

We return then to questions of land ownership and property. Nothing more clearly illustrates that property is not simply the adjacent rectangles on a map than Stark's history. Indeed this history, which is a history of property, consists almost entirely of changing relationships and shifting negotiations. The relationships form a triangle of sorts: people, the government, and the land itself. Within the triangle people negotiate who controls what land, who else gets access, and under which conditions. Today we call these negotiations "property debates," but that is not quite right. A debate implies a single conflict that can be settled one way or another. A negotiation denotes the open-ended condition of society establishing relationships around land and then adjusting them as new (or old) ideas take hold. Negotiation is a process, not a debate. The process is fluid.

During the process the state can assume the role of mediator, of partisan, or, in the case of deer hunting, both. A dual role will create paradoxes. The state had jurisdiction to manage deer as common property for the public good. It defined public good as maximizing the access sportsmen had to hunting land. Yet unlike deer, the state and hunters could not ignore private property boundaries. The state defined public good as managing deer at the highest population that local communities would tolerate. Yet the policy precluded other public goods, such as conserving ecologically and economically valuable forests. The negotiation—the process—continues.

As for the reserve, it became the beneficiary of an amazing change of mindset. People in Stark were still irate over its existence. But the destructive behavior of a few people had a curious effect: Other members of the community started to feel protective toward the land. At first people talked about what they did not want. They did not want free-range trucks; they did not want chaotic paths fragmenting the forest into ever-smaller pieces; they did not want a massive invasion of exotic plants; they did not want old refrigerators, feral dogs, or scary people. What they did want was a say in the land's future. Here was a small chrysalis of a new vision, but what would it transform into? Who would negotiate for it and what prerogatives would they try to assert—private, public, community? Or something else altogether?

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(Re)Enter the Ho-Chunk

The reserve languished in administrative limbo throughout the 1980s. No one could agree on its purpose, its management, or its future. Many people continued to deplore the passing of the La Farge dam. At times their rhetoric sounded like a midwestern replay of old western land wars between the federal government and local people. But this saga had a few twists left. Oblivious to any irony in the Kickapoo Valley, the Corps of Engineers had adopted new language in the 1980s to publicize its mission. "Project delivery is the Corps' business," a glossy brochure announced. "From conception of a project until its completion and turnover to the ultimate user; the Corps provides complete project management services." Rather than districts, or engineers, or planners, the Corps now used, according to the brochure, "Corps Life Cycle Project Managers," who served "as points of contact for customers to ensure that they are fully informed and involved, forecast trends and resolve problems, and oversee all phases of project development, ensuring the delivery of 'a quality product, on time and within budget.'"¹ This advertisement is significant not because it embraced the new business jargon of the times but because project completion and turnover were precisely the aims for anyone interested in the reserve, which meant everyone who lived in Stark.

In 1993, residents across the Kickapoo Valley began meeting to develop a plan. They wanted the Corps to complete the La Farge dam's life cycle, even if the dam itself must remain unfinished. They hoped to convince the federal government to transfer the reserve to the state, after which they hoped the state would appoint a local board to manage it.² Doing its part to resolve the long-festering issue, Wisconsin petitioned for the land's release from federal control.

It is worth pondering the implication of the local plan and the state's request. Wisconsin was asking Congress to devolve control over a highly contested piece of public land, something state governors have expressed interest in for a hundred years. They have rarely succeeded. The general purpose of federal lands—the question of who makes up their legitimate constituents—has always been a point of contention in the country, but devolution is a more sensitive topic yet. The negotiations involved would entail competition between levels of government, agencies, users, local communities, and nonlocal interests of every kind.

Apart from the political arena of Congress, there was another process available for settling the status of the reserve. When federal land is not in use for ten years or more it becomes classified as “excess real property.” Upon this designation the U.S. General Services Administration (GSA) will search for a new custodian. There is a pecking order in the search. The GSA will look first to other federal agencies, which have the right of refusal. Only then will the GSA designate the property “surplus.” Then state and local governments or certain nonprofit organizations can step forward.³ No doubt Kickapoo Valley communities did not want to watch from afar as one federal agency, the Army Corps of Engineers, transferred its land to another federal agency. They did not want to wake up and find a national park in their midst.

Not to put too fine a point on the matter, the La Farge dam fiasco still burned in the local psyche. Any hint of a federal alternative to the Corps would have fueled the political equivalent of a forest crown fire. Devolution was what people wanted, emphatically. This was clear to all the politicians who found themselves engulfed by the issue. Russell Feingold had been trapped on the very day he was first elected U.S. senator, when a constituent approached him in his own garage and asked him to introduce legislation transferring the Corps land to the state of Wisconsin.⁴ Feingold responded to his constituent with impressive alacrity. He drafted a provision to deauthorize the La Farge dam project with language setting the terms of the transfer in the Water Resources Development Act of 1994. He was unsuccessful in inserting the language that year, so he planned to try again in the 1996 act. In this way the reserve would become an exception to the rule against political rather than administrative devolution in our system of federal holdings. (Although making an exception establishes a process others may follow in the future.)

While Feingold was working on federal legislation, Governor Tommy Thompson had to decide which of his agencies would eventually house the

reserve. He chose the Department of Tourism. This was a strange home, but there was too much antipathy toward Thompson's other choice, the Department of Natural Resources. Even DNR Secretary George Meyer agreed. “With the history out there, [DNR ownership] would never work,” he said.⁵ Then Thompson had the delicate task of arranging for the reserve's future management. Here he became the consummate diplomat. Thompson settled on a board of local and state citizens who would oversee a newly christened Kickapoo Valley Reserve.⁶ Four members would come from the townships of Stark and Whitestown and the villages of La Farge and Ontario, which respectively encompassed and bordered the reserve. Two more members would represent the greater Kickapoo Valley watershed. Though local communities would not have complete control over the land, they would have a majority at the table, and just as important, the table would be in La Farge.

A form of public land tenure unique in the country was taking shape. Valley residents anticipated terrific possibilities. A few hoped that a future board would return some land to previous owners. But after a quarter century, that would have provoked questions about previous compensation, land values, heirs, and so forth. Other people wanted to use the land for economic development, perhaps small industry or agricultural leasing. Still others wanted to designate the reserve a biological core area. This would be the ideal way, they said, to pursue ecological restoration and to sustain important regional ecosystems. Between the poles of economic and environmental sustainability, hopes ran high that the reserve would become a mecca for ecotourism, a winning hybrid of recreational development and environmental protection.⁷

But the actual Water Resources Development Act of 1996 laid out a fourth, unanticipated path for the property. Congress did agree to devolve control, only it added a caveat. Twelve hundred acres with “culturally and religiously significant sites,” the act decreed, would go to the Ho-Chunk Nation, formerly known as the Wisconsin Winnebago. The law left open the possibility that additional sites, meaning more land, could be reserved for the Ho-Chunk after ten years. Management decisions for the entire property, moreover, must include the Ho-Chunk, who would appoint two of their own representatives to the board. The La Farge dam had just generated another surprising spillover.

People in the Kickapoo Valley were incredulous. Where in the world did the Ho-Chunk come from? some of them asked. What right did they have to any of the land? They didn't even live in the Valley!⁸ The Ho-Chunk

seemed to appear out of nowhere. Yet signs of earlier occupants were strewn across the reserve in the four-hundred-and-fifty-plus archeological sites the Corps of Engineers had catalogued since 1960.⁹ So the more apt question might have been, *when* did the Ho-Chunk become involved with this land?

In 1825 and 1827, United States–Indian treaties mapped tribal territories in the Great Lakes region in order “to promote peace among these tribes, and to establish boundaries among them and the other tribes who live in their vicinity, and thereby to remove all causes of future difficulty.”¹⁰ With these words President John Quincy Adams allocated to the Winnebago the territory they already occupied. This was most of the land in southwestern and southern Wisconsin contiguous with a smaller area in northwestern Illinois.¹¹

Unfortunately for the tribe, the 1825 treaty coincided almost exactly with white discovery of lead on the Fever River in Galena, Illinois, the southernmost part of their territory. Miners began flooding the region, violently usurping Indian land and resources. Winnebago chief Four Legs brought up the incursions during negotiations for the 1827 treaty on boundaries. “Father,” he began, “. . . you have always told us to be still, to raise our children, provide for our families, and not be afraid of your men. But I am afraid of your young men at the mines. There are a great many Americans on our land, working it without our permission, and I want you to tell our Great Father to stop it—to reach out his long arm and draw them back.”¹² The following year another Winnebago chief, Old Grayheaded Decora, described the same scene in more detail: “When some lead is found, and it was known down the Mississippi, white men came flocking to Fever River like the wolves in the plains to the dead buffalo. . . . They spread out in every direction and began to dig and find and carry off lead on the Winnebago lands. We said, ‘if we do not stop them soon, it will be too late. More and more are coming every day—the game and furs are leaving the country, and the Indians cannot live in it any longer, if we do not stop the white men from coming over the line into our country.’”¹³ The line, however—the Winnebago property line as established by the United States government—had been breached. President Adams had no intention of removing the lead miners. Unlike the Winnebago, the miners had powerful armaments and still more powerful political connections.¹⁴

By fixing legal boundaries among Indian tribes, the treaties of 1825 and 1827 accomplished something quite different than the Winnebago could

have imagined. The treaties provided the legal foundation on which the U.S. government could begin negotiating land cessions. What this means is that the treaties defined the proper ownership for any lawful transfer of land from one nation to another. Only one year after their territory became defined and codified in U.S. law, the Winnebago found themselves negotiating a transitional treaty with the United States. Now, according to the subsequent treaty in 1828, “it is fully understood, that the United States may freely occupy the country . . . until a treaty shall be held with the Indians for its cession; which treaty, it is presumed, will be held in the year 1829.” What’s more, the document insisted, “it is expressly understood and agreed, that if any white person shall cross the line herein described, and pass into the Indian country, for the purpose of mining, or for any other purpose whatever, the Indians shall not interfere with nor molest such persons.”¹⁵ The next year the Winnebago began ceding their land to the United States, in three parts and three treaties of cession.¹⁶

First on the table was the lead mining area in Illinois along with adjacent land running north into Wisconsin, a total of 2,530,000 acres. The great Winnebago orator Little Elk was stunned at the amount of land the government demanded from the tribe. “Why do you wish to add our small country to yours, already so large?” he asked. “Do you want our country? Yours is larger than ours! Do you want our wigwams? You live in palaces! Do you want our women? Yours now sitting behind you are handsome and dressed better than ours! Look at them yonder! Why, fathers, what can be your motive?”¹⁷ Though Little Elk did not realize it yet, the answer to one of his questions—Do you want our country?—was yes. For a large portion of their whole country the government forced the Winnebago to accept \$18,000 annually for thirty years, another \$30,000 in goods immediately, and an annual delivery of three thousand pounds of tobacco and fifty barrels of salt for thirty years.

At the gathering where Little Elk and his fellow chiefs agreed to the treaty’s terms, U.S. Commissioner Caleb Atwater turned his gaze on an unhappy female onlooker. Some kind of exchange ensued. Regrettably the woman’s actual words were not recorded. But Atwater’s harsh account of her—as a woman and as an Indian—is a reminder that many of the people most profoundly affected by these events had little say in them. “As I passed through the open spaces between the ranks,” Atwater began, “my attention was forcibly drawn to a particular spot by a constant snarling, hissing noise of some miserable human being, on whom approaching her, I ascertained to be an Indian woman, shriveled, haggard and old, though

remarkably neat in her person and dress." Saying he wanted to please all the Indians and "especially the ladies," Atwater recounted his effort to address this woman. "I told her that her great father, the President, had specially ordered me, so far as in me lay, to please all, and to see that no one went home dissatisfied. At that moment she returned upon me a volley of epithets too degrading to be repeated, even though applied to myself, as I felt conscious of not deserving them." He sought an explanation for her animosity anywhere but in the occasion of the treaty itself: "Turning around to see some females who were politely sitting on the ground behind me, I learned the fault finder *was an old maid* (unmarried men at sixty years of age I will call bachelors, but ladies never), and that the only distinguishing mark of attention she had ever received from any man was a smart blow with a flat hand on her right ear" (emphasis in original). Sure of his explanation, Atwater dismissed the episode, saying, "as I never could endure the ideas conveyed to my mind by a rattlesnake, a heartless politician, an iceberg and a cold hearted woman, I turned away from her in disgust, and never saw her more nor inquired her name, for fear I should remember it." As Atwater saw it, "She was the only person who left the treaty ground dissatisfied with the commissioners."¹⁸

Because she was a woman, the name of Atwater's fleeting antagonist does not appear on the treaty. What a shame. Though we will never know what instigated the argument, or what the nature of her complaint was, it is not unreasonable to suppose that she was giving voice to an agonizing process for Winnebago women. She and her companions could only bear witness to decisions that would irrevocably change their lives but were entirely outside their control. Their position had not always been so marginal. Through intermarriage with Europeans, Indian women had been important cultural intermediaries—"influential creators of the middle ground"—as historian Richard White described Algonquian women.¹⁹ Cession treaties with the Winnebago were part of the erasure of the middle ground, where Indians and Europeans had found mutual accommodation, and where Indian women had held an influential place. In Atwater's one-sided and even misogynistic account, there are hints that one woman's words, at least, were still powerful, if not her influence. Her words were certainly disturbing enough to Atwater, who got some revenge by distorting her image and rendering her nameless. Meanwhile the process of rendering her people landless had just started.

Next went the easternmost half of the territory in Wisconsin, up to Lake Winnebago. By this time an alliance between the Sauk war leader,

Black Hawk, and the chief of a band of mixed blood Winnebago and Sauk, known as the Winnebago Prophet, had culminated in the Black Hawk War of 1832. Black Hawk and his followers had wanted to return to their ancestral village Saukenuk, which lay within territory ceded to the U.S. government in 1804. Black Hawk's anti-American uprising was ruinous for his people; after tracking the band through the valleys of southwestern Wisconsin and across the Kickapoo River, the government slew as many as four hundred at the mouth of the Bad Axe River on August 2, 1832.²⁰ Most Winnebago bands had not supported Black Hawk and the Winnebago Prophet. Indeed Winnebago had persuaded the two to surrender. In handing over Black Hawk to the Americans, Winnebago leader One-eyed Decora said, "My father, we deliver these men into your hands. . . . We want you to keep them safe; if they are to be hurt, we do not wish to see it—wait until we are gone before it is done. . . ." ²¹ Rather than executing their Indian prisoners, the Americans exacted a different kind of price for the Black Hawk War. Arguing for a bigger separation between whites and Winnebago, to avoid "quarrels and wars," the government demanded a second treaty of cession. In return for an unfamiliar place to live west of the Mississippi River, also for \$10,000 annually over twenty-seven years, for a boarding school to educate Winnebago children, and for sundry tokens including the relocation of a blacksmith's shop, the Winnebago relinquished almost half of their land in Wisconsin. Still remaining was the westernmost part of their territory, which encompassed the Kickapoo Valley.

In the summer of 1836 a smallpox epidemic devastated the Winnebago, killing one thousand people, nearly one-third of the tribe, including many important chiefs. This was the moment when territorial governor Henry Dodge asked the Winnebago to sell the last of their lands in Wisconsin. At the time, Waukon Decora led a Winnebago band that resided at the mouth of the Kickapoo River. His village had been large. One explorer recalled that the band cultivated a hundred acres of pumpkins, potatoes, squashes, and wild tobacco.²² A smaller Winnebago settlement lay farther upstream. From their agricultural locus, small parties ranged along the river and through Valley forests, hunting and trapping and gathering wild berries and nuts. The towering, uneven bluffs on what is today the Kickapoo Valley Reserve sheltered Winnebago hunters, who butchered and cooked deer under their rocky overhangs.²³ Later residents called these bluffs the Oocooch Mountains, possibly a mispronunciation of Ho-Chunk.²⁴

Waukon Decora spoke for the entire tribe in rebuffing a third and final cession. Reading even a fragment of his speech, you cannot fail to appreciate the anguish of a people faced with losing their land, their livelihoods, and many of their lives in a single year. "All our chiefs and forefathers have died upon the land we are now living upon," he said. "Many of our principal men died here last summer; their bones are buried here, and it seems hard for us to leave them." This was the last vestige of Winnebago land in Wisconsin. "We had one tract of land which did not suit us so well as this, and we sold it. But we did not tell our Great Father we would sell this country—not a foot of it."²⁵ Yet the next year in Washington, D.C., the Winnebago unwittingly ceded their last holdings. The lopsided setting was this: The tribe had sent a delegation to Washington, D.C., not to relinquish their lands but to try and hold on to them. It is probable that some of those in the delegation did not have tribal authority to sign a final agreement. During the trip, Indian agent Thomas A. B. Boyd withheld funds from the delegation and appeared to have used them on liquor and prostitutes for himself. Finally, the Winnebago present believed that the treaty stipulated an eight-year grace period before they must leave the territory, when it really gave them eight months to relocate west of the Mississippi River.

After the Winnebago signed this third treaty of cession, their connection to the land of southwestern Wisconsin did not end; it simply entered a treacherous new phase. What followed during the next twenty-five years was a series of relocations, land cessions, and removals to reservations ever farther from Wisconsin. In 1840, Winnebago who abided by the treaties went first to the "Neutral Ground" on the Turkey River in Iowa, a place that was not neutral at all but a repository for warring Dakota and Sauk (between which the Winnebago were sandwiched). In 1846, the United States government moved the Winnebago to north central Minnesota, where they again became a buffer between warring tribes, this time Dakota and Ojibwe; then to southern Minnesota in 1855 after another treaty of cession; followed by a tortuous forced march to the Crow Creek Reserve in South Dakota, during which five hundred Winnebago died; and ultimately to Nebraska.²⁶ At every point Winnebago slipped out from under government surveillance to return to Wisconsin. These were the "disaffected bands," the "dwellers among the pines" (*Wazijaci*), who hid in the region despite a military policy to round them up and evict them from the state.²⁷ The period marks what would eventually become a durable split between the treaty-abiding faction, which settled on the Nebraska

Winnebago Reservation, and the Wisconsin Winnebago—later the Ho-Chunk—who never had their own reservation.

Their enduring sense of place made its way into Kickapoo Valley and Vernon County lore. Sometime during the 1860s, a poet using the *nom de plume* of Esmerelda composed the following tribute to Winnebago expatriates.²⁸

THE INDIAN

Oh! Lone Winnebago,
How sadly you weep
O'er the bones of thy loved ones
In their desolate sleep;
The white man hath robbed thee
Of thine own native soil,
And the graves of thy fathers
Are sunk neath their toil,

How sad is thy journey,
As thou goest alone
Through these wide rolling prairies,
That were once all thine own,
'Mid the homes of the white man
No more thou art free;
Scarce a grave for thy dead
Will they grant unto thee.

No more o'er these bluffs
Shall thou roam with delight,
Nor chase the wild deer
With fleet step and light,
Nor 'round the great council fire
Recline at thine ease,
Nor smoke with thy kindred
The calumet of peace.

No more shall thou fish
In this bright, silver stream,
No more shall the blade

Of the tomahawk gleam;
 No more shall thine arrow
 The water-fowl cleave;
 At the bidding of white men.
 All these thou must leave.

Oh! Sad Winnebago,
 We grieve for thy fate,
 Thy wrongs by the White man
 Hath earned them thy hate.
 May the spirit thou worship
 Yet grant unto thee
 A portion with braves
 And home with the free.

A later account avowed that “the Winnebagos were so deeply attached to their Kickapoo valley that the government had to move them off time after time. They would come creeping back the next year, to hide in the swampy lands along a smaller river pouring into the Kickapoo. ‘Hiding in the Kickapoo’ became a specific term.”²⁹

Periodic roundups notwithstanding, the Wisconsin bands grew to one thousand people by 1873. In that year the Wisconsin legislature initiated the most notorious of the forced relocations. The first phase of the removal took place at Portage City. According to a Winnebago depiction, eighty people, including women with nursing babies back at home, were “pressed with the bayonet aboard the [railroad] cars waiting for them at that place.”³⁰ Not all white residents supported the cruel policy. One group of citizens protected Blue Wing and his family from soldiers who were about to force them on a train. In the end, however, the state succeeded in shipping nine hundred people west to Nebraska through the winter of 1873–74.

Their removal proved still more catastrophic once they arrived in Nebraska. Out of desperation Winnebago chiefs sent news of their plight to President Grant. “We respectfully show to your excellency that there are now on their [Nebraska Winnebago] reservation nine hundred of our people, and we are poor and in need of help. Very many of our people are dying from want and exposure. Thirty of them have been buried within the past nine days.” Comparing their destitution to better conditions in Wisconsin, where they had “lived like white people,” the chiefs warned

the president, “We cannot live here in this way and unless you do something for us, we shall go back to Wisconsin where we can hunt and fish.”³¹ By spring almost all the survivors had returned to Wisconsin.

Though the Wisconsin bands never gained reservation land in the state, their presence did finally win grudging acceptance. In 1881, special legislation allowed individual Winnebago Indians to buy forty-acre homesteads as long as they abandoned any claim to the Nebraska reservation.³² Of course the land was not free; nor was it good land for farming and hunting, since Euro-American settlers had already purchased the best tracts; nor did the land become government-sanctioned tribal property. Even so, the Winnebago had acquired a lawful place in southwestern Wisconsin. They clustered in northern parts of the region, near Black River Falls. Their presence dwindled farther south, in the Kickapoo Valley. At the end of the century residents noted that the Valley “is some times visited by small bands of Indians, but even this is getting to be rare.”³³ A local perception settled in that the Winnebago had faded away into the night of history.

Where land is concerned this is not an uncommon narrative of conquering peoples. Examples abound the world over. Where some indigenous group was on the scene first, then displaced by another group, the displacers must dispose of the earlier residents in order to assert their own primacy over the place—in other words to assert their right to the land. Obviously the Winnebago were physically displaced, although that is not precisely my point here. After all, when one group loses land in a war, it might try to reclaim the land with force. Both sides see the logic of the claim, even when they are fighting over it. The kind of displacement I am referring to is more beguiling than war. It is the displacement that occurs in the cultural narratives of invaders. They must incorporate earlier groups into their own stories of arrival, and yet find a way to wipe the slate clean, to become *first* in a place. Perhaps, goes one story, the earlier people were not civilized. Dehumanizing predecessors is a typical way of justifying territorial conquest. You find colonial versions of it in Africa, Asia, and South America too.³⁴ Or an alternative story: Earlier people were admirable in their spirituality and closeness to the land, but sadly they waned into oblivion leaving only traces for us to honor. Both are forms of origin stories. Just as importantly they are cultural claims to land. The question is, what happens when circumstances change for the people who have been displaced? What happens when a group believed entirely out of the picture returns to reassert its own cultural stories and claims?

The Winnebago had long been memorialized and then disposed of in written histories of Wisconsin counties and townships. As a result, few non-Indians understood that in the *present-day* Kickapoo Valley the Winnebago still mattered. Admittedly, their memories of home and displacement were not confined to the same kind of boundaries that held sway among non-Indians in Stark. Their history could never be limited to a homestead parcel or a township or a county or a reserve. But under the right circumstances they had the power to shape a public reserve and a township, even if those particular boundaries had not previously held any meaning.

Jump ahead nearly one hundred years to the 1960s, and two events in Winnebago history converge. The first of these occurred in 1963, when the Wisconsin Winnebago established a formal government under the Indian Reorganization Act of 1934. This act was an attempt to reverse the General Allotment Act of 1887, a spectacular failure in Indian land policy. Under the policy of allotment, Indian tribes had lost two-thirds of their reservation lands. The 1934 act gave tribes more control over assets, and it compelled federal and state governments to respect tribal constitutions. Because they had internal disagreements, and because they also feared abrogating long-standing claims against the federal government, the Wisconsin Winnebago declined to organize in 1934.³⁵

They had a number of reasons for changing their position three decades later. A document from the Wisconsin Winnebago Business Committee observed that the moment had come when Indians around the country “generally desire recognition as Indian tribes and seek improvement on a tribal level rather than assimilation and loss of ethnic identity.”³⁶ There was a more place-specific reason to organize as well. As a nonreservation people, the Wisconsin Winnebago resided on taxable lands, or private property, whereas the federal government’s fiscal obligation to tribes centered almost entirely on reservations. The result, according to Mitchell Whiterabbit, was that, “We, the Wisconsin Winnebagoes, who do not reside on any reservation, and who, the greater number of us now reside on taxable lands and who need federal assistance, have often been excluded from receiving Federal aids and benefits.”³⁷ Although federal recognition would not achieve the aim that all aid “extended to Indians residing on reservations . . . be equally extended to us,” it would give the Wisconsin Winnebago a stronger institutional position from which to negotiate the problem. In January of 1963, the Wisconsin Winnebago voted *en masse* in favor of their new constitution: 514 people for organization, 5 people against.³⁸ In 1994, they changed their name from Winnebago—which

other tribes had imposed on them centuries before—to the Ho-Chunk Sovereign Nation. They thus proclaimed their identity as “People of the Big Voice.”³⁹

Just prior to the 1963 vote on organization, Mrs. Helen L. Peterson, a member of the Oglala-Sioux Tribe, addressed the Wisconsin Winnebago General Council Meeting about the Indian Reorganization Act. She took care to explain that the act would not benefit the Wisconsin Winnebago as much as it had other tribes because of their nonreservation status. Still, Mrs. Peterson felt strongly that the tribe should organize. One of her central arguments was so shrewd that it seems worthwhile to quote it at length. She drew the attention of everyone present to section 17 of the act, which allowed tribes to obtain federal charters for incorporation. “You know and I know,” she said, “that ‘corporations’ seem like such a complicated concept for most of us who have had little or no business experience that any discussion of this seems above our heads. You know, yourselves, however, that this is a common form of doing business today and that we all ought to inform ourselves better on what corporations are, what advantages they offer, and so on. In many instances it takes a corporation legal structure to conduct business enterprises advantageously.” Gesturing to their impoverished condition, Mrs. Peterson allowed that, “With no land, no money, or no resources, you may feel this provision or possibility wouldn’t be important today.” But think ahead, she prodded, “Maybe you *don’t* have much of anything right now, but perhaps you will someday.”⁴⁰

Helen Peterson had just unknowingly foreshadowed Indian gaming. In 1987, the U.S. Supreme Court ruled that state law cannot ban gambling on Indian land if it permits and regulates gaming otherwise.⁴¹ Congress followed with the 1988 Indian Gaming and Regulatory Act, under which states must negotiate gaming compacts in good faith. By the 1990s, the Ho-Chunk Nation had proven Helen Peterson prophetic, having become a large corporation whose holdings included three successful casinos. Once one of the poorest tribes in the state, the Ho-Chunk were now the most economically influential.⁴²

Their newfound bureaucratic organization and wealth made it easier for the Ho-Chunk to focus on cultural matters of the highest importance, specifically, the inventory and care of archeological sites. By 1993 the Ho-Chunk had already initiated a project to map hundreds of effigy mounds in southern Wisconsin. On one site beside the Wisconsin River, they planned to spend \$700,000 to buy land and conduct archeological research.⁴³ Beside another river, the Kickapoo, their ancestors had cooked

deer in rock shelters, carved petroglyphs in soft sandstone bluffs, and built burial mounds for their kin. Present-day Ho-Chunk had a sacred obligation to the place, which extended even to the physical remains of still earlier cultures. With the reserve's status in flux, the Ho-Chunk saw a window of opportunity. They now had the political sophistication and the financial clout to make a modern land claim.

In Washington, D.C., Senator Feingold's staff had been working hard on the part of the senate budget bill that would deauthorize the La Farge dam project. Feingold was almost ready with freestanding language to transfer the land to the state. His office had been in regular contact with the Kickapoo Valley citizens group, and no substantive concerns had arisen. But the senator wanted to know if the Corps of Engineers would also support the bill's language. He got a most unexpected reply from the Corps. This bill, the agency said, may abrogate the rights of the Ho-Chunk Nation.

Feingold's staff was stunned. No one had been aware that the Ho-Chunk Nation had any connection to the land. What the senator's office learned on further research changed the way they all thought about the reserve. It emerged that a previous president of the tribe had written the Bureau of Indian Affairs—a federal agency—and asked the Bureau to make a claim should the General Services Administration declare land from the La Farge dam excess property—a claim, by the way, for the entire property.⁴⁴ This told the senator two things. One was that the Ho-Chunk Nation had maintained an active interest in the land, to the point that it had tried to ensure its own future role as owner. And second, the legislation as it stood could usurp the Ho-Chunk's claim. The question that followed was whether or not state and local officials and Kickapoo Valley communities had been aware of the claim and had pursued legislation as a way to bypass the Ho-Chunk Nation. The senator's staff never satisfied themselves either way on that point, but it became clear that no formal discussions had taken place with the Ho-Chunk during community meetings on the reserve's status.⁴⁵ The Ho-Chunk had not been an official part of the process.

Senator Feingold could have responded in a number of ways. He could have gone ahead with the language already developed for the Water Resources Development Act of 1996. If a political fight arose, however, this approach might put the legislation at risk. Alternatively, Feingold could have inserted explicit language in the bill to protect cultural sites, thereby

addressing Ho-Chunk concerns but not actively promoting their further involvement. Instead, Senator Feingold stopped the project altogether in order to confer with the Ho-Chunk. Chloris Lowe Jr., then president of the Ho-Chunk Nation, traveled to Washington with a map of archeological sites on the reserve that looked, according to one person present, as if someone had thrown rice at it and all the grains stuck. Feingold decided to allocate some of the reserve to the Ho-Chunk, but he needed a specific number of acres for the bill. Lowe proposed twelve hundred acres and the senator agreed (the agreement would later infuriate Ho-Chunk elders).⁴⁶

That the federal government was planning to devolve so much land to the state was notable. More notable yet, for the first time in U.S. history the federal government would return some of the land the Ho-Chunk had once controlled. "My dream has been to have this area . . . set aside and reserved in perpetuity for Ho-Chunk people and their descendents," said Lowe. "At the same time," he continued, acknowledging the land's recent history, "I am happy the nation has been able to assist in ending the suffering the people of the Kickapoo Valley have experienced for decades because of the La Farge Dam project."⁴⁷

The 1996 act included a number of conditions, any one of which could derail the transfer. Foremost was the requirement that the Ho-Chunk Nation and the State of Wisconsin sign a formal Memorandum of Understanding on their respective property boundaries within the reserve, as well as agree on a management plan for all the land.⁴⁸ They had to reach an agreement on or before October 31, 1997, only one year and one day after the law had passed, and after which the law would expire. At the same time, the U.S. Army Corps of Engineers had to sign a Programmatic Agreement with the State of Wisconsin in order to comply with a different law, the National Historic Preservation Act.⁴⁹ Under this law, before the Corps could relinquish any land it must provide for the protection of archeological sites listed in or eligible for the National Register. Likewise the Corps must take precautions to protect any undiscovered sites from future harm. The problem for the agency was that federal law mandated a much higher level of protection on federal land than Wisconsin state law mandated on state land. The Corps could not act until the state addressed the adverse effects its ownership might have on archeological sites.

The requirements of the National Historic Preservation Act put the St. Paul District Corps of Engineers in an uncharacteristic position. Whereas the district had once worked to inundate the area, now it was the principal

custodian of valuable and sacred cultural resources. Whereas the criterion for success had once been completing the La Farge dam, now it was completing a land transfer. The new goal was as straightforward as the Corps could ever want in a project. The only obstacle was obtaining consensus among representatives of the State of Wisconsin, the Ho-Chunk Nation, the State Historic Preservation Office, the Kickapoo Reserve Management Board, and the Bureau of Indian Affairs. Because this was a social challenge rather than an engineering problem, a nonengineer and nonofficer in the St. Paul District stepped forward to coordinate the process. John Anfinson was a historian and the District's Chief of Cultural Resources. The detailed minutes he recorded at meetings on deauthorization provide a rich portrait of negotiations whose outcome was never certain. Likewise, his words touch on the drama that always hovered over the reserve. Through Anfinson's work in this setting, the St. Paul District became, for a brief moment, what the Corps liked to profess itself: a relatively objective observer and mediator.

The Programmatic Agreement was in effect a contract outlining the property rights the State of Wisconsin would hold once it assumed ownership of the reserve. The same was true for the Memorandum of Understanding between the Ho-Chunk and the state. These were separate documents, but the negotiations over both would be inseparable. Discussions throughout the year revolved around three interwoven problems. First was defining the boundaries of the Ho-Chunk's twelve hundred acres. Second was how to safeguard archeological sites when the state took over its part of the reserve. And third was whether or not the Ho-Chunk would claim additional land later, a possibility the Water Resources Development Act had left open. Always pressing on the negotiations was the October 31 deadline for signing an agreement.

The Ho-Chunk needed to delineate twelve hundred acres, an obligation that immediately became a sore point. Why the short deadline? asked Ho-Chunk negotiators.⁵⁰ Earlier archeological work notwithstanding, they must have a chance to assess the property themselves. The research could not be accomplished in a single year, and they wanted to be very cautious because tribes throughout the country were watching the process.⁵¹ Compounding Ho-Chunk frustration was a deep-seated anger over the amount of land involved. In settling on twelve hundred acres, their former president had gone beyond his authority, they asserted. He had not represented the tribe.⁵² Minutes from one meeting paraphrased the feeling: "It did not matter whether a site had one flake or a variety of cultural resources. All

the sites were significant; the whole valley was sacred. [The Ho-Chunk] may, therefore, ask for all the sites, regardless of which are significant from a National Register Perspective."⁵³ Ho-Chunk negotiators, said John Anfinson, "never gave up the point that there is no 1200 acres—it's all sacred."⁵⁴ By October, however, the Ho-Chunk had acted on the twelve hundred acres guaranteed them. They decided against sites scattered across the reserve as Chloris Lowe had originally calculated. The tribe settled instead on two large parcels, one in the township of Whitestown, the other in the township of Stark.

Along with Ho-Chunk property boundaries came the question of how to ensure a high level of protection for cultural sites on the remaining land. Over several meetings Richard Dexter, of the State Historic Preservation Office, argued for a covenant, while Ho-Chunk attorney Glen Reynolds preferred a conservation easement held by the Bureau of Indian Affairs. Rich Berg of the Bureau of Indian Affairs was unhappy at the prospect of enforcing an easement. For their part Corps representatives reported that the precise instrument did not matter: Corps Headquarters Real Estate in Washington would reject an easement and a covenant because both would keep the federal government involved in the property.⁵⁵ This was a dispute over the means to an agreed-upon end.

Negotiators for the State of Wisconsin went straight to the real schism that easements and covenants exposed. Why do the Ho-Chunk need title to any land if an easement can protect the entire property? one of them asked. For him the Ho-Chunk's attorney gave a brief history lesson. Another state negotiator presented the flip side of the same question. Whether by covenant or easement, aren't the Ho-Chunk "getting their cake and getting to eat it too?" That was to say, the tribe would own twelve hundred acres outright while directing how the state managed the rest. Still a third state negotiator, who was assigned to represent local interests around the reserve, wondered how he could convince local citizens to go along with an easement.⁵⁶ His anxiety was well founded. Residents were closely following the negotiations. At one meeting a member of the property rights group PLOW (Private Landowners of Wisconsin) had disputed the constitutionality of the whole deal. On a bridge across the reserve, anti-Indian graffiti stared drivers in the face.

In the end the negotiators decided against an easement or a covenant. Instead they combined a National Register historic district nomination with a formal Cultural Resources Management Plan.⁵⁷ Together the two would provide the same level of protection as federal law. Although they

came to naught, the discussions over easements and covenants put a spotlight on the ambiguous meaning of public property. It was a hollow idea until all the interested parties gave it some form, working out parameters for access to and control of the land.

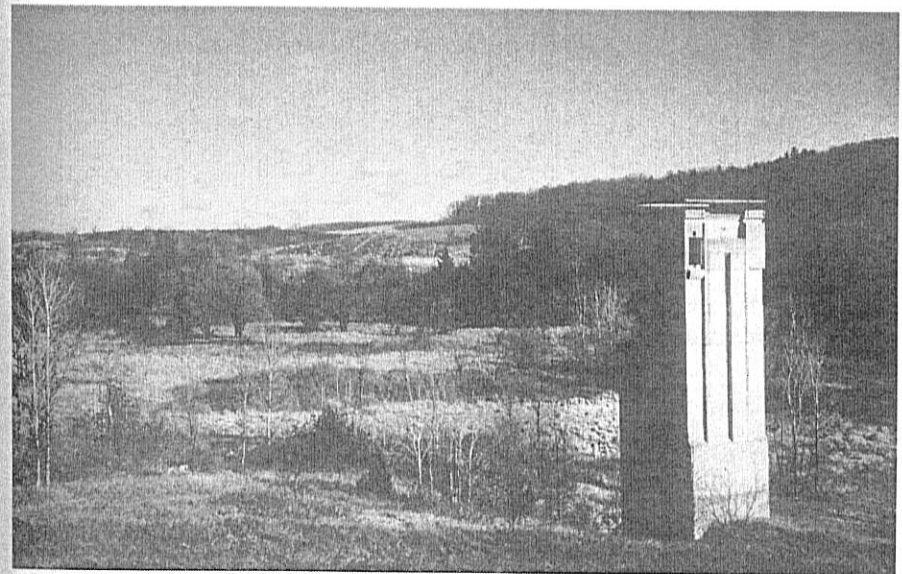
Not yet resolved was the part of the Water Resources Development Act that enabled the Ho-Chunk to request additional land after ten years. With only three weeks left to reach an agreement, the Ho-Chunk introduced the topic. They wanted specific criteria in the Memorandum of Understanding for future land transfers to the tribe. According to meeting minutes, "This led to a 3 hour break down in the negotiations. The State team was extremely upset."⁵⁸ For months the five-member commission negotiating for the state had tried to ensure that the Ho-Chunk would not claim more land. Doubtless this was their biggest concern all along. No wonder then, when nearly every other issue had been resolved, that this remained the deal-breaker. "It was like push and shove," said Ho-Chunk attorney Glenn Reynolds. Both sides had a lot of land to lose, but together they would lose it all if they did not come to terms.

At some point during their struggle, at some breaking point, the negotiators moved beyond the specific property debate. They left it behind and moved toward weary acceptance that the process of negotiation would continue long, long after they were done, and so their solution was very wise. They left open the possibility of a future shift in property boundaries. And they also left open the possibility that the boundaries would stay fixed in place. On the issue of additional transfers, the Memorandum of Understanding ultimately read, "the State, through the [Kickapoo Reserve Management] Board, agrees to consider future transfers of land . . . which contain sites, discovered subsequent to the transfer of the initial 1200 acres . . . of cultural or religious significance."⁵⁹ After specifying how the Board would evaluate Ho-Chunk requests, the Memorandum made plain that "future land transfers are not guaranteed under any circumstances, but will be given fair consideration." Nor would the Board guarantee that any property line would be sacrosanct or fixed for all time (though some property lines may well be remembered for all time).

The negotiators barely met their deadline for an agreement, a triumph nonetheless. In one year they had made peace with the tensions inherent in the reserve and in the process had negotiated a new form of public-private-community and federal-state-local land tenure. As defined by the communities of the Kickapoo Valley, the Ho-Chunk Nation, the State of Wisconsin, the Corps of Engineers, the Kickapoo Reserve Management

Board, the Bureau of Indian Affairs, the State Historical Society, the Water Resources Development Act, and the National Historic Preservation Act, the Kickapoo Valley Reserve represented a hybrid of public and private ownership; a partnership between historic antagonists; a source of empowerment for local people and the Ho-Chunk; a sacred space; and several new land titles.

A note of caution to anyone interested in applying a similar devolutionary model to other public lands: Conflict over the reserve had centered on who would hold title to the property and what the precise property boundaries would be. But when negotiators had discussed the actual land, there was little discord. None of them proposed, for example, that the reserve become a site for commercial resource extraction. The Ho-Chunk presence might have set tacit limits. Or perhaps the strict deadline encouraged negotiators to focus on shared values, rather than on values that would have separated them. It was probably both. Within this context everyone was united by a vision that was at once cultural and ecological. Quoting from their joint plan, the Ho-Chunk Nation and the state agreed to:



Both symbol and artifact. The Kickapoo Valley Reserve management board decided to preserve the La Farge dam intake tower because of its historical significance. (Lynne Heasley)

protect the reserve and all it contains with special protections for significant cultural and environmental resources;
 provide for managed public access to balance various user groups with the overriding mission to protect the reserve;
 cherish the history of the reserve, its resources and the lives of the people that have been affected by the political and natural occurrences which ultimately led to this project.

The plan outlined more specific principles as well. "The management of the Reserve shall: Protect the Reserve's aesthetic, cultural, scenic and wild qualities as well as the native wildlife and plant communities."⁶⁰ Though protection was the main theme (no more pickup trucks), the plan did not adopt a hands-off approach. It noted the presence of "poorly managed cultivated forests that need selective harvesting, as well as areas in need of reforestation" (there will be some eco-logging, therefore). The Board would also "make recommendations for appropriate restoration of oak savannas, prairies or other native habitats" (perhaps some eco-plowing, too,



A landscape vision—a communitywide agreement to "protect the reserve and all it contains with special protections for significant cultural and environmental resources." (Courtesy of Wolfgang Hoffmann)

or at least herbicide applications to make room for prairie plants). Tourism would be the primary human activity on the reserve, but it "should have as little effect on the land as possible" (silent sports especially welcome, but we won't shut out hunters). With this plan the negotiators laid out their intent to shape the landscape of the future. Conversely, they specified ways in which the nonhuman nature of the place would shape management.

By approaching the reserve as property, the negotiators had established new social relationships on the land. By approaching it as nature worthy of care in its own right, they had made room for important ecosystem dynamics—a sustainable wildness, you might say. By approaching it as part of a long and contentious human history, they helped old combatants reconcile. There was the Ho-Chunk's erstwhile grievance with the U.S. government. There was also the more recent rancor between the Sierra Club and locals who had fought for the La Farge dam. All these groups accepted the Programmatic Agreement, the Memorandum of Understanding, and the Joint Management Plan. All that remained was for Ho-Chunk president Jacob Lone Tree and Wisconsin Governor Tommy Thompson to sign the final documents. "It came right down to October 30," Anfinson said.⁶¹

More than twenty-five years earlier, residents in Stark had celebrated the ground breaking for the La Farge dam. Some twenty years before they had burned Senator Proxmire in effigy when he came to town and announced the end of the project. Now it was October 30, 1997, and they were preparing a big welcome for the governor and the Ho-Chunk Nation at the signing ceremony in La Farge. "They had the town hall all decked out, cookies and coffee, everyone was waiting," recalled Anfinson. "Then . . ." Anfinson paused. "The governor called and said he wasn't coming." The governor did not want to land his plane in the dangerous coulee country around La Farge. Even at this most human moment it seemed that the Valley landscape must be part of the finale. "I felt so bad for the town," Anfinson said. "They were stood up."⁶²

Besides the slight, and some did feel it as a slight, the law deauthorizing the reserve was about to expire. Governor Thompson changed his mind about the trip after Marcy West, executive director of the Kickapoo Valley Reserve, spoke with him by phone. "We discussed options," West said tactfully of the conversation.⁶³ She tried to convince the governor to make the two-hour drive from Madison. He decided to fly to La Crosse instead, about a forty-minute drive from La Farge on a winding two-lane highway. "We all jumped in our cars and raced over to La Crosse," said

Anfinson (energetically). "There was tension down to the last minute. The Ho-Chunk were threatening to leave." Many Valley residents were in the caravan. "There were some people that needed to witness it," said West.

Despite all the drama, and because of it, the Ho-Chunk did participate in the signing. Afterward they joined some of the St. Paul District staff for dinner at a local restaurant. Forced off their land 160 years earlier, the Ho-Chunk had returned to claim their history and their property. On this occasion, both the government and Kickapoo Valley communities welcomed them back.

Conclusion

Claims on Paradise

In writing this book my hope is that people concerned with rural places—especially those who live in them—will be empowered by their own complicated histories. The historical tension between individual and community prerogatives on the land is the central problem this book has explored. Making sense of this tension is crucial to understanding rural transformation in the twentieth century. Like many rural places, the Kickapoo Valley has moved away from local farm economies and landscapes and toward regional diversity, both social and ecological. We could use many lenses to view these changes. Macrolevel lenses include capitalist development, globalization of agriculture, and demographic trends reshaping country, city, and suburb. At a microlevel we could focus on social dynamics such as class, ethnicity, race, and gender. All of these are important analytical lenses and many of them have a place in this book. But the book has been primarily concerned with property—as an institution, a cultural prism, and an ecological force. Property is a locus where society and the natural world reshape each other, and where society's deeper values surface.

My approach to the problem of individual and community prerogatives has involved examining the historical interplay between property regimes and landscapes using case studies—the townships of Liberty, Clinton, and Stark. This required tracing ecological outcomes in changing landscapes and cultural outcomes in changing narratives about property and the environment. This was more challenging than it sounds, because the events that influenced outcomes in the Valley took place on many levels: local, regional, and national; and ecological, cultural, and legal. The most striking result was the divergence of the three townships. Since the 1930s, clear