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## Introduction

The Spring 2016 issue of *The Michigan Historical Review* features two research articles, two research notes, fourteen book reviews, and seven notes on books received.

The issue's first article, Andrina Tran's "An Experiment in the Moral Imagination: Russell Kirk, Clinton Wallace, and Conservative Hobohemia," was the winner of our 2015 Graduate Student Essay Prize. Tran investigates the devoted friendship between one of Michigan's most prominent intellectuals, Russell Kirk, and a hobo named Clinton Wallace. Although often hailed as a founding father of modern American conservatism, Kirk was also a prolific writer of ghost fiction, which he described as "experiments in the moral imagination" that would revitalize a decadent culture and instill "poetry" into politics. While many of his contemporaries castigated the poor as idle dependents, Kirk glorified the figure of the penniless wanderer and even identified himself as a kind of "vagrant." Tran examines the paradoxical relationship between Kirk and Wallace, including Kirk's fictionalization and sacralization of Wallace in his most famous tale, "There's a Long, Long Trail a-Winding." Both the facts of this relationship and its fictional translation serve as windows into Kirk's views on poverty, suggesting one way in which libertarian attitudes coexisted alongside religious faith. Similar to how libertarian businessmen in the 1940s viewed unions as both model and threat, conservative culture-makers like Kirk were simultaneously reclaiming and repudiating a world of hobohemia that had long been dominated by the modernist Left.

The issue also features a second essay on Kirk, Jason Morgan's "No Refuge from Modernity?: The Intersections of American and Japanese Conservatism, Russell Kirk, and Shirasu Jirō." From 1941-1945, Japan and the United States were locked in a total war. Both nations' economies, cultures, histories, intelligentsias, political systems, and imperial holdings were swept up in what propagandists from both sides identified as an apocalyptic struggle between good and evil. But, as Morgan argues, many of the divisions between Japan and the States were false. The two Pacific powerhouses were actually united by much more than they knew. On a grand scale the war was made possible by the fraught schemas of modernity, which enabled the rise of quasi-divine nation-states capable of making deontological claims. (Earlier wars were almost always wars of conquest. In the modern age, wars now became existential contests of a Manichean nature.) In Tokyo, many of Japan's leading philosophers gathered to discuss how modernity might be overcome, many forced to

admit that whatever lay outside of modernity stood little chance of overwhelming and defeating the totalizing modern project. Meanwhile, Michigan was home to a unique example of an American intellectual who was also disgusted with the modern proclivity toward mass slaughter, and who joined his Japanese counterparts in trying to find some refuge from modernity. Russell Kirk, the "Sage of Mecosta," not only helped train one of the best translators of Japanese literature into English in the twentieth century (with many of the translated works being, themselves, attempts to find some detour around modernity), he also wrote powerfully against the atomic bombings of Hiroshima and Nagasaki and tried to find the "permanent things" in the West that would civilize what modernity had made barbaric. At the same time, Shirasu Jirō, a Japanese statesman, also retreated to his own, Mecosta-like refuge outside of Tokyo, where he too turned to the things of the past for some sort of refuge from the modern age.

Richard Wiles provides the first of the issue's two research notes. In "A Bitter Memory: Seeking 'Maamaw Gwayak' (Social Justice) at Burt Lake," Wiles examines the history of one of Michigan's original Native American people, the Cheboiganing Band of Ottawa & Chippewa Indians. Drawing from notable treaties as well as less-known historical documents, the essay explores the circumstances surrounding the Band's removal from their ancestral homeland in northern Michigan's Cheboygan County. Today the descendants of the original Cheboiganing Band's "burned out" Indian Village are known as the Burt Lake Band of Ottawa and Chippewa Indians. They are currently struggling with the consequences of having their federally created preserve illegally removed in October of 1900.

— Andrew Small



Settlement of Indian Village on Lake Cheboigan (Burt Lake), 1892

## A Bitter Memory: Seeking "Maamaw Gwayak" (Social Justice) at Burt Lake

By  
Richard Wiles

*In that year (1900), nineteen families of Indians were forcefully evicted from their homes. Sheriff Deputies from Cheboygan County then poured kerosene over the buildings and burned every one of them while the women and children watched. . . . The facts show that this was one of the most shameful incidents in a long list of our mistreatment of the Indians. . . . The Cheboygan Band of Indians did not participate in any of the Ottawa and Chippewa wars or alliances, they lived a peaceful life as a communal family at Lake Cheboiganing (aka Burt Lake). They lived by themselves, built permanent homes, and cultivated their own fields.<sup>1</sup>*

The northern Lower Peninsula of Michigan has been the ancestral home of the Cheboiganing Band of Ottawa-Chippewa Indians (also known as the Burt Lake Band of Indians) since the late eighteenth century.<sup>2</sup> The French Jesuits who arrived in the area in the 1740s named the band "Cheboiganing," meaning "a place of passage" in the Algonquin language. Their settlement was located inland from Lake Michigan and Lake Huron on a waterway made up of small rivers and large lakes; it was known to white settlers as Indian Village, strategically located near the

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<sup>1</sup> Merton Carter. "Shame on the Shore," *Petoskey News Review*, 20 June 1969, 1. Carter is an Emmet County historian and curator of the Little Traverse Bay Regional Historical Museum.

<sup>2</sup> Great Lakes Indian historian Helen Tanner placed the Band's settlement on Lake Cheboiganing (Burt Lake) as early as 1768. *Atlas of the Great Lakes Indian History* (Norman, OK: University of Oklahoma Press, 1987), 58-59, map 13. The 1902 Cheboygan County plat book showed only the remnants of the Cheboiganing Band's ancestral homeland at Indian Village, including their Catholic Church and its cemetery. By then most of the village's 411 acres, which featured log cabins, pastures, fields, and forest, were unmarked. In their place the plat included a proposed hotel at Indian Point. Called the Colonial Hotel, it was built in the summer of 1902 and closed within three years. Similar to the name change of "Lake Cheboiganing" to "Burt Lake," "Indian Point" was changed to "Colonial Point." It eventually became highly-valued real estate, home to many summer resorters looking for vacation homes in northern Michigan. Phillip P. Frickey, "Marshalling Past and Present: Indian Canon Originalism," *Harvard Law Review* 107 (December 1993): 1100-21.





### Settlement of Indian Village on Lake Cheboigan (Burt Lake), 1892

Source: Little Traverse Historical Society

mouth of the Maple River, on Maple Bay, along the lake's shoreline. The small village was the first permanent, all-season Native American settlement in an area known for its harsh winters.<sup>3</sup>

By 1829 there was a Catholic mission log church at Indian Village under the direction of a local priest, Father Augustine De Jean. He named it the "Mission of St. Mary's Church." Though the settlement was originally predominately Chippewa, the proximity to Lake Michigan's Ottawa settlements of L'Arbre Croche and La Croix facilitated many inter-marriages. By 1836 the leader of Indian Village was Joseph Shingo's-se-moon (also known as Big Sail, or Chief Chingassimo). He was a signer of the 1836 Treaty of Washington written and negotiated by Henry Schoolcraft, the resident federal Indian agent for the Michigan Territory via the Office of Indian Affairs (War Department) headquartered at Mackinac Island. Chief Chingassimo was one of several northern Michigan Territory Indian leaders Schoolcraft took to Washington, DC, in the spring of 1836 to participate in the treaty negotiations. One of the reasons for the federal government's interest in a treaty was the recent influx of white Europeans to the territory, a result in part of the 1825 opening of the Erie Canal. Within a decade both the federal government and Bands of northern-based Indians wanted the treaty. The federal

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<sup>3</sup> Tanner, *Atlas of the Great Lakes*, 58-59.

government wanted to sell the territory's land, while the Native Americans owed heavy debts to fur traders and suffered from poor living conditions. They knew they needed help.<sup>4</sup>

The 1836 legal document contained a total of thirteen articles whereby the federal government promised to provide payments of specie (in the form of annuity distributions for twenty years), as well as farm equipment and general education (through the provision of teachers and the building of schools). The government also agreed to pay off the trading debts incurred by the various Bands during their years of fur trading and provide some preserved ancestral land for each Band who signed the treaty. These promises were given in return for the ceding of 13,600,000 million acres of land in Michigan's lower and upper peninsulas. In particular, Article 2 stated that the treaty would provide that "one tract of one thousand acres be located by Chingassimo or Big Sail, on the Cheboigan." The Chief himself thus chose the exact location where Indian Village would be located on the peninsula of Indian Point-Lake Cheboiganing.<sup>5</sup>

However, during the treaty's ratification process various US Senators inserted changes into the document that the Michigan Band's leaders had not agreed to during their negotiations: changes that eventually caused irreparable harm to the Cheboiganing Band of Ottawa-Chippewa. The first problem arose in a section where Schoolcraft's heading used the word "Nations." The designation "Nations" had never been used by the Michigan-centered Bands of Ottawa or Chippewa Indians; no such Indian political units existed. Each Ottawa and Chippewa village had its own elders and leaders. No one leader led a nation. Schoolcraft employed the term only for the political expediency of the federal government, as it was far easier to group the several independent Indian groups into one "Nation" of Ottawa and one "Nation" of Chippewa. Such a distinction was not factual and totally unacceptable to the various Michigan Bands, yet by the time they realized this it was too late to change.<sup>6</sup> Though the Senate had the right to alter the language after the Indian Band's negotiators signed, Native Americans could not; once the Senate ratified

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<sup>4</sup> Richard White, *The Burt Lake Band: An Ethnohistorical Report on the Trust Lands of Indian Village* (East Lansing, MI: Michigan State University Press, 1980), 81-82.

<sup>5</sup> Charles J. Kappler, ed., *Indian Affairs: Laws and Treaties, Volume 2* (Washington, DC: Government Printing Office, 1972), 450.

<sup>6</sup> Charles E. Cleland, *Rites of Conquest: The History and Culture of Michigan's Native Americans* (Ann Arbor, MI: University of Michigan Press, 1992), 227-28.

the treaty there was no recourse for the Cheboiganing Band, or the other Michigan Bands, to rectify the mistake.

The ratified treaty sent back to Michigan also contained additional language that the Native Americans had not agreed to during the negotiations. Article 2 stated:

From the cession aforesaid the tribes reserve for their own use, to be held in common the following tracts for the term of five years from the date of the ratification of this treaty, and no longer; unless the United States shall grant them permission to remain on said lands for a longer period.

The Band's negotiators agreed to preserved areas of land in perpetuity in exchange for the 13,600,000 acres of ancestral homeland. However, at a time when Indian Removal was the official policy of President Andrew Jackson's administration, a limit of five years was placed on the designated preserved lands (reservations).<sup>7</sup> This altered language did not sit well with Chief Chingassimo and some others in Indian Village. The chief did not trust the language concerning removal even though it indicated the US government could very well grant each Band the right to remain on the land for a longer period of time. As that was not the intent when he signed the treaty, Chingassimo himself soon decided to leave for Canada, eventually settling on Manitoulin Island (Lake Huron).<sup>8</sup>

The five-year residency limit in Article 2 came due in May 1841 but the government made no attempt to remove the Cheboiganing Band or any other Native Americans in Michigan. By then, Joseph Kie-She-go-way was the Cheboiganing Band's leader, and his mistrust of the 1836 Treaty of Washington's language concerning removal prompted him and his followers in Indian Village to heed the advice of local priest Father Francis Pierz. Father Pierz advised them to use their 1836 treaty annuity money to purchase the land they were living on at Indian Village outright. Chief Kie-She-go-way subsequently delivered \$356 to the Indian agent on Mackinac Island in 1844. That money was eventually sent to the new Superintendent of the Mackinac Indian Agency, William A. Richmond,

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<sup>7</sup> Charles E. Cleland, *Faith in Paper: The Ethnohistory and Litigation of Upper Great Lakes Indian Treaties* (Ann Arbor, MI: University of Michigan Press, 2011), 67-68.

<sup>8</sup> Kappler, *Indian Affairs*, 451.



who used it to buy six separate parcels of land totaling 411 acres on Indian Point.<sup>9</sup>

Between 1848 and 1850, Superintendent Richmond, acting on his federal authority for the Office of Indian Affairs, personally wrote the specific language used in the six land patents involving the Cheboigan Band's parcels at Indian Village:

To all to whom these Presents shall come, Greeting:  
Whereas The Governor of Michigan In Trust for the Sheboygan (sic) Indians of whom Kie-She go way is Chief has deposited in the General Land Office of the United States, a Certificate of the Register of the Land Office at Ionia whereby it appears that full payment has been made by the said 'Governor of Michigan In Trust for the Sheboygan Indians of whom Kie-she-go way is Chief' according to the provisions of the Act of Congress. . . . The United States of America . . . have Given and Granted, and by these presents Do Give And Grant unto the said The Governor of Michigan and his successors in office In Trust for the Sheboygan Indians of whom Kie-She go way is Chief the said tract above described.<sup>10</sup>

Richmond was following a precedent set by himself and Michigan Governor John Barry when he used this language. With Governor Barry's approval he had written a nearly identical land patent for forty acres in Calhoun County on behalf of the Calhoun County Band of Pottawatomie. In that patent, No. 24587, he used the same wording for the Potawatomie as he did for the Cheboigan Band, just changing the location and names of the chiefs.<sup>11</sup>

Thus, beginning with the proclamation in March 1836 of the Treaty of Washington the historic Cheboiganing Band of Ottawa and Chippewa Indians were, and have continually been, a federally recognized Michigan historic Indian political group. This federal recognition was only enhanced in September 1856 with the proclamation of the 1855 Treaty of

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<sup>9</sup> George Cornell, *An Ethnohistorical Report on the Burt Lake Band of Ottawa and Chippewa Indians (aka The Cheboigan Band of Indians)* (East Lansing, MI: Michigan State University Press, 1994), 45-46.

<sup>10</sup> White, *Burt Lake Band*, 98-99.

<sup>11</sup> Cornell, *Ethnohistorical Report*, 102-3.



**Joseph Parkey's Indianville cabin, similar to other burned  
Indian Village cabins**

Source: Little Traverse Historical Society

Detroit. When Indian Village resident and spokesman Joseph Assagon (Aw-se-go) signed that legal document on behalf of the Cheboiganing Band at Little Traverse Bay's Ottawa village in 1856, he made his mark in the presence of the federal Office of Indian Affairs agent in Michigan, Superintendent Henry Gilbert.<sup>12</sup> The 1855 Treaty of Detroit was sought by the various independent Bands of Michigan Indians to help rectify some of the errors and problems incurred by the earlier 1836 agreement. Treaty journal notes and minutes recorded by two secretaries in the Office of Indian Affairs, John Logan Chipman and Richard M. Smith, show that the intent of the treaty's language in Article 5 was to remove the 1836 treaty's false indication of a Michigan-based "Ottawa nation" and "Chippewa nation." Indian leaders of the various Ottawa and Chippewa Bands wanted that fact to be clear to the federal government and had asked for the inclusion of Article 5 wording. This new language was written by the Commissioner of Indian Affairs, George Manypenny, who had come to Detroit to negotiate the treaty (he did so with the help of Gilbert). Manypenny's wording intended to dissolve the idea that

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<sup>12</sup> Ibid., 286-87.



Michigan Indians were of one Ottawa political unit and one Chippewa political unit.<sup>13</sup> However, forty-five years later the language he used instead would prove disastrous for the Cheboiganing Band.

Unlike the white local government officials of southern Michigan's Calhoun County, who abided by the "preserved status" meaning of the 1848 land patent language for the Huron Potawatomi, and thus did not tax the land held in trust, Cheboygan County officials chose to assess the Cheboiganing Band's protected lands. These illegal assessments then led to tax titles being sold on the preserved lands and bought by local land speculators. By 1900, all 411 acres of Indian Village were in the hands of Cheboygan banker John McGinn. His attorneys convinced local Circuit Court Judge Oscar Adams to issue a writ of eviction and on October 15, 1900, that writ was violently served by Cheboygan County Sheriff Fred Ming. That day local police illegally seized the settlement at Indian Village and burned it to the ground – an event known as the Burt Lake Burn-Out. McGinn was not only present, he helped pour the kerosene that was used to set the nineteen log homes ablaze.

The October 1900 seizure of Indian Village by county officials resulted in the immediate disbursement of the nineteen families who were living in the settlement. The only two structures left standing by the sheriff was St. Mary's Mission Church, built in the 1850s, and the log cabin rectory that sat close to it. Many families journeyed a few miles to the northwest, where former Indian Village residents had moved prior to the Burn-Out. The Parkey family, for one, offered shelter, as did the Hamlin family. The area eventually became known as Indianville, and there a new St. Mary's Catholic Church was built in 1908 and is still in use today. It soon became, as it is today, the central settlement of the Cheboiganing (Burt Lake) Band of Indians. Others journeyed west of the Burned-Out village to Brutus, Pellston, and Cross Village. The June 1900 census recorded a total Native American population in Burt Township of 109, with almost every family residing either in Indian Village, or nearby in what became Indianville.<sup>14</sup>

Four separate district attorneys in Michigan handled the federal government's civil action against the perpetrators of the land seizure and Burn-Out, yet none of them gave the case their full attention. The incident involved nineteen log cabins, most of which had been constructed in the 1850s by the Band members only after they had purchased outright their

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<sup>13</sup> Ibid., 43-45.

<sup>14</sup> Alice Littlefield, *The Burt Lake Band of Ottawa and Chippewa Indians* (Mt. Pleasant, MI: Central Michigan University Press, 2002), 37.



411 acres and only after their land was placed “in trust to the Governor of Michigan and his successors forever.” In other words, they had waited to construct their homes until they felt confident the government would not unjustly remove them from their ancestral homeland.<sup>15</sup>

Leaders and spokesmen for the Band desperately tried to find legal recourse in the aftermath of the Burn-Out. Letters were written to the Governor of Michigan, the Attorney General of the United States, the Office of Indian Affairs, the Department of Interior, and even President William McKinley. In June 1903, Michigan’s legislature passed a joint resolution calling for 400 acres of land to be set aside in Cheboygan County for use by the Burned-Out Band members and their families. Though it was an acknowledgment of the wrong done to the small group of northern Michigan Indians, the legislation (Joint Resolution No. 20) became yet another historical tragedy for the Cheboiganing Band. It was written by Michigan House of Representative’s clerk Charles Sumner Pierce, who had been an attorney in Oakland County prior to being elected clerk in January 1903. Unfortunately, his wording in the resolution was once again careless and did not take into account the intent of the two earlier treaties. Instead, Pierce based his language on the series of misinformed personal opinions Michigan officials offered prior to the Burn-Out. Ironically, the myth that the violent incident had somehow been a legal act was thus perpetuated in the misinformed and incorrect language of the 1903 Joint Resolution, a document that was meant to give sympathetic aid and assistance to the Cheboiganing Band.<sup>16</sup>

Pierce acted without checking the official federal government records, and those of former Michigan Governor John S. Barry, when he wrote:

Whereas, while the Governor was not acting in his official capacity for the State when these lands were conveyed to him in trust . . . Whereas, it is the opinion of the officials of the Department of the Interior that the individual members of this Band of Indians not having

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<sup>15</sup> *Summary Under the Criteria and Evidence for Proposed Finding Huron Potawatomi, Inc.*, United States Department of the Interior, Office of Federal Acknowledgment, 10 May 1995, 66. The document states: “In the mid 1840’s, with assistance of local settlers and of Charles G. Hammond, Michigan State Auditor, the group (Band) purchased land collectively, which it placed in trust for its permanent use with the Governor of Michigan. This land is today the Pine Creek Reservation. The 120-acre tract has remained exempt from property taxes in Calhoun County, Michigan, as an Indian Reservation, since its establishment.”

<sup>16</sup> White, *Burt Lake Band*, 121-23.

sufficient money to purchase for each of them a forty acre tract of land, made up a purse and purchased these lands, paying the government price . . . Whereas, the unfortunate situation in which these Indians were placed was called to the attention of the federal government and received in reply the dictum of the Secretary of the Interior that 'It is not within the powers of this department to afford any relief, was received.'<sup>17</sup>

Not only was none of this true, the 1903 Resolution was later used to justify the illegal seizure of the federally preserved land at Indian Point. Eventually, in June 1911, Attorney General George Wickersham instructed his federal district attorney in Michigan to file a civil suit to regain the ancestral homeland property of the Cheboiganing Band.<sup>18</sup>

In March 1914, Office of Indian Affairs Commissioner Cato Sells sent Special Indian Agent Joseph Howell to investigate the incident. Sells was responding to letters sent by Cheboiganing Band members Enos Cabenaw and Albert Shannanaquet, both of whom had survived the land seizure and burning of their log houses and subsequently provided signed affidavits. A month later Howell issued his nine-page "Howell Report," which indicated that Michigan Governor John Barry knew exactly what he was doing when he allowed the 1848-1850 warranty land patents to read "In Trust to the Governor and His Successors forever." The language meant that Michigan had created an "Indian reservation" for each parcel of land listed, whether in Calhoun County in the South or Cheboygan County in the North. Howell also wrote that he had conducted a thorough investigation into the Washington, DC, records of the Michigan Mackinac Indian Agency and the Office of Indian Affairs and found that Article 5 of the 1855 Treaty never intended to dissolve all Michigan Indian political units but only the use of the word "nation." Thus, the 1836 treaty's use of Ottawa "Nation" and Chippewa "Nation" had been incorrect, and at the request of the various Michigan Indian leaders in Detroit that term was to be eliminated in 1855.<sup>19</sup>

Howell discovered that the intermittent tax assessment of Indian Village land parcels from 1860 to 1900 had violated the intent of both the 1836 and 1855 treaties, as well as the language used in the 1848-1850

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<sup>17</sup> *1836 Treaty of Washington Vol. II Treaties*, compiled and edited by Charles J. Kappler (Washington, DC: Government Printing Office, 1904).

<sup>18</sup> Kappler, *Indian Affairs*, 726-31.

<sup>19</sup> Cornell, *Ethnohistorical Report*, 98-101.



Cheboygan County-Burt Township – Plat Map, 1902

Source: Petoskey District Library

warranty land patent. The phrase “In Trust to the Governor and His Successors forever” clearly had the intent of creating “reservation land” at Indian Village that could not be taxed or taken for debt in perpetuity. The Howell Report also noted that the subsequent language used by the Michigan House of Representatives in the 1903 Joint Resolution No. 20 was based on inaccurate information and blatantly wrong. “In this respect the State authorities were clearly in error,” he wrote. The report showed that the 1901 statement by Secretary of Interior Ethan Hitchcock to ex-Michigan Governor Hazen Pingree that Hitchcock’s department could not act on behalf of the Cheboiganing Band was wrong. The Native Americans had been under the guardianship of the Office of Indian Affairs since the 1836 Treaty of Washington.<sup>20</sup>

<sup>20</sup> *Public Acts of The Legislature of the State of Michigan, Passed At The Regular Session of 1903, Containing Joint and Concurrent Resolutions, Amendments to the Constitution* (Lansing, MI: Robert Smith Printing, 1903), 444-46.



Howell met federal district judge Clarence Sessions in Grand Rapids before returning to Washington, DC. Sessions was presiding over the case initiated by the Justice Department in 1911, *The United States of America as Guardian of the Cheboygan Band of Indians vs Frank Shepard, and Albert W. Ramsey-Executors of John W. McGinn-deceased*. Howell informed the judge of what he had learned in his investigation and what he intended to report to the Commissioner of Indian Affairs. Yet three years later, on May 31, 1917, Sessions issued a decision in the case that ignored everything Howell told him, crafting an opinion containing the same misinformation as the 1903 Joint Resolution. The judge first ruled that the language used by Indian Agent William Richmond in the six land patents did not contain the exact words "tax exempt." He then interpreted Article 5 of the 1855 Treaty of Detroit to mean that the federal government could not act as a ward or guardian of the Cheboigianing Band in the civil action because since 1855 there were no Indian political units existing in Michigan. And, finally, Sessions specifically referred to the erroneously written 1903 Joint Resolution and thus repeated the 1901 incorrect statement of the Secretary of the Interior Department: "it is not within the powers of this Department to afford any relief." The entire opinion was once again based on a lack of due diligence, as well as actual negligence since the judge ignored the facts Howell provided him in April 1914.<sup>21</sup>

After Session's ruling US Attorney General Thomas Watt Gregory (the third Attorney General involved in the case) instructed his Michigan eastern district attorney (the fourth district attorney involved) not to appeal. Thus, to this day the Bureau of Indian Affairs considers the date of Session's ruling (May 31, 1917) to be the official date on which the Cheboigianing Band of Ottawa and Chippewa Indians ceased to exist as a federally recognized Michigan Indian political unit. This, too, was a totally arbitrary decision without merit and one that did not involve Congressional approval. Federal recognition of the Cheboigianing Band began with the 1836 treaty and Congress took no official action to dissolve the constitutionally guaranteed, government-to-government relationship. Article VI of the US Constitution states that all treaties are to be considered the Supreme Law of the land, and Article II-Section 2 states that only the Senate can give legal consent to treaties negotiated by the office of the President. Meanwhile, the language of Article III-Section 2 has been interpreted over the years to mean that only an act of Congress

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<sup>21</sup> Joseph Howell, *The Howell Report*, 14 April 1914, Department of the Interior, Office of Indian Affairs, 1-9.

can terminate a treaty or discontinue the political organization of an Indian tribe, nation, or band. Federally recognized Indian political units exist as a domestic dependent nation. Supreme Court Chief Justice John Marshall wrote in 1831 that a treaty-signing Indian political unit was to be in a relationship with the federal government like that of a ward to its guardian. The following year Marshall crafted a ruling that forbade individual states from having any authority over Indian political units, a decision that also set a precedent for interpreting Indian treaties. Marshall wrote that such agreements must always be interpreted as the Native Americans at the time of negotiation would have understood them, and in favor of any Indian political unit when ambiguity arises in the treaty's language. Not only were the treaties written in English, but some Native leaders were illiterate or misunderstand concepts of land ownership, and many treaties were drafted under threatening conditions.<sup>22</sup>

The case was clearly different for the southern Michigan Calhoun Band of Potawatomi. Richmond's land patent was used 150 years later as partial evidence by the Bureau of Indian Affairs's Office to grant the Potawatomi Band federal recognition, the same status the Cheboiganing Band continue to seek today. The Cheboiganing Band organized themselves under the 1934 Wheeler-Howard Act (Indian Reorganization Act) with the required petition generated by the Band's members sent to Indian Affairs Commissioner John Collier on May 13, 1935. Collier never acted on it and five years later, in 1940, the Commissioner issued a general decision to cease Office of Indian Affairs services to any of Michigan's Lower Peninsula Bands of Indians.<sup>23</sup> Fifty years later, in September 1985, a letter of intent to organize the historic Cheboiganing Band, using the wording "Burt Lake Band of Ottawa and Chippewa Indians," was sent to the Bureau of Indian Affairs. Ten years later, in April 1995, the Burt Lake Band received a letter from the Office of Federal Acknowledgement regarding a Technical Assistance review of their intent to petition the federal government for organization under a new process initiated in 1978. That same year the historic Calhoun County Band of Potawatomi, now called the Huron Potawatomi, Inc., were granted their federal recognition. This Potawatomi Band had never lost access to their "In Trust to the Governor and His Successors" patented land. The plots

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<sup>22</sup> Richard A. Wiles, "A Bitter Memory," Petoskey District Library White Paper, November 1, 2013, 281-82.

<sup>23</sup> *Summary Under the Criteria and Evidence for Proposed Finding Huron Potawatomi, Inc.*, (United States Department of the Interior, Office of Federal Acknowledgment), 10 May 1995, 65-66.

remained reserved land, exempt from debt and taxes for almost 150 years. So why did federal and state officials deem the Cheboiganing land patents illegitimate? No legal answer has ever been offered. One band of Michigan Indians had their reaffirmation by the federal government partially based on the Richmond land patent of 1848, while another had their ancestral homeland taken from them, their homes destroyed, their people scattered, and their relationship with the United States unrecognized, all because their reserved land under the Richmond patents were deemed illegitimate.<sup>24</sup>

The historic Cheboiganing Band of Ottawa and Chippewa Indians of northern Michigan played by all the rules laid before them by the federal government. Schoolcraft's Treaty of 1836 clearly indicated the protected Cheboygan Indian reserve, and his Indian Agent Report Map of 1837 identified the exact location of the Cheboygan reservation and its population of 117 people. John Mullet's Re-Survey map of 1855 also featured the position of the Cheboygan reservation and the Detroit Treaty of the same year reserved these lands for the Cheboygan Indians. As local historian Merton Carter later wrote, "Each of these patents showed that \$1.25 per acre was paid by the Indians in spite of the fact that they had sold all their other land for only 6.5 cents per acre in the Treaty of 1836 . . . only 10 years before. All patents for the Cheboygan land listed the Governor of Michigan as the purchaser . . . 'In Trust for the Cheboygan Indians of whom Ki-She-Go-Way is Chief.'" Carter contended that:

A good tax lawyer would have had little trouble in showing that these lands should not have been taxed in the first place as you cannot tax a governmental body. Certainly the governor of the state and his successors were trustees of the property and that should have prevented the parcels from being taxed. . . . These lands were all purchased in good faith and it was a shame that the tribe lost ownership through the negligence of a long line of trustees.<sup>25</sup>

Carter examined the *United States Journal of Purchases* at the Ionia, Michigan, Land Grant office and also found the same records at the Department of Interior. "The Cheboygan Indians should never have paid

<sup>24</sup> Cornell, *Ethnohistorical Report*, 186-87.

<sup>25</sup> Carter, "Shame on the Shore," 3.



taxes on the land because it was reserved by every treaty they had signed and the governor held the land in trust for them," he wrote.<sup>26</sup>

This small, Cheboygan County-based Band never participated in any conflicts against the American colonies or the United States; not the Revolutionary War, nor the War of 1812. The Band sent six of its members to fight for the Union Army in the Civil War. One, Joseph Assagon, a Band spokesman and signer of the 1855 treaty, did not return. Three more members participated in World War I, twenty in World War II (two lost their lives), and five in the Korean and Vietnam conflicts. What happened to the Cheboiganing Band on October 15, 1900, was the beginning of a series of historical tragedies that continue to this day. For the last 115 years, Band leaders, elders, and members have sought both "Maamaw Gwayak" (social justice) and legal justice. Their federally protected ancestral homeland was forcibly taken under the guise that Indian Village residents failed to pay taxes on six parcels of patented land, land that should have been protected from taxes, or debt, under the provisions of the 1836 and 1855 treaties. Despite two Congressional treaties and six federal land patents, their ancestral homeland was not preserved or honored. All were legal documents, created by federal officials and designed to protect the Cheboiganing Band as a ward of the federal government.

Since October 1900, members of the Cheboiganing Band (now referred to as the Burt Lake Band) have been engaged in regaining ownership of their ancestral homeland somewhere nearby the original Indian Village. In May 1935, the descendants of the Indian Villagers of 1900 signed an Office of Indian Affairs official petition under the 1934 Indian Reorganization Act. To add insult to their previous illegal loss of land, federal officials told them that since they no longer had their ancestral land, they did not qualify to be reorganized. Thus, they were stripped of their federal recognition Congress first provided them in 1836 and validated again in 1855. Today there are nearly 250 descendants of the original Indian Village Burn-Out residents. They, too, are seeking their re-affirmation, legal justice, and "Maamaw Gwayak" at Burt Lake.

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<sup>26</sup> Ibid., 1.