. (U. S. District Court 1989, 1053-054)

57. For additional information, see “Fishing in Western Washington—A Treaty Right, A Clash of Cultures” in U. S. Commission on Civil Rights (1981, 61-100).

58. For evidence of the ideological connection between these organizations, see Equal Rights for Everyone (1984). In early 1991, STA attorney Fred Hatch of Sayner was retained as legal counsel by PARR as that organization began advance preparations for night protest rallies at boat landings in the spring. The official PARR newspaper recently stated, “although PARR and STA may march to a different drummer, they are still marching down the same road, at the end of which, we all hope, is equality for everyone” (PARR Issue 1991a, b, i).

59. Both Dane County Board Chairman Richard Wagner and Dane County Executive Richard Phelps announced they favored ending their county’s membership in the Wisconsin Counties Association as a result of its handling of the Salt Lake City conference. Wagner protested, “it’s inappropriate for any action to be taken to exclude Wisconsin officials whether they are Indians or not.” See Milwaukee Sentinel (1990c).
