

Treaty Analysis

Of the Treaty between the U.S.A. and the Winnebago; Aug. 1, 1829

Mid-Term Paper - November 10, 1996

This Treaty has been “*made and concluded at the Village of Prairie du Chien, Michigan Territory, [...] between the United States of America, by their Commissioners, General John M’Neil, Colonel Pierre Menard, and Caleb Atwater, Esq., for and on behalf of said States, of the one part, and the Nation of Winnebago Indians of the other part.*”

The introduction alone illustrates the character of the language used in this agreement. As a legal paper, the treaty contains highly formal statements in order to make its reading unmistakable. Such language can be found in almost every legal document, such as laws and diplomatic agreements. Unfortunately, as can be seen from the passage quoted above, this makes it difficult for people unfamiliar with legal procedures to grasp the content of the text. In fact, the study of law is mainly one of language and trains the understanding and formulation of texts in order to obtain a document that can only be understood in the one and only intended way. Clearly, this makes it difficult for *any* non-lawyer to comprehend such an agreement.

Article One then describes the area of land ceded to the U.S.: It is difficult to judge whether this description was understandable for the Native Americans signing the treaty. I was not able to sketch the area on the map, but then I am not familiar enough with the lands of Wisconsin, and there are several Indian names used that no modern map shows. Provided that the terms used were familiar to all the persons involved, the Native Americans would still have had to rely on an interpreter to give them the non-Indian place names. It is not even known whether the area in question was ever pointed out on a map to give the signers an impression of its size. Even if so, I do not think that large-scale maps were common for Indians to use: It then follows that some may not have been aware of the true extent of the land ceding and their own position on the map. As will also become clear from other points later, the entire treaty was formulated in the language of the white law - which very few people were able to grasp in its full meaning.

This is further demonstrated when the text refers back to two other treaties made earlier, namely the one of St. Louis (*Aug. 24, 1816*) and the ninth article [!] of the treaty of Prairie du Chien (*Aug. 19, 1825*). Again, we can only guess at whether the interpreter took his time to explicitly point these lines out on the map and if these descriptions were clear to the signers of the paper.

Article Two then states the conditions of payment. It is striking that the payments

extended for 30 years at the most, whereas the ceding of the land was permanent. This very clearly shows that the Indian side of signers must have been under some pressure to sell away their lands for a definite sum. It becomes evident in **Article Four** that they indeed had debts to pay which were balanced by the treaty. Provided that these land cedings could be considered an ‘emergency sale’, it can be doubted that the Winnebago would have agreed to sell their land *without* this pressure.

The definition of splitting the payments (Art. II) states the two U.S. offices of Prairie du Chien and Fort Winnebago to pay “*in proportion to the numbers residing within the most convenient distance of each place, respectively*”. Even assuming that this would have been a comprehensible statement for the Winnebago, the general practice of interpreting Indian treaties gives reason to predict abuse of this section. Always pointing to the other payment office would have been a convenient excuse for delaying payments. Also, this regulation makes it more difficult for the recipients to keep score of the total sum paid. This passage may have been intended for easier distribution of the payments, but it is altogether too confusing and might easily have been distorted.

Article Three states the establishing of three blacksmiths’ shops for the use by the Winnebago. Like the payments, these are limited to a period of 30 years. It is interesting that the wording used for the “*two yoke of oxen, one cart and the services of a man...*” states “*the term not to exceed 30 years*”. This rather suggests that the limitation was valid only with respect to maximum, not to minimum duration. Strictly speaking, this part of the agreement could have been canceled after the first day because the treaty only states the limit of time not to be *exceeded*.

Article Five then regulates grants of land to individual members of the Winnebago Nation from the territory ceded above. These land grants were to be located off the mining areas and not to be sold by the Indians without the consent of (the President of) the United States. The treaty does not explain the status of these Native Americans on this land. Since Article One states very clearly that “*the Winnebaygo nation hereby, forever, cede and relinquish to the United States, all their right, title, and claim, to the lands [etc.]” (my underlining), it is very questionable whether these land grants were of any use at all to the Winnebago. Strictly speaking, the Indians could *at any time* have been forced to leave their granted lands. I wonder if this is what happened afterwards. Even more, the Treaty does not state the size nor location of even one such grant. So this part of the agreement remained highly questionable and much at the disposition of the U.S. to give away grants with little or no value for the Winnebago, such as stretches of rocky ground unsuited for agriculture.*

It is notable that **Article Six** has been removed from the final version of the treaty because it had not been ratified by the Senate. Its content would have been interesting to know.

The final **Article, Seven**, then proclaims the treaty binding for all contracting parties. Again, it is interesting to notice that the text only states the ratification “*by the President of the United States*” as the ultimate condition for making the agreement valid and binding. As seen above, verbatim interpretation of this formulation would mean that the treaty would be just as valid even *without* the consent of the Winnebago, giving it the character of a law rather than a treaty. And indeed this is what happened later: When the United States found out that it was much easier to simply pass laws over someone than to ask for their permission, this was exactly what they did.

I have so far mostly attempted to grasp the content of this treaty from my own perspective and have learned that it leaves some questions open for me. Even though my understanding does not depend on an interpreter or legal advisor, I find the result rather unsatisfying.

If I now try to see this agreement through the eyes of a 19th-century Winnebago, my understanding would depend to a great deal upon the explanations given to me. First, I would probably not be familiar with maps, making it difficult for me to judge the extent of the ceded land. I would also assume the land grants stated in Article Five to be fertile land suiting the needs of my people - which cannot necessarily be taken for granted, as shown above. I would also not be used to pinpointing agreements to the last detail in a contract as was - and is - important in white Anglo-Saxon legal culture. Rather, I would rely on an understanding of common sense and assume that the opposing contracting party does so as well. And most important of all, I would most likely not be able to read the contract myself. My understanding of the treaty would almost certainly depend ultimately on the interpreter - if at all there was one available. As can be seen from many examples, this often proved to be a weak point in treaty history: I could never be certain that I am being told the truth.

Finally, one of the greatest problems of treaties was that the U.S. often had Chiefs sign the contracts that did not have the consent of all the Indians affected by the paper. Even if the ones signing the treaty were fully aware of what it meant for them, their signatures were likely to affect others of their people that did not even *know* about the existence of the document. So, as a Winnebago of that time, I could find myself being subject to an agreement that I had not agreed to.