

THE RULE OF THE GOVERNOR AND  
JUDGES IN MICHIGAN TERRITORY,  
1805-1823

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## ABSTRACT

### THE RULE OF THE GOVERNOR AND JUDGES IN MICHIGAN TERRITORY, 1805-1823

By

Timothy Frederick Sherer

Michigan Territory, created by Congress in 1805 out of part of the original Northwest Territory, was ruled by a governor and three judges for eighteen years. As there was no representative assembly in this first stage of government, these officials had great power--they adopted the laws, served as Supreme Court justices, treated with the Indians, and maintained law and order. This dissertation is a case study of the administration of one American territory during its first governmental period.

Michigan's early territorial experience was unique for several reasons. Most of the nearly five thousand residents in 1805 were of French backgrounds and spoke little English. While the British had surrendered their western posts to the United States by 1796, they still loomed as a menace across the Detroit River, and constantly interfered in Michigan affairs, particularly in their dealings with the Indians. Most of the territory's population was centered in and around Detroit, the largest town. Before Governor William Hull and judges Augustus Woodward, John Griffin, and James Witherell arrived in Michigan, Detroit had burned to the ground.

Most secondary accounts describe the legislative and judicial efforts of the governor and judges from 1805 to 1812 as "chaotic," and

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concentrate on the eccentricities of Woodward and his occasional petty feuds with Hull. Unfortunately this approach has neglected the positive and more important accomplishments of the territorial officials who rebuilt Detroit, gained Congressional aid for destitute citizens, improved transportation, laid the foundation of an educational system, created a court system, and adopted an extensive criminal code. During this period the judges sitting as a Supreme Court heard over four hundred cases.

Hull's importance in dealing with the Michigan Indians has been similarly neglected. As Superintendent of Indian Affairs in Michigan he counteracted British influence among the tribes by giving the Indians teachers, tools and implements, and food and clothing. He also acquired by treaty a tract of land for the United States that included roughly the southeastern quarter of the Lower Peninsula. Although the War of 1812 ended his Indian program, he was instrumental in promoting their welfare.

Woodward was the sole territorial official remaining in Michigan after Hull surrendered Detroit to the British in the War of 1812. He spoke against the British destruction of American homes and property, attempted to rescue whites taken by the Indians, and eased the suffering of many territorial inhabitants. In spite of his efforts to assist Americans, the British occupation of Michigan was a devastating blow to the territory and created serious problems for the territorial officials in 1814 when they returned to power.

Lewis Cass, Hull's replacement as governor in 1814, contributed greatly to Michigan's recovery from the devastation of the War of 1812. Cass was instrumental in rescuing whites taken by Indians and in obtaining

emergency rations for white settlers. He continually petitioned Congress for emergency aid to rebuild the territory and to aid those unfortunate citizens who had lost nearly everything in the conflict.

As Superintendent of Indian Affairs, Cass proved himself an able and gifted administrator. He improved and expanded Hull's program of Indian education, created new agencies, increased Indian expenditures for food, tools, and clothing, and instituted more rigid regulations for traders and agents. He also acquired by treaty several million acres of land for the United States. In dealing with the Indians, Cass was also forced to confront the power and the influence of John Jacob Astor's American Fur Company.

Many writers have focused on the despair and destruction in Michigan following the War of 1812 without recognizing the positive accomplishments of the governor and judges. From 1814 to 1823 these officials adopted legislation concerning internal improvements, a new university, a territorial bank, and the regulation of trade and commerce. They laid out fourteen new counties, adopted a new criminal code, and legislation regulating prisons and procedures in criminal cases. During this period the Supreme Court handled nearly six hundred cases.

This study takes issue with the claim by some writers that by 1823 the governor and judges were forced to give up their legislative power to an elected assembly because the general populace was dissatisfied with their administration. Much of the criticism leveled at the territorial officials originated from a small faction of Americans and former Britishers who desired self-government. The majority of the inhabitants--those of French extraction--resisted attempts by the governor

and judges to involve them in representative government and were satisfied with their administration. In 1818 Michigan residents voted against a popularly elected general assembly.

The rule of the governor and judges in Michigan reveals both strengths and weaknesses in the territorial system established by the Ordinance of 1787. The major weakness was the failure to include citizens in the governmental process, particularly those Americans already accustomed to self-rule. Another weakness was that because of their many duties, the territorial officials were forced to restrict the time allotted to any one particular duty. At the same time a concentration of power in the governor and judges was necessary in Michigan. Because of the great number of French-speaking inhabitants unfamiliar with American law or language, these officials were forced to take the lead in establishing a workable system of government. Michigan was fortunate in having strong governors in Hull and Cass and competent judges in Witherell and, especially, Woodward.

A wide range of both manuscript and printed sources was used in this study. Important manuscript collections included "The Michigan Territorial Papers," "The Transactions of the Supreme Court of Michigan, 1805-1824," and the papers of Augustus Woodward, Benjamin Witherell, Lewis Cass, William Hull, Solomon Sibley, and William Woodbridge. Letterbooks, records of executive proceedings, memorials, and petitions to the governor and judges, found at the Michigan State Archives were also valuable. State and War Department records in the National Archives were also very important. Useful printed sources included The Territorial Papers of the United States, The Laws of the Territory of Michigan,

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American State Papers, and the Michigan Pioneer and Historical Collections. Many secondary accounts also made significant contributions to this study of the rule of the governor and judges.

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By

Timothy Frederick Sherer

A DISSERTATION

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To my wife, Judy, whose  
constant love and continual  
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I would like to thank all my friends and fellow graduate students who have shown interest in my work and have offered me encouragement.

Special thanks must also go to my parents, who instilled in me a love of knowledge at an early age. Their interest and encouragement have been valuable aids in the completion of this study.

While many people have made important contributions to this study, I stand alone in being responsible for its shortcomings.

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## LIST OF ABBREVIATIONS

BHC	Burton Historical Collection, Detroit Public Library
CHL	Clarke Historical Library, Central Michigan University
CL	Clements Library, University of Michigan
FRC	Federal Records Center
MPHC	Michigan Pioneer and Historical Collections
MSA	Michigan State Archives
MSU	Michigan State University
NA	National Archives
NW	Northwest Territory
RG49	Records of the Bureau of Land Management
RG59	General Records of the Department of State
RG75	Records of the Bureau of Indian Affairs
RG107	General Records of the Department of War
SD	State Department
SG	Surveyor-General
WD	War Department

CHAPTER I  
MICHIGAN'S PRE-TERRITORIAL PERIOD

Irish traveller Isaac Weld, visiting Detroit in the Northwest Territory at the close of the eighteenth century, observed a tiny and rather primitive community. The town, situated on the western bank of the Detroit River, contained but a few more than one hundred houses. Jutting out into the river were wooden wharfs, built to accommodate the trading crafts that contributed economic life to the distant outpost. Several streets, running parallel to the river, were intersected by others at right angles. They were narrow, unpaved, and generally dirty. A sudden downpour rendered them next to impassable. Footways, formed of square logs laid transversely close to each other, provided pedestrians firm underfooting. A strong stockade surrounded the inhabitants. It had four gates, with blockhouses at each opening, and a small fort near the north wall with small field-pieces to discourage hostile intruders.<sup>1</sup>

Trade constituted the most important activity of Detroit's inhabitants, nearly two-thirds of whom were of French extraction. No less than twelve trading vessels belonged to the town's commercial interests, and included brigs, sloops, and schooners of from fifty to one hundred tons each. "The stores and shops in the town are well furnished," Weld observed, "and you may buy fine cloth, linen, etc., and every article

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<sup>1</sup>Isaac Weld, Jr., Travels Through the States of North America and the Provinces of Upper and Lower Canada During the Years 1795, 1796, and 1797 (2 vols.; London: John Stockdale, 1807), II, 183-189.

of wearing apparel, as good in their kind, and nearly on as reasonable terms, as you can purchase them at New York or Philadelphia."<sup>2</sup> Across the Detroit River were the British settlements of upper Canada, whose inhabitants recognized the frontier outpost as a key to the Indian trade of the Wabash Valley. Detroit's streets were usually thronged with Indians of one tribe or another, intent on securing a favorable exchange for their furs and skins, or on simply taking in the sights. One could also observe many old Indian women leading about their daughters, "ever ready to dispose of them, pro tempore, to the highest bidder."<sup>3</sup> While it had a promising future as a western commercial and trading center, Detroit in 1796 was a small, frontier village of approximately five hundred inhabitants.

The French were the first Europeans to leave a lasting influence on Michigan. As early as 1701 the green forest lands and the sparkling waters had induced Cadillac to erect Fort Pontchartrain on the present site of Detroit, in an effort to bolster French influence against rising British pressure in the Northwest.<sup>4</sup> Under Cadillac's

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<sup>2</sup>Ibid.

<sup>3</sup>Henry M. Utley and Byron M. Cutcheon, Michigan as a Province, Territory, and State (4 vols.; New York: The Publishing Society of Michigan, 1906), II, 133. Hereafter cited as Utley, Michigan.

<sup>4</sup>George Catlin, The Story of Detroit (Detroit: The Detroit News, 1923), 4-8. Hereafter cited as Catlin, Detroit. The French had established Sault Ste. Marie in 1668, Michilimackinac in 1669, and Fort St. Joseph, at the mouth of the St. Joseph River in 1679, but these were trading posts and military headquarters instead of real settlements.





guidance, French farmers called "habitants" came to inhabit the lands surrounding the tiny outpost. Cadillac granted them lands fronting on the Detroit River, as well as land extending back into the interior. He also invited neighboring Indians to live near the settlements where they could trade their furs and receive instruction from the Jesuits. Cadillac reasoned that by daily contact with both hardworking settlers and the clergy, these Indians would gradually come to accept the customs and culture of France. Cadillac's scheme failed, as the red men were frequently debauched by liquor and often exploited by avaricious fur traders.<sup>5</sup>

The fur trade remained the major reason for French interest in Michigan, and also the spoils for which England and France contested in their several wars in America in the eighteenth century. Three trading posts in Michigan served as strategic points of French control in the struggle with the British. Michilimackinac, erected at the Straits of Mackinac, served as a rendezvous for trappers and traders plying their trade to the north and northwest. Fort St. Joseph, built near the present city of Niles, became the trade center for the Illinois Country and lands to the south. Detroit became the focal point for peltry dealers journeying from the far west. Despite French attempts to license traders to discourage English competition, Michigan trappers, particularly the famous "coureurs de bois," often scorned such regulations and even turned a profit by trading with the English. The influence

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<sup>5</sup>Clarence M. Burton, History of Wayne County and the City of Detroit (5 vols.; Detroit: The S. J. Clark Co., 1930), I, 41-52. Hereafter cited as Burton, History of Wayne County.

of these French trappers and traders was lasting in Michigan. Many of them continued in the fur trade under both the British and the Americans.<sup>6</sup>

British and French rivalry in Michigan and the northwest broke out in open warfare in 1744 with King George's War, the third such conflict between the two powers since the Glorious Revolution in England in 1689. In 1744 several hundred Ottawa, Huron, and Pottawatomi braves lived around Detroit, and nearly two hundred Ottawa warriors were encamped near Michilimackinac. The French had been successful in retaining the allegiance of many Michigan Indians, but some tribesmen had discovered that a better bargain was to be gained by dealing with the British. In 1745 Chief Nicolas of the Huron tribe living near Sandusky permitted the British to build a "strong house" near his village. Iroquois tribesmen, at the instigation of the British, prodded Huron warriors to attack Detroit. The attack failed, but several French traders returning to Detroit were captured and killed. The British were later forced to give up their trading post at Sandusky.<sup>7</sup> Peace came in 1748. In the years to come, Michigan Indians, intent on increasing their own influence in the lands of the Great Lakes, would continue to serve as pawns in the conflicts between foreign powers.

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<sup>6</sup>Willis Dunbar, Michigan: A History of the Wolverine State (Grand Rapids, Michigan: William B. Eerdmans Pub. Co., 1965), 88-93. Hereafter cited as Dunbar, Michigan.

<sup>7</sup>Howard Peckham, Pontiac and the Indian Uprising (Princeton: Princeton University Press, 1947), 30-33. Hereafter cited as Peckham, Pontiac.

The French and Indian War of 1754 signaled the final contest for power in America between France and England. Most of the fighting took place outside of Michigan, but that area was involved in the hostilities. When General Braddock led an English force against Fort Duquesne, the Detroit militia was called upon to help reinforce that garrison. Grain and other provisions from Detroit were also sent east to maintain the French positions. Hurons, Pottawatomies, Ottawas, Miamis, and other Indians from around Detroit supported the French at Duquesne, and their later withdrawal contributed to the decision to abandon the post to the English.<sup>8</sup> When the tide of battle began to turn against the French, many of their former Indian allies began to waver in their support. A delegation of Ottawa, Huron, and Chippewa journeyed to Fort Pitt and smoked the peace pipe with George Croghan, who represented the British.<sup>9</sup> With the fall of Quebec in 1759, English victory in North America was only a matter of time. The following year the French gave up Montreal and all Canada with it. General Amherst selected Robert Rogers to travel westward with a sufficient force to take over the Great Lakes posts from the French.

The transfer of military and civil control in Michigan from French to British hands did little to disturb existing conditions. Most Frenchmen took the oath of allegiance and remained at their homes.

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<sup>8</sup>Burton, History of Wayne County, I, 71-72; James Campbell, Outlines of the Political History of Michigan (Detroit: Schober & Co., 213-216. Hereafter cited as Campbell, Political History of Michigan.

<sup>9</sup>Dunbar, Michigan, 112.

They continued to be Roman Catholics, took care of their farms, married and reared large families, and "died and slept peacefully with their fathers in St. Ann's churchyard."<sup>10</sup> King George prohibited the English governors from making grants of lands and English subjects from purchasing Indian lands. This latter condition was not strictly observed in Michigan, however, and a later American government experienced some confusion in unraveling conflicting claims.<sup>11</sup> Generally, the French seemed convinced of the military power of the English, and showed little disposition to challenge it.

Michigan was shaken out of its brief peaceful interlude by the uprising of Pontiac in 1763. With the expulsion of the French from North America, the Indians discovered that they were at the mercy of the English traders. Free gifts of weapons, ammunition, and powder were not as forthcoming as under the French. Land speculators began to invade Indian lands to spy out possible future holding. Alarmed by the growing power of the whites, Pontiac, whose village lay a few miles from Detroit, attempted by craft to take over that post. Failing in this venture, he placed Detroit under siege. News of Pontiac's activities spread rapidly and soon other western posts were in danger. By the end of July, only three forts--Pitt, Niagara, and Detroit--were still in British hands. In New York, General Amherst ordered two relief expeditions to move westward. Captain James Dalyell reached

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<sup>10</sup>Utley, Michigan, I, 252.

<sup>11</sup>Campbell, Political History of Michigan, 132-133.

Detroit late in July with supplies and reinforcements, enabling that post to hold out against Pontiac's forces. Colonel Henry Bouquet defeated an Indian force at the Battle of Bushy Run early in August to break the siege of Ft. Pitt. West of Ft. Pitt the war on the frontier continued into the fall. When Pontiac's warriors began to desert him and French assistance failed to arrive, hostilities came to an end. Pontiac slipped away to the Illinois Country, where he later met his death at the hands of an Indian assassin.<sup>12</sup>

British civil government was extended to Michigan in 1765 when it was included in the Province of Quebec. That same year Sir Guy Carleton became the first Governor-General of Canada. As the population of this province remained principally French, British laws, customs, and religion were not readily accepted or understood by the inhabitants.<sup>13</sup> By the Quebec Act of 1774, Parliament extended the boundaries of that province south as far as the Ohio River and west to the Mississippi River. French law was to be observed, but in criminal cases British law would take precedence. Roman Catholics were to enjoy religious freedom. Four lieutenant-governors were to be appointed, one each for Michilimackinac, Detroit, the Illinois settlements,

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<sup>12</sup>Peckham's Pontiac contends that the Ottawa chief was not the chief strategist of the Indian uprising, but instrumental mainly in uniting the tribes around Detroit for an assault on that post. For an earlier account, crediting Pontiac with a central role in the rebellion, see Francis Parkman, The Conspiracy of Pontiac (2 vols.; Boston, 1851).

<sup>13</sup>Campbell, Political History of Michigan, 152-153; Burton, History of Wayne County, I, 120.

and Vincennes. There was no provision for an elected assembly. Inferior courts were to be established at both Michilimackinac and Detroit, with appeals possible to the superior courts at Montreal and Quebec.<sup>14</sup>

Henry Hamilton, the lieutenant-governor at Detroit in 1776, was unimpressed with the Canadians in Michigan. He found them "so illiterate that few can read and very few can sign their own names."<sup>15</sup> Most Detroit residents knew little about breeding sheep and were poor farmers. Hamilton believed that they were also lazy. Nevertheless, the soil was so rich that even careless and ignorant farmers could raise crops. Some whites made a living by exploiting the Indians through dishonest weights and measures and shoddy trade goods. Any regulations regarding such trade were either not known or not duly enforced. Disputes between traders and Indians were common, often resulting in murder. Occasionally traders could borrow heavily on credit, lured by quick profits at the expense of the Indians, only to find themselves unable to repay their creditors. Through "ignorance or dishonesty or both," these traders would become business failures, run out on their creditors, and journey to a new post to start the process all over again.<sup>16</sup>

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<sup>14</sup>F. Clever Bald, Michigan in Four Centuries (New York: Harper & Bros., 1954), 79-80. Hereafter cited as Bald, Michigan.

<sup>15</sup>Report of Lieutenant Governor Henry Hamilton, August, 1776, in Utley, Michigan, I, 300-303.

<sup>16</sup>Ibid.

War returned to Michigan in 1775, and the area was placed under martial law by the British. This time the upstart Americans were the enemy, and the Indians around Detroit were encouraged to unleash their fury on the settlements in the Ohio Valley. Whites such as Simon and James Girty, Alexander McKee, and Matthew Elliott frequently led such raids.<sup>17</sup> Indian enthusiasm in the northwest for the British cause was reduced in 1779, however, when George Rogers Clark forced Hamilton to surrender the post of Vincennes and its 79 defenders. The British then strengthened their defenses at Detroit and proceeded to take the offensive. In 1780 they led a large force of Michigan Indians against St. Louis, Kaskaskia, and Cahokia, but were unsuccessful.<sup>18</sup> That same year, Captain Henry Bird headed a body of several hundred Indians in a move against Kentucky. When the warriors became uncontrollable and proceeded to pillage indiscriminately, Bird was forced to return to Detroit with his mission incomplete.<sup>19</sup> Because of Indian hostilities in Michigan, some Americans favored plucking the western thorn of Detroit from their side. "I have ever been of the opinion that the reduction of the post of Detroit would be the only certain means of giving peace and security to the whole western frontier," Washington wrote to

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<sup>17</sup>Catlin, Detroit, 68-70; Burton, History of Wayne County, I 129-134.

<sup>18</sup>Campbell, Political History of Michigan, 174-180; Dunbar, Michigan, 143.

<sup>19</sup>Utley, Michigan, I, 181.





Jefferson in 1781.<sup>20</sup> Detroit was not taken by the Americans in the Revolutionary War, however, and hostilities continued in the northwest until the spring of 1783 when news arrived that a peace treaty had been signed.<sup>21</sup>

Although Great Britain agreed in the Treaty of 1783 to evacuate her forces from the territory ceded to the United States "with all convenient speed," she continued to occupy Detroit, Michilimackinac, and other western posts until 1796.<sup>22</sup> The British justified this action by claiming that the United States had failed to encourage the restoration of confiscated loyalist properties seized during the Revolution, or the repayment of American debts owed to Britishers before the war. The retention of these western forts enabled the English government to keep the valuable fur trade in the hands of Canadian traders and to retain control over the Indian tribes, valuable allies in the Revolutionary War.<sup>23</sup>

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<sup>20</sup>George Washington to Thomas Jefferson, December 28, 1781, quoted in Silas Farmer, History of Detroit and Michigan (Detroit: Silas Farmer and Co., 1884), 259. Hereafter cited as Farmer, History of Detroit.

<sup>21</sup>Burton, History of Wayne County, I, 179-180.

<sup>22</sup>Julius Pratt, A History of United States Foreign Policy (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1965), 30-31. Hereafter cited as Pratt, U.S. Foreign Policy.

<sup>23</sup>Dunbar, Michigan, 151-152; Ray Allen Billington, Westward Expansion (New York: The Macmillan Co., 1967), 152-153. Hereafter cited as Billington, Westward Expansion.

Thus Michigan, technically a part of the United States by the Treaty of 1783, continued to remain under British control for the next thirteen years.

After 1783 the British included Michigan within the Province of Canada under the jurisdiction of English law and Canadian courts. In July of 1788 Detroit became a part of the judicial District of Hesse, one of four such districts established by Governor Sir Guy Carleton in Upper Canada. Each district was to contain a court of common pleas, a sheriff, and justices of the peace.<sup>24</sup> In 1791 the British Parliament established two provinces, Upper and Lower Canada, with Michigan included in the former. The Quebec Act was repealed. Trial by jury was introduced in both civil and criminal cases. Upper Canada was also to have an elected assembly. Counties were set up in each province, the Detroit area being divided between the counties of Kent and Essex.<sup>25</sup> In 1792 Francois Baby, William Macomb, and David Smith from the Detroit area were elected to the assembly, which met at Niagara.<sup>26</sup>

In 1796 the British decided to abandon their western posts. Indeed, by Jay's Treaty of 1794, the English had promised that the forts would be evacuated no later than June of 1796.<sup>27</sup> British expenditures

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<sup>24</sup>William Riddell, Michigan Under British Rule: Law and the Law Courts, 1760-1796 (Lansing: Michigan Historical Commission, 1926), 19-26. Hereafter cited as Riddell, Michigan Under British Rule.

<sup>25</sup>Catlin, Detroit, 91; Campbell, Political History of Michigan, 193-194.

<sup>26</sup>Burton, History of Wayne County, I, 202-204.

<sup>27</sup>Pratt, U.S. Foreign Policy, 41-43.

in Europe, because of the French Revolution, made it more difficult to maintain garrisons in America's hinterland and to send great quantities of presents to an Indian population "whose appetite was almost as large as the area over which it roamed."<sup>28</sup> Daily, more and more Americans were moving into the trans-Allegheny West, challenging British influence and control in the Northwest. General Anthony Wayne's victory at the Battle of Fallen Timbers in 1794 had convinced the defeated Indians that British aid could no longer be relied on; it had also convinced many among the English that Detroit could be taken if the Americans made a determined effort.<sup>29</sup> In addition, the reports from Montreal revealed a decline in the fur trade south of the Great Lakes. As British fur activities began to shift further northward, Michigan and the Ohio Country became economically less important. During the summer and fall of 1796, Britain surrendered most of her western posts to the United States, ending her regime in Michigan and the Northwest. Secretary of State Timothy Pickering reported to Rufus King in August of 1796 that "By this time all the British posts must have been delivered up to the troops of the United States . . . in the most handsome manner, on the part of the British."<sup>30</sup> Michigan had finally become a part of the United States.

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<sup>28</sup>Nelson Russell, The British Regime in Michigan and the Old Northwest, 1760-1796 (Northfield, Minnesota: Carleton College, 1939), 270-271. Hereafter cited as Russell, The British Regime in Michigan.

<sup>29</sup>Bald, Michigan, 89-90.

<sup>30</sup>Timothy Pickering to Rufus King, August 8, 1796, quoted in Russell, The British Regime in Michigan, 270.

When Lieutenant Colonel John Hamtramck arrived at Detroit in 1796 with an American occupational force, he found a population of about five hundred, principally French, but also including Englishmen, Scots, Dutchmen, Germans, and Indian and Negro slaves. Such Americans as were present were probably Tory refugees from the East.<sup>31</sup> Many of these, including Alexander McKee, Simon Girty, and Matthew Elliot, decided to quit Detroit for Canada. John Askin, a prominent merchant in Michigan, informed Colonel Richard England at Montreal that "in short my opinion is that many People who Intended residing here will move Over, some of them no doubt more from Interest than Attraction. at same time I cannot say since the Arrival of Lt Colonel Hamtramck that he has given any Cause of dislike."<sup>32</sup>

While Michigan did not come under American jurisdiction until 1796, technically it was a part of the Northwest Territory after 1787. According to the Ordinance of 1787, this territory was eventually to be carved into not less than three or more than five states. As this ordinance served as the basis for Michigan's later territorial government, it is worth examining in some detail. One Michigan writer observes that the 1787 Act "may most properly be called a constitution; since it vested the whole original legislative authority in other bodies than Congress, and in some particulars was meant to operate as a permanent

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<sup>31</sup> Dunbar, Michigan, 173; Bald, Michigan, 95-98.

<sup>32</sup> John Askin to Colonel Richard England, July 30, 1796, in Milo Quaife, ed., The John Askin Papers (2 vols; Detroit: Detroit Library Commission, 1931), II, 48-50. Hereafter cited as Askin Papers.

compact between the United States and the people of the Territory."<sup>33</sup>

The Ordinance of 1787 provided for a governor and three judges to administer the new territory "north and west of the Ohio River," assisted by a secretary. A governor was to be appointed for three years, and was required to reside in the district of his appointment and to hold a freehold estate of one thousand acres. A secretary, whose term was four years, was to possess five hundred acres. His duties included keeping and preserving the acts and the laws passed by the legislature, the public records of the district, and the proceedings of the governor in his executive department. The territorial secretary was also to transmit authentic copies of such acts and proceedings every six months to the secretary of Congress. Three judges were also to be appointed to constitute a territorial court, which was to have common law jurisdiction. These judges were to hold a freehold estate of five hundred acres, and their commissions were to continue in force during good behavior.<sup>34</sup>

The governor and judges, or a majority of them, were authorized to "adopt and publish in the district, such laws of the original States, criminal and civil, as may be necessary, and best suited to the circumstances of the district. . . ."<sup>35</sup> These officials were to report the

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<sup>33</sup>Campbell, Political History of Michigan, 207.

<sup>34</sup>The Public Statutes at Large of the United States of America, I (Boston: Charles C. Little & James Brown, 1848), 51. Hereafter cited as U.S. Stats.

<sup>35</sup>Ibid.

adoption of such laws to Congress, and these laws, unless rejected by Congress, were to be in force until a general assembly was elected for the territory. Afterwards, the legislature was to have the authority to alter such laws as it saw fit.

Under the ordinance, the governor retained wide powers during the first territorial stage of government, before a general assembly had been organized. It was his responsibility to appoint such magistrates and other civil officers in each county and township as were necessary to maintain peace and good order. The governor was to make proper division of the territory, after Indian title had been extinguished, into counties and townships. He was to make sure that the laws that had been adopted were being enforced in all parts of the territory.<sup>36</sup>

As soon as the Northwest Territory, or any of its parts designated for future states, contained five thousand free adult male inhabitants, an assembly was to be elected, with one member for each five hundred male inhabitants, until the assembly contained twenty-five members, when the number and proportion of representatives would be determined by that body. Representatives were required to be United States citizens, reside in the district, and hold title to two hundred acres of land. An upper house or council of five members was to be selected by Congress, from ten persons nominated by the representatives. Councillors were to serve five years, while representatives served two. The governor, the legislative council, and the assembly were to constitute

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<sup>36</sup>Ibid.

the territorial legislature, with the power to "make laws, in all cases, for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared."<sup>37</sup> The governor was to have an absolute veto, however, and the power to "convene, prorogue and dissolve" the general assembly when he deemed it expedient. This second stage of territorial government would remain in force until the area numbered sixty thousand inhabitants. At that time it would "be admitted, by its delegation, into the Congress of the United States on an equal footing with the original states in all respects whatever."<sup>38</sup>

The Ordinance of 1787 guaranteed important rights to the individual citizen. No person was to be molested because of his mode of worship or religious sentiments. Inhabitants were to be entitled to the benefits of the writ of habeas corpus, trial by jury, and judicial proceedings according to the course of the common law. All persons were to be eligible for bail, unless the offense was capital and the proof against the individual was strong. No man was to be deprived of his liberty or property, except by the judgment of his peers or the law of the land. All fines were to be moderate and there were to be no cruel or unusual punishments inflicted on wrongdoers. No law was to be made to interfere with private contracts or engagements, as

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<sup>37</sup> Ibid. As in the case of laws adopted previous to a territorial legislature, any divisions into counties or townships by the governor could later be amended or altered by that legislature.

<sup>38</sup> Ibid.

long as they did not break the law or interfere with the public good.<sup>39</sup>

"Good faith" was to be observed towards the Indians, according to the terms of the Ordinance, and their land and property was not to be taken without their consent. Their property, rights, and liberty were not to be disturbed except in "just and lawful wars authorized by Congress."<sup>40</sup> From time to time, laws founded in "justice and humanity" were to be made to prevent injustice to the Indians, and to preserve peace and friendship with them. Slavery and involuntary servitude were not to be allowed in the territory, except for the punishment of crimes, but fugitives from lawful labor were to be subject to reclamation.<sup>41</sup>

The Ordinance specified the procedure for property descent for both resident and non-resident proprietors in the Northwest Territory. The estates of such proprietors, dying intestate, were to descend to and be distributed among their children and the descendants of a deceased child in equal parts. If there were no children or other descendants, then such property was to be equally divided among the next of kin. There were to be no distinctions between "kindred of the whole and half blood;" all legitimate heirs were to be equally considered.

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<sup>39</sup>Ibid.

<sup>40</sup>Ibid.

<sup>41</sup>Ibid. In spite of this provision, slavery continued to exist in Michigan even after the British evacuation in 1796. In 1782 there were 179 slaves at Detroit. See Harley Gibb, "Slaves in Old Detroit," Michigan History, XVIII, 143-146. Hereafter this collection will be cited as Michigan History.



Estates in the Northwest Territory were to be devised or bequeathed by wills in writing, signed and sealed by the person of "full age" owning such estate, and attested by three witnesses.<sup>42</sup>

American civil government finally came to Michigan in August of 1796 when Winthrop Sargent, the Northwest territorial secretary, accompanied General Anthony Wayne's army to Detroit. Sargent, acting governor in the absence of Arthur St. Clair, proceeded to establish Wayne County, which included all of the present state of Michigan, as well as parts of northern Ohio and Indiana, and a strip of eastern Wisconsin and Illinois bordering on Lake Michigan.<sup>43</sup> The acting governor experienced no small difficulty in selecting local officials, for Peter Audrain was the only American at Detroit, and the majority of the inhabitants of French descent were unable to read or write. Nevertheless, Sargent observed impartiality in distributing offices between both British and French, while appointing Audrain to four posts.<sup>44</sup> Seven justices of the peace were selected, including James Abbott, James May, and Robert Navarre, who sitting together were to

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<sup>42</sup>Ibid.

<sup>43</sup>Proclamation by Winthrop Sargent erecting Wayne County, in Michigan Pioneer and Historical Collections (40 vols.; Lansing: Michigan Historical Commission, 1877-1929), VIII, 496-497. Hereafter this collection will be cited as MPHC.

<sup>44</sup>Bald, Detroit's First American Decade (Ann Arbor: University of Michigan Press, 1948), 55-57. Hereafter cited as Bald, Detroit. At Detroit Audrain served as clerk of the Court of Quarter Sessions, judge of probate, prothonotary of the Court of Common Pleas, and also recorder.

constitute a Court of General Quarter Sessions. A Court of Common Pleas was also established. In general, Sargent found civil matters in Michigan in a state of disorder. Land titles were confused and records had been carried off by the British. Sargent promptly drafted a request to Canadian officials for their return.<sup>45</sup>

Sargent found the French element in Detroit generally more favorable to American rule than the British; he also discovered that they were relatively unconcerned about active participation in civil government. He informed Secretary of State Timothy Pickering that the people of French descent in Wayne County, if left to their own devices, would "prefer remaining a Colony of the United States And if they should at all comply with a requisition for Delegate to a general Assembly of the Territory, it would be with a very great reluctance."<sup>46</sup> The secretary decided that the great distance from Detroit to the Ohio Country, coupled with the probable expense, contributed to French apathy. He looked less favorably on Michigan's British sympathizers. Malden, the British post across the river from Detroit, had been christened "Smugglingburg" by the Americans, in recognition of a prominent pastime of that settlement. Furthermore, it had been the practice of British sympathizers in Wayne County to use fear and intimidation to force simple and ignorant

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<sup>45</sup>Ibid.

<sup>46</sup>Sargent to Timothy Pickering, September 30, 1796, in Clarence Carter, ed., The Territorial Papers of the United States (27 vols.; Washington, D.C.: U.S. Government Printing Office, 1934-1945), II, 578. Hereafter this series will be cited as Carter, Terr. Papers.

farmers to sign lists stating that they were British subjects.<sup>47</sup>

American settlement at Detroit after 1796 was gradual and often motivated by developing business opportunities. James Henry chose the frontier outpost as the site for both a store and a tannery, and purchased several thousand dollars worth of goods in Montreal for the enterprise. He was later assisted by James Kennedy of Pittsburgh and James Williams of Hagerstown, Maryland. Frederick Bates, a Virginian and one of Michigan's first territorial judges, came to Michigan as an employee of the quartermaster's department in the Northwest Territory. Two American lawyers who came to Detroit were David Powers of New York and Solomon Sibley, who originally came from Massachusetts, but had practiced at Marietta on the Ohio River. Sibley, destined to play an important role in Michigan's territorial development, was not overly impressed with Detroit's appearance when he first arrived. He found it a village "without taste or elegance." A week later he had decided that he would be content to spend the rest of his days in Michigan, provided he was able to find a suitable wife without having to return to Massachusetts.<sup>48</sup>

Trouble occasionally arose in Michigan because inhabitants of British and French backgrounds could not get along with each other. Pro-British factions in the territory spoke against the new American

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<sup>47</sup>Sargent to Timothy Pickering, August 14, 1797, Ibid., 622-624.

<sup>48</sup>Bald, Detroit, 123-124; Campbell, Political History of Michigan, 217-218.

rule, while most Frenchmen were willing to accept it. British loyalists urged Detroit citizens to refuse to support any new authorities in Michigan and to withhold their services as witnesses and jurors in any court cases. In 1797 the sheriff and the magistrates of Wayne County complained to Congress that because of the influence of British loyalists it was difficult to assemble a jury or to maintain order in Detroit. These petitioners doubted that even the Wayne County militia could be counted on in case of an emergency.<sup>49</sup>

Differences in customs and language also strained relations between the newly arrived "Yankees" and the older French inhabitants in Michigan. French girls considered most of the American men rough and boorish. Frederick Bates and his friend George Wallace attended the Catholic Church in Detroit one evening, with an eye to viewing the young French ladies. They took the pew of a "Miss Navarre" but moved to another when she arrived. When the young lady looked down at her dress toward the end of the service, she found it stained by tobacco juice which the interlopers had thoughtlessly spat upon the kneeling bench! Solomon Sibley often looked upon the French at Detroit as "exceedingly ignorant and lazy." They experienced occasional privation not because the soil was poor, but because of idle work habits. He was critical of their practice of throwing manure into the river instead of spreading it on their fields. Sibley remained skeptical of French loyalty to the United States, and believed that the habitants

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<sup>49</sup>Petition to Congress from Wayne County, July 12, 1797, in Askin Papers, II, 112-113.

and the Indians would unite against the Americans should French troops ever invade the country.<sup>50</sup>

Political rivalry reared its head in Michigan in 1798, when Governor St. Clair called for elections for a house of representatives for the Northwest Territory, whose population had swelled to over 5,000 free adult males. James May was supported by most of the British residents of Detroit. Solomon Sibley, favored by the Americans and most of the French population, defeated May by more than fifty votes. May then accused Sibley of influencing the outcome of the election by passing out liquor to the voters, as well as by posting discharged soldiers with clubs at the polls, who threatened to assault anyone voting for May.<sup>51</sup> After Sibley had left for Cincinnati to take his legislative seat, word arrived at Detroit that Wayne County was entitled to two more representatives, according to census returns. Once again May ran and was defeated, this time by Francois Joncaire de Chabert and Jacob Visger.<sup>52</sup>

The Territory of Indiana was created in 1800 when the Northwest Territory was divided. The western boundary of the Northwest Territory was to run due north from Ft. Recovery to the national boundary in Lake Superior, approximating the present Ohio-Indiana line extended north to Canada. The area that eventually became the Michigan territory was thus

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<sup>50</sup>Bald, Detroit, 140-142.

<sup>51</sup>Dunbar, Michigan, 181; Campbell, Political History of Michigan, 219.

<sup>52</sup>For the roll and results of this election, see MPHC, VIII, 509-511.

split, with its eastern half in the Northwest Territory and its western part included in the Indiana Territory. The Indiana Act provided for a government "in all respects similar" to that set forth in the Ordinance of 1787, with a governor, a secretary, and three territorial judges who would constitute a court. Congress moved the seat of government from Cincinnati to Chillicothe in the east, and named Vincennes on the Wabash River the governmental center for Indiana.<sup>53</sup> William Henry Harrison, former secretary of and delegate to Congress from the Northwest Territory, was named the governor of Indiana, as well as superintendent of Indian affairs for that region. John Griffin, one of the three Indiana territorial judges, was later to accept a similar position in Michigan.<sup>54</sup>

The town of Detroit was incorporated by the Chillicothe government in 1802 and placed under a board of trustees. John Askin wrote to Robert Hamilton, a Canadian merchant in Queenston that "this place is incorporated. . . . The legislature honored me so far as to make me the first of five trustees who they named & to whom they gave great authority."<sup>55</sup> He was joined by John Dodemead, Charles Girardin, James Henry, and Joseph Campau, all well-known citizens of Detroit. At their first meeting, the trustees discussed the problem of fire protection.

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<sup>53</sup>U.S. Stats., II, 108.

<sup>54</sup>Beverly Bond, Jr., The Civilization of the Old Northwest (New York: The Macmillan Co., 1934), 151. Hereafter cited as Bond, The Old Northwest.

<sup>55</sup>John Askin to Robert Hamilton, April 8, 1802, in Askin Papers, II, 372-374.

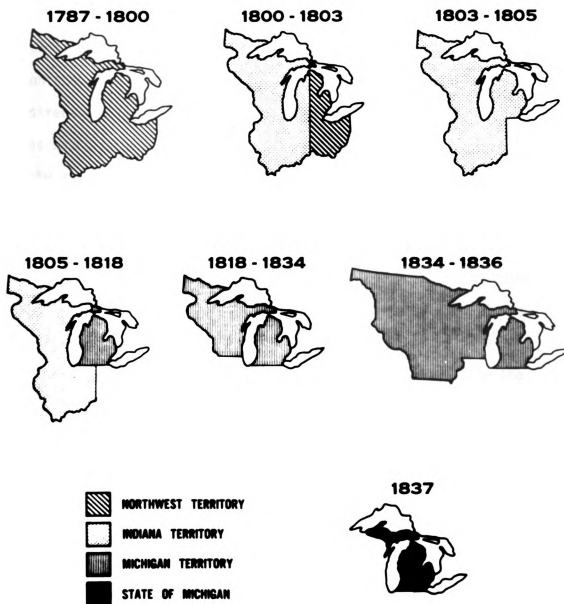


Figure 1. Areal Development

Source: Earl Senniger, Jr., Atlas of Michigan (Flint, Michigan: Flint Geographical Press, 1970) 84.





Defective chimneys were ordered repaired, and every householder was instructed to place a barrel filled with water close to his home. Towns-  
men were given specific tasks in case of fire emergency, and the first  
organized fire department was created in February of 1802.<sup>56</sup> Other  
early concerns of the trustees included the regulation of horse-racing  
in the streets of Detroit, and the price and weight of loaves of bread,  
which was baked by public bakeries in large ovens.<sup>57</sup>

By an enabling act passed by Congress in April of 1802 permit-  
ting the people of Ohio to draw up a constitution and apply for admis-  
sion to the Union, Detroit and eastern Michigan were annexed to Indiana  
Territory.<sup>58</sup> The people of Wayne County were not consulted concerning  
this decision, and there were Federalist charges that the Republicans  
in Congress had separated Wayne County from the new state of Ohio so  
that the Federalist majority in the county would be excluded from the  
Ohio constitutional convention.<sup>59</sup> In January of 1803, Governor Harrison  
issued a proclamation establishing Wayne County, Indiana, including in  
it all of the Lower Peninsula of Michigan, a large part of the upper  
one, and small sections of Illinois and Wisconsin.<sup>60</sup>

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<sup>56</sup> Farmer, History of Detroit, 133; Catlin, Detroit, 108-109.  
Evidently Detroit's early attempts at town government were less than  
successful. Every month people complained about the non-observance of  
the fire ordinance, and even the trustees of the town were fined for  
failing to uphold the law. Catlin, Detroit, 108-109.

<sup>57</sup> Catlin, Detroit, 108-109.

<sup>58</sup> Annals of Congress, Seventh Congress, First Session, 1348-1351.

<sup>59</sup> Dunbar, Michigan, 182-183; Bond, The Old Northwest, 120.

<sup>60</sup> For a copy of Harrison's proclamation, see MPHC, VIII, 540-542.

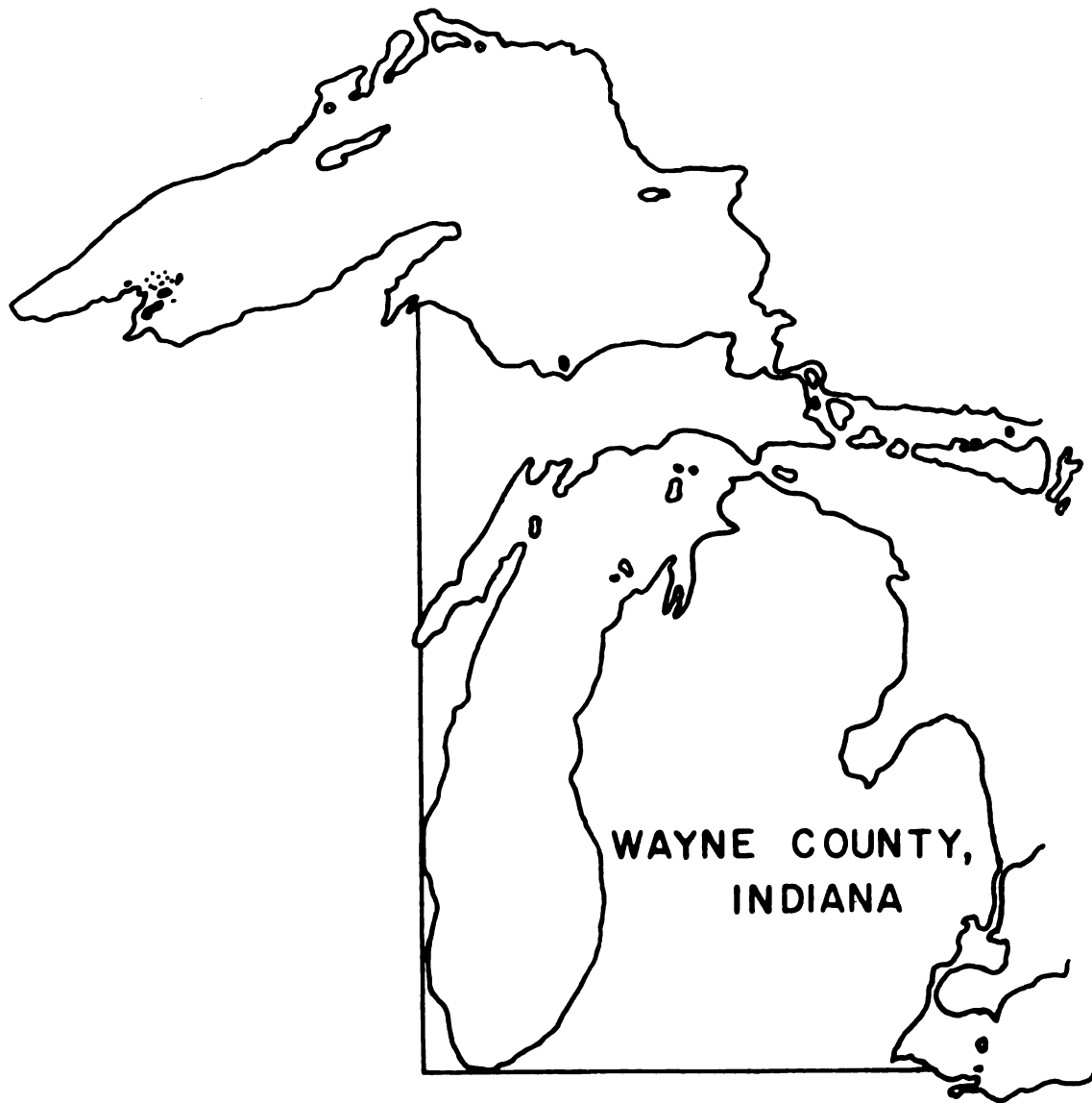


Figure 2. Michigan Counties, 1803

Source: Earl Senniger, Jr., Atlas of Michigan (Flint, Michigan: Flint Geographical Press, 1970), 83.

The decision to include Wayne County within the Indiana Territory was not popular in Detroit. As part of the Northwest Territory, Michigan had sent representatives to a general assembly as early as 1798. Indiana was still in the first stage of territorial government, and Michigan was forced to give up her representatives and submit again to the rule of the governor and judges. Vincennes was even more distant than Chillicothe, and the citizens of Detroit had little reason to hope that a government six hundred miles away would be eager to hear or to act on their problems.

A memorial to Congress by Detroit inhabitants in March of 1803 specified many of Michigan's complaints regarding its recent transfer to Indiana Territory, and asked that a new and independent territory be created in Michigan. Commercial problems had arisen in Detroit, necessitating their removal to the courts. Unfortunately, only two sessions of the circuit court had been held at Detroit in six years. Some cases had been pending for four years, and were still awaiting settlement. If the judges of the Northwest Territory had been reluctant to journey to Michigan, because of the great distance and the hazards of the Indian Country, the Indiana judges were even more so. Michigan's remoteness placed its citizens "in a situation truly Critical and alarming, and in many respects, but a little preferable to a state of nature."<sup>61</sup>

These petitioners strongly maintained that an independent Michigan territory could have obvious beneficial effects for both Michigan

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<sup>61</sup>Memorial to Congress by Inhabitants of Detroit, March 20, 1803, in Carter, Terr. Papers, VII, 99-106.

and the United States. A separate territory would be a spur to new settlement, which would improve communication with the Ohio Valley. The federal government would be relieved of the considerable expense of supporting troops and garrisons in Michigan. The petitioners expressed the hope that the government in Washington would not be indifferent to the lucrative trade and commerce of the Great Lakes region, but "by its countenance and protection afford a fair opportunity to the enterprising Citizen of Capital to enter into and share an equal participation, in the Only Trade of the Country, at present wholly engrossed by foreigners."<sup>62</sup> Greater revenue could be garnered from dutiable articles of commerce arriving in Michigan if there were local governmental supervision. Michigan citizens had little use for a federal government that failed to consider their local problems. Thus abandoned, such a citizen would "rather embrace the earliest possible opportunity to quit a country, wherein he is not certain of even protection for his Person, much less for his property."<sup>63</sup>

Congress was not unmindful of events and circumstances in Michigan. A Congressional committee, responding to a Michigan memorial in 1803, reported that the petitioners were bounded on one side by the British Province of Canada and encompassed on the other by Indian tribes. This committee decided that Michigan was entitled to a separate territorial government because its remote situation prevented its citizens from

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<sup>62</sup>Ibid.

<sup>63</sup>Ibid.

receiving fair treatment in the courts and adequate representation in the government at Vincennes.<sup>64</sup> In 1803 the Senate passed a bill creating Michigan Territory, but it was defeated in the House.<sup>65</sup>

Despite Congressional setbacks, Michigan residents continued to impress upon Washington both the need and the desirability of a new and independent territory. A petition forwarded in September of 1803 pointed out that if Michigan residents could possibly maintain a regular intercourse with Indiana, the need for a separate territory might justly be questioned. Compared to the rest of the country, however, Michigan was obviously remote and therefore needed its own territorial government to manage its own affairs.<sup>66</sup>

A memorial to Congress in 1804 by the "Democratic Republicans of Wayne County," recounted the familiar criticisms of governmental neglect by Indiana Territory officials and the lack of an adequate and responsible court system. There was a more urgent need, however, for a separate Michigan territory. Such an erection would lessen the ties of British loyalty and help to dispel some of the "anti-republican notions" which certain local citizens had imbibed. These citizens had transferred their allegiance from France to England to the United States, and had ended up with no attachment to any of these countries.

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<sup>64</sup>Annals of Congress, Eighth Congress, First Session, 24-30.

<sup>65</sup>Ibid., 78, 212, 1042.

<sup>66</sup>Petition to Congress by Inhabitants of Detroit, September 1, 1803, in Carter, Terr. Papers, VII, 118.

These petitioners hoped that a regular and moderate exertion of authority, blended with justice, would perhaps gain the allegiance of these people and make them a faithful body of "Citizen-soldiers" for the protection of the frontier.<sup>67</sup>

Michigan became a separate territory in June of 1805. The southern boundary was a line drawn eastward from the southerly bend of Lake Michigan, and a line through the middle of Lake Michigan to its northern extremity and then due north to the northern boundary of the United States was the western boundary. Only a small portion of the Upper Peninsula was included. The Congressional act establishing Michigan Territory provided for a government similar to the one established for the Indiana and Northwest territories. Officers in Michigan were to "exercise the same powers" and to "perform the same duties," as well as receive the same compensations as officers in Indiana Territory. Michigan, like Indiana before it, was to "adopt" laws. Any suits or legal proceedings pending by the end of June, 1805, in the area becoming Michigan Territory were to be proceeded in to judgments as if the act had not been passed. Detroit was to be the seat of government.<sup>68</sup>

In March of 1805 the Senate confirmed President Jefferson's nomination of William Hull to be governor of Michigan for a three-year

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<sup>67</sup>Petition to Congress by Democratic Republicans of Wayne County, December 6, 1804, Ibid., 240-242.

<sup>68</sup>U.S. Stats., II, 309. See also William Jenks, "The Creation of the Territory of Michigan," Michigan History, II, 270-288.

term. In addition, the Senate consented to the appointments of Stanley Griswold of New Hampshire as secretary, and Augustus B. Woodward of Washington, Frederick Bates of Michigan, and Samuel Huntington of Ohio as territorial judges. When Huntington declined the office, John Griffin of Indiana Territory replaced him. James Witherell of Vermont replaced Bates in November of 1806, when Bates resigned to accept a governmental appointment in Missouri.<sup>69</sup>

Michigan's first governor was born in 1753 in Derby, Connecticut. Hull graduated from Yale College at the age of nineteen, studied law, and became a member of the bar in 1775. When a company was raised at Derby for the Revolutionary War, Hull was selected as captain. During the war he took part in the battles of White Plains, Trenton, Princeton, Saratoga, Monmouth, and Stony Point, rising to the rank of lieutenant colonel at war's end. His daughter, Mrs. Maria Campbell, later wrote of her father's Revolutionary experiences, and pointed out that he was stationed in the most exposed and advanced positions and suffered fatigue, hardships, and dangers. "So severe was the duty," she noted, ". . .that half of his detachment was exchanged every fortnight."<sup>70</sup> Hull's record was such that he won the commendation of both General Washington and Congress for gallantry and bravery.<sup>71</sup>

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<sup>69</sup>Carter, Terr. Papers, X, 9-12, 46, 197.

<sup>70</sup>Maria Campbell, Revolutionary Services and Civil Life of General William Hull (New York: D. Appleton & Co., 1847), 197. Hereafter cited as Campbell, Hull. This volume, prepared from Hull's manuscripts, is obviously sympathetic to the General, and in places is a defense of his actions rather than an objective account of his life.

<sup>71</sup>Bond, The Old Northwest, 210; Bald, Michigan, 106.

After the war, Hull settled in Newton, Massachusetts, and began to practice law. In 1781 he married Sarah Fuller of Newton, by whom he had seven daughters and one son. He soon became a prominent man in his new home. In 1787 he served on a committee to prepare a reply to insurgents in the celebrated Shays' Rebellion, and drafted the instructions for Newton's representative in Congress. Hull believed that the virtue of the higher classes had preserved the independence of the country. When insurgents defied the federal government, then military force became the "only alternative." Hull's class-consciousness and his eastern outlook were not the most promising credentials for the future governor of a western territory. At the same time, however, he believed that government was instituted for the "benefit and happiness of the people."<sup>72</sup>

Hull occupied several important positions while a Massachusetts resident. In 1788 he was appointed a justice of the peace, and later became a justice of the common pleas, and a justice of the peace and of the quorum. During this time, he retained ties with the state militia, serving first as brigadier and then as major general after 1797. He was both a founder and charter member of the Massachusetts branch of the Society of Cincinnati, and a member of the Ancient and Honorable Artillery Company of Boston. In 1792 he sought appointment as postmaster of Boston, but was unsuccessful. He then went to Philadelphia

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<sup>72</sup>Campbell, Hull, 227-232; William Jenks, "Sketch of the Life of William Hull," MPHC, XL, 25. Hereafter cited as Jenks, "Hull," MPHC, XL. Besides replying to insurgents in Shays' Rebellion, Hull played an active part in their defeat, serving as an aide to Governor Lincoln.



as representative of the Massachusetts Officers of the Revolutionary War, and attempted to induce Congress to make further compensations to the soldiers and officers of that war. Again, he was unsuccessful. The following year Alexander Hamilton appointed Hull as an American agent to visit Canada to obtain supplies for the Indians who were to meet with U.S. commissioners the following summer at Sandusky for the purpose of effecting a treaty. Hull failed to obtain any Canadian supplies, but did gain the promise of Governor Simcoe at Niagara that the British would not prevent American transportation of provisions across the Great Lakes. After a trip to Europe in 1795, where he renewed his friendship with Lafayette, Hull returned to Massachusetts and his law practice. In 1802 he was elected a state senator, and continued in that post until 1805.<sup>73</sup>

When the question of the creation of a new territory in Michigan arose, President Jefferson recognized Hull as a man politically sympathetic to his own views, and with a creditable civil and military record. Hull was fifty-two years old when he accepted the appointment as Michigan's first governor. He had built a solid reputation and standing in Massachusetts, but had suffered financial setbacks in land speculation in Ohio and Mississippi.<sup>74</sup> The governor's annual salary

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<sup>73</sup>Jenks, "Hull," MPHC, XL, 26; Campbell, Hull, 240-242.

<sup>74</sup>Jenks, "Hull," MPHC, XL, 27-30. Hull had invested in the famous "Yazoo lands" in Mississippi in 1796, and also in the Connecticut Reserve in Ohio. His investment in the latter was a total loss as a result of incorrect surveys.

of two thousand dollars could not have served as a great inducement to give up the security of the East for the Michigan frontier. Hull's decision to accept the governorship led to grief and misfortune instead of the glory and recognition he sought.

Frederick Bates, one of the three territorial judges, was born in Belmont, Virginia in 1777. His father, a Quaker and a merchant, raised a large family, and although he was unable to give his sons a college education, they all received the basic skills and were encouraged to study and to work. While a youth of seventeen, Frederick became county clerk of Goochland County. In that office he gained familiarity with court procedure and spent his spare time studying for the bar.<sup>75</sup>

Bates was one of the few territorial officials to have a first-hand knowledge of Michigan before his appointment. As an employee of the Quartermaster Department of the United States Army, he was based at Detroit but often visited other Michigan outposts. The young Virginian, a friend of Jefferson and a Republican, found it expedient to support the Federalists while in Michigan. At Detroit he informed his brother Richard that "nothing democratic will go down with us. A young fellow in this Country whose principles are democratic could

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<sup>75</sup>Edward Bates, "Sketch of Frederick Bates," MPHC, VIII, 563-565. Hereafter cited as Bates, "Bates," MPHC. VIII. Edward Bates was the younger brother of Frederick, later to serve as attorney-general under Lincoln.

scarcely find employment as a Shoe black."<sup>76</sup> By 1800 Jefferson was President, and the young man could openly acknowledge his true loyalties. He went into business for himself as a storekeeper in Detroit in 1802, still studying law in his spare time. Bates became the postmaster at Detroit in 1803, and the receiver of the land office at that outpost in 1804.<sup>77</sup>

Friendships between the Bates family and Jefferson and Madison undoubtedly helped young Frederick secure the judgeship. Methodical and exact in business, Bates was a constant and observant reader, well versed in the English classics, aware of French literature, and a good historian. His brother Edward observed that while Frederick was no public speaker, his powers of conversation were "somewhat remarkable--fluent always, sometimes brilliant, and generally, at once, attractive and instructive."<sup>78</sup> Bates remained a man of retiring habits and few but strong friendships. At Detroit he was on close terms with Hull, who had shown him courtesy and kindness at the outset of his public It was Michigan's loss when Bates accepted a territorial judgeship at St. Louis in 1806.<sup>79</sup>

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<sup>76</sup>Frederick Bates to Richard Bates, December 24, 1799, quoted in Bald, Detroit, 163. "I cannot think your politics are radically changed," Richard responded, "but only dissembled for your own convenience while among those miscreants of Detroit, those instruments of popular degradation, those maggots of political corruption. . . ." Bald, Detroit, 163.

<sup>77</sup>William Jenks, "Frederick Bates," Michigan History, XVII, 15-19. Hereafter cited as Jenks, "Bates," Michigan History, XVII.

<sup>78</sup>Bates, "Bates," in MPHC, VIII, 563-565.

<sup>79</sup>In 1824 Bates became the second governor of Missouri.

Judge John Griffin, born in Scotland in 1771, had by far the most distinguished ancestry of all the officials of Michigan Territory. His mother was the daughter of the sixth earl of Traquhair of Peebles, Scotland, and his father, Cyrus, was a member and president of the Continental Congress, a judge of the U.S. Court of Appeals, and a U.S. district judge in Virginia, sitting as one of the judges in the trial of Aaron Burr in 1807.<sup>80</sup> John was educated in Virginia and spent some time at the College of William and Mary. He studied law and traveled abroad with his father. When Indiana Territory was erected in 1800, it was not too difficult, through the connections and influence of his father, for John to secure one of the three judgeships. With the erection of Michigan Territory in 1805, Griffin replaced Samuel Huntington of Ohio as one of its three justices.<sup>81</sup>

The little that has been written on Griffin has generally been unfavorable. One Michigan writer observes that he was "constitutionally inert, wanted firmness and decision of character, and disliked responsibility, but was considered an upright judge, and an honest man."<sup>82</sup> Another characterized him as "one of those to whom the farther pastures look the greenest. . . ."<sup>83</sup> Perhaps the unkindest

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<sup>80</sup>William Jenks, "Judge John Griffin," Michigan History, XIV, 221-225. Hereafter cited as Jenks, "John Griffin," Michigan History, XIV.

<sup>81</sup>Bond, The Old Northwest, 151; Dunbar, Michigan, 194.

<sup>82</sup>Robert Ross, The Early Bench and Bar of Detroit (Detroit: Richard Jay & C. M. Burton, Pub., 1907), 73-75. Hereafter cited as Ross, Bench and Bar of Detroit.

<sup>83</sup>Jenks, "John Griffin," Michigan History, XIV, 221-225.

evaluation of Griffin appeared in a biting satire by "Sydney" in the Detroit Gazette of January 10, 1823:

He [Griffin] went to Europe without his momma, made a tour of Europe on a small scale; inspected every museum in it with a small opera glass from Dublin to Paris. . . . While in Michigan his honor has read one chapter of Blackstone entitled "on the Relation of Husband and Wife" three times, given 35 legal opinions in exact conformity to those of the presiding judge [Woodward]; drawn one law, entitled, "An Act more effectually to provide for illegitimate children;". . . fined a pretty girl for disorderly conduct on Christmas eve three shillings and sixpence. . . attended 56 parties and at 53 of them got as merry as an Irish lord. . . made three speeches in private on the utility of steamboats, the disobedience of children and the best manner of preserving eggs.<sup>84</sup>

Griffin does not emerge as a man of forceful character, and his years in Michigan were marked by frequent requests for transfers to a more healthful climate. Often content to abide by the decisions of his colleagues, Griffin failed to achieve either prominence or happiness.

James Witherell, successor to Bates on the Michigan territorial bench, was born in Mansfield, Massachusetts, in 1759. His English ancestors arrived in America soon after the Mayflower. At the age of sixteen he joined the army under Washington at Boston, and rose from a private to the rank of adjutant by the end of the war. After eight years of hard service he had saved eighty dollars in continental script. He spent the entire amount on a bowl of punch with which to treat a brother officer.<sup>85</sup>

After the war Witherell went to Connecticut to study medicine. In 1788 he moved to Vermont and practiced medicine there for a number of years. He also served as associate and chief justice of Rutland

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<sup>84</sup>Detroit Gazette, January 10, 1823.

<sup>85</sup>Ross, Bench and Bar of Detroit, 234-238.

County, as a member of the governor's council, and as a representative in the state legislature. In 1807 he was elected to Congress and voted for the act abolishing the slave trade. While he was in Congress, Jefferson appointed him territorial judge in Michigan.<sup>86</sup>

Judge Witherell proved one of the more stable territorial officials in Michigan, often serving as a kind of balance wheel among his associates when their patience gave way to controversy. One Michigan writer characterizes him as one whose "air and figure conspired to give the impression that he was a man of iron, and this was true of his character."<sup>87</sup> Often stern and aloof in public life, he could be courteous and kind in private. He had gained some practical experience while serving on the New England frontier, and he used this to advantage in Michigan. He was undoubtedly the most popular of the three territorial justices.

Certainly the most colorful and perhaps the most important official of Michigan's early territorial period was Justice Augustus Brevoort Woodward. He was born in New York in 1774 and was baptized

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<sup>86</sup>Thomas W. Palmer, "Sketch of Life and Times of James Witherell," in MPHC, IV, 103-107. Hereafter cited as Palmer, "Witherell," in MPHC, IV. Jefferson named John Coburn of Kentucky as Bates' replacement, but he declined. Return J. Meigs of Ohio was then appointed, accepted, but never reported for duty, and resigned in December of 1807.

<sup>87</sup>Louis Rau, "Solomon Sibley, the Public Servant, 1768-1846," ms. on microfilm in the Burton Historical Collection, Detroit Public Library, 231-232. Hereafter cited as Rau, "Sibley." Hereafter, the Burton Historical Collection will be cited as BHC.

into the Reformed Dutch Church.<sup>88</sup> His father, an importer and a shop-keeper, chose to support the American Revolution, and as a consequence his store and goods were confiscated by the British during that conflict. Augustus enrolled in Columbia College in 1789 and received an excellent classical education, reading in French, Greek, and Latin. After his graduation, he worked as a clerk in the Treasury Department, and then moved to Virginia where he taught at an academy in Lexington. When his uncle Elias Brevoort died, leaving him 150 pounds, Woodward set out for Washington, D.C., where he invested in real estate.<sup>89</sup>

Woodward soon became a prominent member of the Washington community. Through shrewd investments he acquired title to ten parcels of land. Impressed with L'Enfant's plan for the capital city, he pasted a copy of that plan on the inside cover of his pocket notebook. He became involved in charitable agencies, attended social events, and became a personal friend of Thomas Jefferson. He was admitted to the Washington bar and soon became one of its most important lawyers. His fees in the Washington court for 1802 amounted to more than thirty-five hundred dollars.<sup>90</sup>

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<sup>88</sup>Frank Woodford, Mr. Jefferson's Disciple, A Life of Justice Woodward (East Lansing: Michigan State College Press, 1953), 17. Hereafter cited as Woodford, Woodward.

<sup>89</sup>Sister Marie Heyda, "Justice Woodward and the Michigan Territory," Michigan History, LI, 45-46. Hereafter cited as Heyda, "Woodward," Michigan History, LI.

<sup>90</sup>William Jenks, "Augustus Elias Brevoort Woodward," Michigan History, IX, 517-519. Hereafter cited as Jenks, "Woodward," Michigan History, IX.

In spite of his many social and legal activities, Woodward still found time to turn his thoughts to science, speculation, and philosophy. In 1801 he published a booklet entitled Considerations on the Substance of the Sun, the first of many such enterprises. While many of Woodward's early thoughts were highly speculative and his conclusions debatable, they do reveal an imaginative mind. Unafraid of failure, he believed that error was unavoidable in life. The "man of genius," he thought, would learn to correct his errors and to learn by his mistakes.<sup>91</sup>

Woodward also supported the cause of those Washington citizens who demanded the franchise and agitated for a municipal government based on the principle of home rule. In a series of pamphlets entitled Considerations on the Government of the Territory of Columbia, he suggested an amendment to the Constitution to permit District residents to have representation in both the Senate and the House of Representatives, and a voice in the selection of the President and Vice-President. District citizens would elect a legislature, while the President would appoint a governor with veto power. "If the principles of republicanism are discarded at the seat of government," he wrote, "then has our country become retrograde in the path of political wisdom, and our position will be altered from the 'front' which we have hitherto occupied, to the rear of the nations of the

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<sup>91</sup>"Personal Reflections," November 12, 1810, in Woodward Papers, BHC; Woodford, Woodward, 145-148.



civilized world."<sup>92</sup> Woodward's plan was not adopted, but in 1802 the City of Washington was incorporated, with a government by a mayor and twelve elected councilmen. Woodward was elected the following June as one of the members of the first council.<sup>93</sup>

Imaginative, sharp of mind, socially conscious, and possessing legal talent, Woodward nevertheless managed to offend and occasionally to infuriate those around him. There is little doubt that he considered himself gifted, and was often impatient with those of lesser talents, particularly the rough inhabitants of the Michigan frontier. He was also a trifle eccentric. Silas Farmer notes that "If there was a thunderstorm, his chair was placed outside the door, and he would calmly sit and take his showerbath."<sup>94</sup> A particularly pointed criticism, appearing in the Detroit Gazette in 1822, claimed that Woodward was "disgusting, without a friend," and that it was "really a matter of curious speculation how or by what strange fatality such a man could have been palmed upon this territory."<sup>95</sup> Woodward probably enjoyed drawing attention to himself, and was not concerned about how others reacted to his eccentricities. His biographer notes that "Self-confidence rather than self-esteem was his predominant trait,

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<sup>92</sup>Woodford, Woodward, 28.

<sup>93</sup>Jenks, "Woodward," Michigan History, IX, 518.

<sup>94</sup>Farmer, History of Detroit, 181.

<sup>95</sup>Detroit Gazette, November 14, 1822.

and if he was ever assailed by self-doubt, the occasion was not made a matter of record."<sup>96</sup>

In the spring of 1805, Michigan residents eagerly awaited the arrival of their newly appointed officials and the beginning of territorial government. From the outset certain factors would make the administration of that government very difficult. Michigan residents came from varied national and cultural backgrounds. Differences in language, methods of land tenure, religion, and political and social customs and practices made consensus among the citizenry almost impossible. With the exception of Bates, who would soon leave for Missouri, the territorial officials were Easterners with little practical knowledge of either frontier people or their problems; they occasionally engaged in petty feuds and machinations, bringing the territory's legislative and judicial wheels to a halt. There was also a growing dissatisfaction by residents with the provisions of the Ordinance of 1787, which concentrated power in the hands of the governor and judges. In spite of these factors, the territorial officials did a creditable job in establishing a system of law and order, passing needed legislation, and maintaining peace with the Indians during Michigan's first stage of territorial government.

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<sup>96</sup>Woodford, Woodward, 22.

## CHAPTER II

### THE LEGISLATIVE BOARD--1806-1812

Tragedy marked the beginning of Michigan's territorial existence. In June of 1805, fire reduced Detroit to a smoldering mass of ruins and ashes in a few hours, leaving its homeless inhabitants to face the wilderness without food or shelter. According to local legend, John Harvey, the village baker, unwittingly sparked the blaze by igniting the hay of his stable with the live coals of his pipe. A strong wind soon carried the flames to the surrounding buildings, and in a short time Detroit became a roaring inferno. Citizens wielding axes, battering rams, and other tools were helpless before the mounting conflagration, and the little hand fire engine with its few feet of hose was unceremoniously driven from the field by its deadly antagonist. One onlooker, carried away with the unfolding drama, described the scene as "at once sublime and painful, exceeding in awful grandeur perhaps almost any spectacle of the kind which has happened since the world began."<sup>1</sup> The day after the fire, Solomon Sibley wrote his wife, Sarah, that "we are all without a single exception, unhoused. . .in Short the Town of Detroit was on the Eleventh Inst in the course of three hours reduced to ashes."<sup>2</sup>

Faced with the destruction of their homes and property, Detroit

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<sup>1</sup>Bald, Detroit, 24.

<sup>2</sup>Solomon Sibley to his wife, Sarah, June 12, 1805, Solomon Sibley Papers, BHC.

residents came together a few days after the fire to consider a course of action. Some advocated the rebuilding of the town upon its original site, while others proposed the laying out of a new town. Judge Frederick Bates, the only territorial officer then in Michigan, suggested that the citizenry await the arrival of the other officials. A few of the inhabitants, desirous of shelter and hopeless of any prompt action by the government, had returned to their property and tried to throw up a few buildings among the ruins. Judge Woodward arrived at the end of June and was immediately impressed with the extent of the disaster. Both Woodward and Bates recognized the folly of trying to rebuild Detroit along its original lines, but were not yet sure of their authority to rule in the matter. They urged Detroit residents to await Governor Hull's arrival, when they would receive needed assistance. That same evening Hull arrived at the stricken outpost, accompanied by his wife, three children, a personal secretary, and Stanley Griswold, secretary of Michigan Territory.<sup>3</sup>

Hull, wasting little time grieving over the calamity at Detroit, proceeded to set the wheels of civil government in motion. He first administered the oaths of office to the judges and the secretary.<sup>4</sup> Early in July the governor and judges met in their legislative capacity and decreed that the territory would constitute one general

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<sup>3</sup>Hull to Madison, August 3, 1805, in MPHC, XXXI, 523-525.

<sup>4</sup>Ibid. Hull had already taken the oath of office before Vice-President George Clinton.

district for the execution of civil and criminal process. That part of the territory in which the Indian title had been extinguished was erected into one county.<sup>5</sup> Several days later Hull delivered an address to the citizens of Michigan. He expressed hope that Detroit's losses would be lessened by the assistance of citizens in other states, by Congress, and by the efforts of Michigan residents. He reminded his audience that their government was to be of "laws and not of men," and that it would guarantee both civil and religious liberty. If it was the duty of the territorial officials to institute a government in conformity with the Ordinance of Congress, it was also the responsibility of the citizenry to lend their respect and support to its administration. He told those assembled that there was "no perfection in humane things," and that they would have to be patient in "forming an opinion on the measures which may be adopted."<sup>6</sup> While the governor's speech was both learned and optimistic, it is doubtful if many of his French-speaking audience could even understand it. Father Gabriel Richard, an influential priest at Detroit who knew

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<sup>5</sup>An Act by Governor Hull, July 3, 1805, in Michigan Territorial Papers, III, 12, General Records of the Department of State, Record Group 59, National Archives Building. Hereafter Michigan Territorial Papers will be cited as Mich. Terr. Papers. General Records of the Department of State will be cited as RG59. Records in the National Archives Building will be indicated by NA.

<sup>6</sup>Address of Governor Hull, in MPHC, XXXI, 531-535; Mich. Terr. Papers, I, 8-10, RG59, NA.

several languages, later translated the address into French.<sup>7</sup>

Michigan's territorial officials recognized that they faced an imposing task in establishing a civil government in the midst of a wilderness. Financial problems immediately presented themselves when Secretary of the Treasury Albert Gallatin informed Madison that Congress had made no appropriations for paying the salaries of the Michigan officials. Madison in turn advised Hull that salaries would be paid out of the contingent fund of the Federal Government, and that the officers could receive a quarter advance at the treasury. Hull subsequently complained to Madison that Michigan's officials needed a salary increase because living expenses at Detroit were so high.<sup>9</sup> Secretary Griswold was equally disturbed about the smallness of his salary and threatened to resign, but Hull persuaded him to remain in Michigan.<sup>10</sup>

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<sup>7</sup>The best work on Richard is Frank Woodford and Albert Hyma, Gabriel Richard, Frontier Ambassador (Detroit: Wayne State University Press, 1958). Hereafter cited as Woodford and Hyma, Gabriel Richard. Detroit citizens issued a polite, written response to Hull's speech in July of 1805. They pledged respect and adherence to the new government, and expressed confidence that their plight would not go unheeded. Address of the Citizens of Detroit, July 15, 1805, in MPHC, XXXI, 519-520.

<sup>8</sup>Madison to Hull, June 11, 1805, in Domestic Letters of the Department of State, 1784-1906, RG59, National Archives Microfilm Publication N40, roll 13. Hereafter Domestic Letters of the Department of State will be cited Dom. Letters, SD. National Archives Microfilm Publications will be cited as M plus the corresponding number, as in M40.

<sup>9</sup>Hull to Madison, August 3, 1805, in Mich. Terr. Papers, I, 6-7, RG59, NA.

<sup>10</sup>Griswold to Madison, April 4, 1805, in Carter, Terr. Papers, X, 13. Griswold's salary was seven hundred and fifty dollars a year.

The most immediate problems confronting the new officers were a stricken village and a destitute population. Secretary of War Henry Dearborn told Hull that the conflagration at Detroit undoubtedly placed both the officers and the citizenry in a "very unpleasant situation." He advised the governor that it might be prudent to improve the arrangement of the town, to widen the streets, and to select the most suitable sites for the necessary public building. He instructed Hull to prevent any individuals from erecting any kind of buildings on lands or lots belonging to the United States. "You will find a heterogeneous mass of materials to govern," he told Hull, "which will call for the exertions of your whole mass of skill, judgement, prudence, and firmness. . . ."<sup>11</sup> Hull soon discovered the accuracy of Dearborn's observations concerning the Michigan population, particularly those of French origin. "When it is remembered that the troops of Louis the XIV came without women," the governor later reported to Congress, "the description of persons constituting the second generation will not be difficult to conceive."<sup>12</sup>

Early in July the governor and judges met in their legislative capacity to lay out a new town of Detroit. They agreed that all of the commons and the old village site would be used. "We immediately fixed on a plan," Hull told Madison, "and employed the best Surveyor

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<sup>11</sup>Dearborn to Hull, July 23, 1805, in Miscellaneous Letters Sent by the Office of the Secretary of War, 1800-1809, Record Group 107, M370, roll 2, NA. Hereafter Miscellaneous Letters Sent by the Office of the Secretary of War, 1800-1809 will be cited Misc. Letters, WD, M370.

<sup>12</sup>Report of the Governor and Judges to Congress, October 10, 1805, in MPHC, XXXVI, 103-111.

we could find in the Country to lay out the Streets, Squares, and lots."<sup>13</sup> Lots in the new town were offered for sale with the knowledge that Congress would have to sanction the action. Former proprietors in the old town were given the first opportunity to purchase lots in the new one, and sales were confined to these former inhabitants as far as possible. The highest bid for this new land was seven cents a square foot, and the whole averaged at least four cents.<sup>14</sup> Since title could not be established until Congress acted, no money was to be paid for one year. After that time, payment was to be in four annual installments.<sup>15</sup> Hull was pleased with the work of the officials because it provided a regular plan for Detroit and helped ease the suffering of those citizens who had been victimized by the fire.<sup>16</sup>

Dissension over the new survey arose almost immediately among Detroit citizens. Several impatient proprietors had already begun to rebuild on their original locations, while others doubted the authority of the new officials to enforce any kind of plan. Some families simply moved onto locations that suited them. John Askin wrote Isaac Todd and James McGill in Montreal that Hull was "laying out the town of Detroit in a very different manner from formerly" and that this action

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<sup>13</sup>Hull to Madison, August 3, 1805, in Mich. Terr. Papers, I, 6-7, RG59, NA.

<sup>14</sup>Report of the Governor and Judges to Congress, October 10, 1805, in MPHC, XXXVI, 103-111.

<sup>15</sup>Ibid.

<sup>16</sup>Hull to Madison, August 3, 1805, in Mich. Terr. Papers, I, 6-7, RG59, NA.



had "been displeasing to some."<sup>17</sup> Both Hull and Woodward realized that Michigan's predicament could only be resolved with the prompt action of Congress. In October of 1805, both officials departed for Washington to seek a remedy, leaving Griswold as acting governor.<sup>18</sup>

In Washington Woodward urged Congress to act speedily in dealing with Michigan's land problems and the erection of a new Detroit. He pointed out that unless low-priced land could be acquired with confidence, few settlers would come to the territory. He even complained that he had spent over three hundred dollars for wine to "quench congressional thirsts" before he could get any action.<sup>19</sup> In March of 1806 he reported to the House Committee on the Territory of Michigan that although Michigan had been part of the United States for over twenty years, there were only eight legal titles to land, and those were "still wearing the fetters of antiquated despotism."<sup>20</sup> In all that time, the old titles had not been adjusted, and no new channels had been afforded to acquire new lands and to prevent unauthorized

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<sup>17</sup>John Askin to Isaac Todd and James McGill, July 22, 1805, in Askin Papers, II, 247-249.

<sup>18</sup>Woodward traveled to Washington by way of New York. Hull journeyed first to Massachusetts to handle some personal business, and later joined Woodward at the Capital.

<sup>19</sup>Woodford, Woodward, 44.

<sup>20</sup>Report of A. B. Woodward to the House Committee on the Territory of Michigan, March 12, 1806, American State Papers, Documents Legislative and Executive of the Congress of the United States. Public Lands, I (Washington: Gales and Seaton, 1832), 281-284. Hereafter cited as Am. State Papers.

encroachments. He admitted that Michigan's land titles were chaotic, but warned that they would become even worse unless something was done.<sup>21</sup> Woodward had a similar warning for the Senate. His arguments were so persuasive that Hull wrote him a letter of congratulation from Boston.<sup>22</sup> In April of 1806 Congress enacted legislation to adjust land titles in Detroit.<sup>23</sup>

According to the Detroit Act, the governor and judges of Michigan, or any three of them, were authorized to lay out a town including the whole of the old town of Detroit and ten thousand acres adjacent, except for military reservations. The legislative board was to hear, examine, and adjust all claims to lots and to issue deeds for them. Every person over the age of seventeen, who had been a resident of Detroit, and every nonresident property owner was to receive a lot not to exceed five thousand square feet. After all claims were satisfied, the remaining part of the ten thousand acres was to be disposed of by the governor and judges, with the proceeds to be applied to the construction of a courthouse and jail in the town of Detroit.<sup>24</sup>

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<sup>21</sup>Ibid. See also Woodward to Samuel Mitchell, April 4, 1800, in Michigan Territorial Papers, 1803-1847, Central Michigan University Microfilm Publication Fn-5, Clarke Historical Library, Central Michigan University. Hereafter this roll of microfilm will be cited as Mich. Terr. Papers, Fn-5. The Clarke Historical Library will be cited as CHL.

<sup>22</sup>Hull to Woodward, April 1, 1806, in Carter, Terr. Papers, X, 47-48.

<sup>23</sup>U.S. Stats., II, 398-399.

<sup>24</sup>Ibid. See also the transcript of decisions made by the land commissioners concerning claimants in the District of Detroit, January 2, 1807, in Mich. Terr. Papers, Fn-5, CHL.

With Congressional support for the rebuilding of Detroit, the legislative board appointed Woodward a committee of one to prepare a plan for a spacious new city. It is certain that Woodward's familiarity with L'Enfant's plan for Washington influenced his design for Detroit. His plan called for large circular plazas one thousand feet in diameter, at intervals of four thousand feet. These were to be connected and intersected by east-west and north-south grand avenues two hundred feet wide. Eight other avenues would radiate like the spokes of a wheel from each of these plazas or "circuses;" these streets were to be one hundred and twenty feet wide and would be connected at intervals by sixty-foot streets.<sup>25</sup> Woodward was enthusiastic about Detroit's future growth. "I have ever believed that your new metropolis. . . is destined to have no common name among the cities which embellish the continent of North America," he told Detroit citizens, "and that the melancholy conflagration of 1805 may by a judicious improvement of

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<sup>25</sup>Dunbar, Michigan, 195-196; Catlin, Detroit, 122-124. There was evidently more than one plan for Detroit. M. Agnes Burton observes that "there is no known map of the town as it was planned by Hull and Woodward immediately after the fire. Whatever that plan may have been, they now resolved that the basis of the town should be an equilateral triangle having each side 4,000 feet and having each angle bisected by a perpendicular line upon the opposite side, an elaborate plan originating with Judge Woodward." M. Agnes Burton, ed., Proceedings of the Land Board of Detroit (Detroit, 1915), 5-6. Hereafter cited as Burton, Proceedings of the Land Board. Alec Gilpin notes that "no single plan of Detroit exists; there are plans of 1805 (lost), 1806, and 1807 (drawn by Abijah Hull)." Alec Gilpin, The Territory of Michigan, 1805-1837 (East Lansing: Michigan State University Press, 1970), 35. Hereafter cited as Gilpin, The Territory of Michigan. See also Buford Pickens, "Early City Plans for Detroit, A Projected American Metropolis," The Art Quarterly, Winter, 1943, 35-51.

the calamity be almost converted into a blessing."<sup>26</sup> It is no small wonder that the town's nine hundred inhabitants experienced some surprise at the prospect of streets and avenues two hundred feet wide! In spite of local opposition, the rebuilding of Detroit was begun in accordance with Woodward's design. His progressive city plan was later, however, to go down to defeat.

Despite the efforts of the governor and judges to settle land claims in Detroit, local citizens remained dissatisfied. The question of land titles remained a constant problem. Few of the French habitants had written deeds to their property near Detroit, and the fire of 1805 only further complicated land settlement within the town. Woodward told Dearborn that Detroit residents had been "very satisfied" with their old town and were very reluctant to make any changes.<sup>27</sup>

Some Detroit citizens disliked the manner in which the land board donated lots. Hull complained to Madison in 1806 that donees claimed that it was the intention of Congress that they should have the most valuable lots, and wanted any land in Detroit purchased from the government considered as donations.<sup>28</sup> The land board decided that the best lots should not be donated, as there were not enough to go around. Friction developed on the land board between Woodward and

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<sup>26</sup> Woodward to the Citizens of Detroit, December, 1806, in Woodward Papers, BHC.

<sup>27</sup> Woodward to Dearborn, March 5, 1806, Ibid.

<sup>28</sup> Hull to Madison, November 13, 1806, in Mich. Terr. Papers, I, 63-64, RG59, NA.

Hull over the selection of donation lands, with Woodward actually resigning from the board.<sup>29</sup> He later returned, however, but conflict over land claims continued. In July of 1807 he informed Madison that the land board "gave great dissatisfaction in the distribution of the donations."<sup>30</sup> This was due in part to the "jealousies and dissensions" prevailing among the people of Detroit.<sup>31</sup>

Detroit citizens even accused the governor and judges of profiting financially from land speculation when they gained property of their own. Woodward was accused of erecting a monument to himself when he named the main north-south street Woodward Avenue. "Not so," he replied, tongue in cheek. "The avenue is named Woodward because it runs wood-ward, toward the woods."<sup>32</sup> Hull had been one of the first to build a new house in Detroit. When citizens charged that he was assembling a private fortune, he told Dearborn that he had purchased only one acre of land on which to build a house. "There is not a barn in Massachusetts more open," he said, "than the room, I have slept in this winter."<sup>33</sup> Woodward disclaimed any personal schemes for

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<sup>29</sup> Woodward's resignation was primarily motivated by legislative and judicial disagreements with his colleagues. See Woodward to the Legislative Board, November 5, 1806, in MPHC, XXXI, 566-568.

<sup>30</sup> Woodward to Madison, July 18, 1807, Ibid., XII, 505-507.

<sup>31</sup> Ibid.

<sup>32</sup> Woodford, Woodward, 47.

<sup>33</sup> Hull to Dearborn, March 4, 1807, in Letters Received by the Secretary of War, Main Series, 1801-1870, RG107, M221, roll 8, Federal Records Center, Chicago. Hereafter Letters Received by the Secretary of War, Main Series, will be cited as Letters Rec'd., WD, Main Ser. Hereafter the Federal Records Center, Chicago will be cited FRC, Chicago.

gain, and defended Hull's actions as well. "I firmly believe the Governor's conduct in this purchase upright and just," he wrote.<sup>34</sup> He also denied that either Bates or the newly-arrived John Griffin had any personal interest in Detroit real estate, and there is little evidence to sustain such a charge.<sup>35</sup>

In March of 1807 Congress passed an act regulating grants of land in Michigan Territory. This act confirmed all claims already approved by land commissioners in Michigan, and allowed persons in possession of lands before 1796, or lands to which the Indian title had been extinguished, to submit their claims to the Register of the land office at Detroit. An individual was allowed one claim of no more than six hundred and forty acres, provided it had not been set aside by the President for public uses in the town of Detroit and its vicinity, or on the island of Michilimackinac. The territorial secretary, together with the register and receiver of public monies of the land office of Detroit were to be land commissioners for persons making claims under the act. Surveys of claims were not to exceed three dollars per mile, to be paid by the claimant. The commissioners would transmit to the Secretary of the Treasury a transcript of their decisions, containing a "fair statement of the evidence," on which

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<sup>34</sup>Woodward to Madison, March 14, 1807, in Mich. Terr. Papers, I, 102-104, RG59, NA.

<sup>35</sup>Griffin arrived in Michigan in September of 1806. For an account of Woodward's holdings at the time of his departure from the territory, see Elizabeth Gaspar Brown, "Judge Augustus Brevoort Woodward, Man of Property," Michigan History, XL, 190-202.

each respective claim was founded, the names of the parties granted certificates, the number of acres granted, and the condition of the land.<sup>36</sup> These land commissioners were to have no authority over lots in Detroit, previously regulated by the Detroit Act of April, 1806.

In spite of new Congressional legislation, dissension continued in Michigan regarding land claims, and the governor and judges remained the targets for criticism. That they were partly to blame cannot be denied. The land board refused to share the responsibility of land adjustment with the citizens of Detroit. If representatives from the citizenry had been permitted to participate in the distribution of lands, total blame for the faults of the program would not have fallen squarely on the governor and judges. These citizens were concerned with immediate recognition of their claims by the Federal Government, and they resented arbitrary decisions regarding allotments by a land board in which they shared no representation.

At the same time, land difficulties in Michigan were also the result of confusion stemming from earlier French and English titles, faulty surveys, and misconceptions on the part of Michigan inhabitants regarding the law. In 1807 a number of Michigan residents petitioned Congress to assist them because of their failure to file land claims properly after the erection of the territory. These citizens admitted that they had failed to enter their claims according to the law and that they had nothing to plead in excuse but their "ignorance of the

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<sup>36</sup>U.S. Stats., II, 437-439.

requisitions of government on that subject."<sup>37</sup> Some claimants had misunderstood the meaning of the law, while others had simply filed too late. Even so, they had not meant to "contravene the regulations of Congress."<sup>38</sup>

Peter Audrain, the register of the Detroit Land Office, recognized that land survey and claims adjustment in Michigan were often made more difficult because of the nature of the populace. He complained to Gallatin that he spent fourteen hours out of twenty-four every day dealing with land claims, and that he was "nearly worn out." "The inhabitants of this Country are not to be compared to the citizens of the United States," he wrote; "they can neither read, or write, at least very few of them . . . but they are good natured people and are entitled to a great deal of patience on our part."<sup>39</sup> In spite of such difficulties, the governor and judges were successful in settling many Detroit claims before the War of 1812. Still others would go unsettled until that conflict was resolved.

The governor and judges assembled as a legislative board between July and October of 1805, and adopted thirty-one laws, copied, as provided by the Ordinance of 1787, from the laws of the various

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<sup>37</sup>Petition to Congress by the Inhabitants of the Territory, October 26, 1807, in Carter, Terr. Papers, X, 138-142.

<sup>38</sup>Ibid. Congress did respond to these petitioners, by granting an extension for filing to January 1, 1809, by an act approved April 25, 1808. U.S. Stats., II, 502.

<sup>39</sup>Audrain to Gallatin, July 6, 1808, in Carter, Terr. Papers, X, 229-231.



states, but adapted to fit the peculiar needs of Michigan. As Judge Woodward took the lead in instituting these laws, they came to be known as the "Woodward Code."<sup>40</sup>

It is evident that the governor and judges occasionally felt compelled to deviate from the simple adoption of laws from the various states. In a report to Congress in October of 1805, the territorial officers made the following observations:

All laws will be found to operate on particular places, times, and persons; and in no State which enters into the composition of the American Union, will an abstract code of principles be discovered free from a connexion, and that a very close one, with the places, times, and persons, affected by them. Hence the strict adoption of any code, or even of any one law, becomes impossible.<sup>41</sup>

This report stressed the fact that in certain cases, the peculiarities of local conditions in Michigan might suggest the need to enact legislation for which no legal precedent could be found. Even if the governor and judges possessed the codes of every state, it would make no difference, for in some cases a strict precedent would be "searched in vain." Because of this condition, Michigan's territorial officers felt justified at times in giving a liberal interpretation to the provisions outlining their legislation powers.

Woodward tried to clarify the construction which the governor and judges of Michigan had been compelled to give to their powers of legislation. He told Madison in 1806 that according to the Ordinance

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<sup>40</sup>These are printed in the Laws of the Territory of Michigan (4 vols.; Lansing: W.S. George & Co., 1871-1884), I, 1-92. Hereafter cited as Terr. Laws.

<sup>41</sup>Report of the Governor and Judges to Congress, October 10, 1805, in MPHC, XXXVI, 103-111.

of 1787, the governor and the judges, or a majority of them, were to adopt and publish suitable laws from the original states. Other territories had interpreted the words "or a majority of them" to apply to the judges only, and had decided that no law could be passed without the "presence" and the "concurrence" of the governor. In Michigan, while the governor was entitled to be a component member of the legislative board, the policy was that other members could adopt legislation without his presence or consent. "On this account the laws are clothed with the signature of all the members of the government," Woodward told Madison, "whether unanimously passed or not."<sup>42</sup> Furthermore, the legislative board had decided that under the term "laws," all "parts of laws" had been deemed to be included. Therefore it was not necessary to adopt the whole of a law from one state. It was sufficient that all the parts of any law were sanctioned by the provisions of some of the states.<sup>43</sup>

The Woodward Code attempted to provide a legislative foundation for the new territory. Fourteen acts adopted dealt with the creation of a judicial system, and will be dealt with at a later time. The remaining acts covered such subjects as requirements for marriage,

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<sup>42</sup> Woodward to Madison, May 8, 1806, in Mich. Terr. Papers, I, 50-52, RG59, NA. As there were only two Michigan judges at this time, this construction was obviously helpful in increasing Woodward's influence on the board.

<sup>43</sup> Ibid. Woodward also maintained that the Michigan officials regarded not only the first thirteen states as "original," but also any states which had been erected prior to the establishment of Michigan Territory.

the recording of deeds, auctions, highways and roads, and relief for the poor. These laws cite precedents from seven states--New York, Maryland, Virginia, Massachusetts, Ohio, Pennsylvania, and New Jersey. With the exception of Ohio, all of these were among the original thirteen states. It is interesting to note the frequency with which each of these states was used as a precedent for the Woodward Code. Most often cited was New York, followed by Virginia, Ohio, Massachusetts, Pennsylvania, Maryland, and New Jersey. In laws concerning the judiciary, Virginia laws were featured most prominently, followed by New York. Laws featuring non-judicial questions followed the precedents of New York in more instances, followed by Ohio and Virginia. The Michigan legislative board, while selecting "parts" of the laws of other states, nevertheless relied heavily on older, eastern states, while foregoing the adoption of laws from such new states as Vermont, Kentucky, and Tennessee. Of some one hundred and ninety-three precedents cited, only forty-four were not from one of the original thirteen states.<sup>44</sup>

Woodward has been unjustly credited with "inventing" parts of the Woodward Code. One writer notes concerning this code that "these laws were nearly all the product of Judge Woodward's mind, but prepared without the help of codes from other states . . . ."<sup>45</sup> Another writer observes that the "Ordinance of 1787 had specified that the

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<sup>44</sup>Terr. Laws, I, 1-92.

<sup>45</sup>Jenks, "Woodward," Michigan History, IX, 526.

laws enacted by the governor, secretary, and judges of a territory must be adapted from those of the original states, but much of Woodward's code was original."<sup>46</sup> To leave the impression that Woodward "created" the Woodward Code either brands him with an arbitrary use of power or credits him with a creative, legislative genius. It is doubtful that he should fully be charged with either. He told Madison in May of 1806 that "in the body of the laws now passed three alone did not receive entire approbation."<sup>47</sup> Citizens from Michigan complaining to Jefferson in 1807 lamented that their officials had "pursued a mode of adopting Laws from the original states which admits of additions, omissions, and combinations by which the spirit, and very letter of the originals pretended to be adopted, are in numerous instances, evaded, or entirely perverted."<sup>48</sup> Woodward and his colleagues were not criticized for "inventing" new laws, but for their liberal method of adopting and selecting laws from the original states.

One of the first laws enacted by the governor and judges in Michigan concerned marriage in the territory. Both justices of the peace and ministers of the gospel were empowered to perform marriages, and a marriage certificate was to be transmitted to the clerk of the court in the district where such a ceremony took place. Anyone who

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<sup>46</sup>Dunbar, Michigan, 197.

<sup>47</sup>Woodward to Madison, May 8, 1806, in Mich. Terr. Papers, I, 50-52, RG59, NA.

<sup>48</sup>Petition from Inhabitants of the Territory to Thomas Jefferson, 1807, in Carter, Terr. Papers, X, 115-122.

illegally married another person could be imprisoned for up to a year and fined up to one thousand dollars. It is comforting to note that the law also recognized that when a man had children out of wedlock and decided to marry the woman, such child or children, if recognized by him, would be "thereby legitimated."<sup>49</sup>

Another early act dealt with the regulation of ferries, tavern-keepers, and retailers of merchandise in Michigan. It was unlawful to operate a ferry across Michigan waters without a license, and every ferry was required to be in adequate condition for the safety of its passengers. Furthermore, anyone charging excessive rates for ferry service could be fined up to one hundred dollars. A ferry license cost thirty dollars.<sup>50</sup> Similarly, retailers of merchandise were required to spend twenty dollars for a license. Tavern licenses cost twenty-five dollars a year, and the proprietor was expected to "provide and furnish suitable entertainments and accommodation for man and horse."<sup>51</sup> One may wonder what kind of entertainment the horse ever really received, but the law was explicit concerning any proprietor who permitted rioting, reveling, or drunkenness on his property. For

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<sup>49</sup>Terr. Laws, I, 30-32. Girls had to be at least 15 to marry.

<sup>50</sup>Ibid. For information on early ferries in Detroit and the territory, see Farmer, History of Detroit, 915-917.

<sup>51</sup>Ibid. Tavern licenses were reduced to sixteen dollars by an act of December 11, 1806. Terr. Laws, IV, 12-13.

these offenses, the fine could be up to one hundred dollars.<sup>52</sup>

Transportation in early Michigan was primitive. Indian trails and bridle-paths often served as the main substitutes for roads, and horseback riding was a common means of travel. Dense woods, wide streams and rivers, and impenetrable swamps were common hazards to the overland traveler. Water travel, when feasible, was often preferable to movement by land, but was not without its difficulties. Within Detroit, the carriage for those who could afford it made daily travel more pleasant. Up until about 1830 the two-wheeled French carts were very popular, and ladies of the highest social standing visited their neighbors or rode to church sitting on the bottom of these primitive vehicles.<sup>53</sup>

The governor and judges adopted legislation in 1805 to improve Michigan's roads and highways. The Detroit River was declared to be a "public highway," and fines were to be levied on persons obstructing that river or similar bodies of water designated as thoroughfares. The governor was to designate a series of "road-districts" within Michigan, and to assess citizens within those areas certain hours to assist in constructing roads. All freeholders over twenty-five (except ministers and priests) were to work from one up to thirty days a

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<sup>52</sup>Ibid. By an act adopted on February 1, 1815, minors were prevented from obtaining spirits without permission from their parents. Similarly, apprentices, militiamen, and Indians needed permission from their masters, commanding officers, and the Superintendent, respectively. There was a ten dollar fine for all persons (except travellers and lodgers) for receiving spirits on Sunday. Terr. Laws, IV, 201-202.

<sup>53</sup>Farmer, History of Detroit, 887.

year on the public roads. Anyone compelled to work over his quota was to be paid at the rate of one dollar a day. Any worker who provided a needed team, cart, wagon, or other necessary implement or animal was to receive two days' credit for each.<sup>54</sup> This legislation was optimistic considering Michigan's primitive state and financial condition. No real improvements in territorial transportation were to take place until well after the War of 1812.

Territorial taxes were an early concern of the legislative board. An 1805 law provided for a tax of one dollar a wheel for every "coach, chariot, phaeton, chaise, calash, chair, or other riding carriage," as well as for winter sleighs. If a man owned a stud horse three years old, he paid a tax of four dollars. Three dollars were to be paid for other horses. A family was taxed fifty cents for keeping a dog.<sup>55</sup> These early taxes were perhaps a bit grandiose for a frontier community, but there is little evidence that they caused great hardship. The legislative board was aware of the poverty in Michigan and made no great effort to see that taxes were collected. When the judges voted to pay the secretary of the legislative board two dollars a day in addition to his salary of twenty-five dollars a year, Griffin dissented, "because of the poverty of the territory and the difficulty of collecting taxes, as well as from the heavy expenses

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<sup>54</sup>Terr. Laws, I, 75-79.

<sup>55</sup>Ibid.

attending the present government of the Michigan Territory."<sup>56</sup>

The governor and judges made some provision for the welfare of the poor in Michigan. In 1805 they appropriated one hundred dollars for the relief of paupers, far from an outstanding sum considering that James May, who served as territorial marshal, received sixteen dollars for a table that same year.<sup>57</sup> A destitute person was required to petition three justices of the peace, who could then issue a certificate designating him as a public charge. He could then receive up to twenty-five cents a day in assistance.<sup>58</sup>

The legislative board adopted an act in 1805 to "promote literature" in the city of Detroit. This act authorized four lotteries, which were to raise twenty thousand dollars to further literature and the improvement of culture in Michigan.<sup>59</sup> The lotteries were never held and the plan was abandoned a few years later.

The Woodward Code represented an ambitious legislative attempt, with positive features, but it suffered from serious defects and met

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<sup>56</sup>"Journal of the Transactions of the Governor and Judges of the Territory of Michigan in their Legislative Capacity, 1805-1815," Michigan Secretary of State Records, Michigan State Archives, Lansing, 22. Hereafter this volume will be cited as the "Judges Legislative Journal." Michigan State Archives will be cited as MSA.

<sup>57</sup>May's appropriation is in Terr. Laws, I, 87-89. May served as territorial marshal, and the Supreme Court occasionally met at his home.

<sup>58</sup>Ibid., 90-91.

<sup>59</sup>Ibid.



some resistance from Michigan inhabitants. Its provisions for taxation, commercial regulation, and a judicial system were too elaborate for a frontier community of nine hundred. There was an obvious disregard for the previous British and French codes of laws, understandable in that the governor and judges were primarily easterners operating under a new American government. To make matters worse, most of the French settlers could not even read the new laws.<sup>60</sup>

The clash of cultures and languages at Detroit continued to cause dissension in the territory, particularly over new legislation. Woodward recognized the problems posed by a meeting of American and French traditions. In a letter to the Senate in 1806 he pointed out that most Michigan citizens were former subjects of a foreign power and that the greater part of them were "born and reared in the use of a foreign language." He expressed the belief that legislation that could "gradually and delicately" assimilate the customs of a foreign people to the American system, comprising one consistent and uniform government, was certainly desirable. With reference to previous French law, he noted that there was a scarcity of written law and that everything had to be gathered from the customs in the country. He also emphasized his notion of a "special" situation in Michigan. He told the Senate that "Perhaps what is termed the second grade of

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<sup>60</sup>Bond notes that "in spite of the lack of understanding and the rather grandiose point of view found in the Woodward Code, the territorial officers might have accomplished much more in Michigan had Congress supported them wholeheartedly." Bond, The Old Northwest, 214.

territorial government, however applicable to new settlements strictly American, is not so applicable to an old country, using foreign laws, transferred to American jurisdiction."<sup>61</sup>

French inhabitants in Michigan experienced little success in convincing Congress of their special needs. Some of them presented a petition to that body in 1810, asking that the government would translate into French and print the laws of the United States applicable to Michigan, as well as any Michigan laws already adopted by the governor and judges.<sup>62</sup> Congress reacted unfavorably to this request. The committee reported that if Congress were to authorize the translation of the laws into the French language, they would thereby give the translation a sanction which would entitle it to be received in the courts of that territory as evidence of the laws of the land. If this were done, great inconvenience and confusion might result from having two separate texts for the same law, susceptible, from the imperfection of all languages, of different and perhaps opposite interpretations. The committee also objected to legalizing any other than the prevailing language of the country because it would "tend to encourage and perpetuate the other dialects which partially prevail in different parts of the Union, and which, it is believed, ought rather to be discouraged."<sup>63</sup> The committee's refusal to allow a French translation

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<sup>61</sup>Woodward to the Senate, 1806, in Am. State Papers, Miscellaneous, I, 461-463.

<sup>62</sup>Annals of Congress, Eleventh Congress, First Session, 1445.

<sup>63</sup>Ibid., 1886.

of American laws may have encouraged some in Michigan to learn English, but it also made the work of the governor and judges much more difficult.

Michigan's remoteness made it necessary for the legislative board to form some sort of local defense, and in 1805 it passed an act providing for a militia. Male inhabitants between the ages of fourteen and fifty were liable for duty, and each man was responsible for a good musket, bayonet and belt, knapsack, two spare flints, and a pouch containing at least twenty-four cartridges. One section of this law that was to bring Hull some grief provided that the commander in chief could direct the "color and fashion" of the uniforms for the officers, noncommissioned officers, and privates, and the occasions on which they were required to appear in uniform.<sup>64</sup>

In September of 1805 Hull as commander in chief issued a directive for the organization of the territorial militia. Eight companies of infantry were to be formed from every part of the territory except the District of Erie. That district was to have seven companies of infantry and one company of cavalry. A Legionary Corps was to be raised by voluntary enrollment from the area outside Erie, to consist of one company each of artillery, cavalry, light infantry, and of riflemen. Augustus Woodward and John Anderson were appointed colonels in the new militia.<sup>65</sup>

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<sup>64</sup>Terr. Laws, I, 47-52. On the need for a territorial militia, see Dearborn to Hull, October 16, 1807, in Letters Sent by the Secretary of War Relating to Indian Affairs, 1800-1824, Record Group 75, M15, roll 2, CHL. Hereafter Letters Sent by the Secretary of War Relating to Indian Affairs will be cited as Letters Sent, WD, Ind. Aff.

<sup>65</sup>General Militia Order by Governor Hull, September 10, 1805, in Mich. Terr. Papers, III, 26-27, RG59, NA.



In a general order issued in October of 1805, Hull prescribed uniforms that could hardly be considered suitable to Michigan's remote frontier situation. Riflemen were to wear short green coats, buff capes, round hats, black cockades, and green feathers. Officers were to wear dark blue coats, faced with red, red capes, white buttons, silver epaulettes, cocked hats with black plumes, red sashes, and swords and pistols.<sup>66</sup> Such eastern "fancies" were met with resentment from a poor, backwards post like Detroit. This resentment increased when it was rumored that Hull was gaining financially by such military requirements, a charge that was never substantiated. A Detroit grand jury in September of 1806 recommended that the legislative board abolish the governor's discretionary power to regulate the uniform of noncommissioned officers and privates because the "impoverished situation of the greater part of the inhabitants, render such regulation extremely oppressive in its operation."<sup>67</sup>

Friction developed between Hull and Woodward over the Michigan militia. At first Woodward was greatly interested in his commission and plunged into his duties with enthusiasm. His judgment in laying out battery positions failed to impress a military man of Hull's experience, however, and the two quarrelled. Hull revoked Woodward's commission, and the justice publically declared that Hull's efforts

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<sup>66</sup>Ibid.

<sup>67</sup>Recommendations of the Grand Jury, September 23, 1806, in MPHC, XII, 626-628.

were pointless.<sup>68</sup> When the threat of war with England reached Michigan in 1807, Hull became alarmed that the British might employ Indians against Detroit.<sup>69</sup> He used the militia to dig trenches and to strengthen the stockade against possible attack, a move that produced grumbling from men resigned to fight but not to dig.

Woodward entertained some rather definite opinions regarding Hull's "Indian scare" in 1807. He approved of the supplying and instruction of the militia, but condemned the fortification of Detroit as a "useless, expensive and prejudicial measure." He conceded that Indian activity was unusual, but explained that this was the result of two things. The first was the interruption of Indian trading because of the exclusion of the English from the continental market for furs. The second was the disturbing influence of the "Shawnee Prophet" among Michigan Indians. Woodward admitted that some of the persons alarmed were sincere in their fears, but added that there was little evidence to support a great threat to Michigan.<sup>70</sup>

Hull was quick to defend his actions in protecting Detroit. He informed Dearborn that Woodward had agreed to his plan for the fortifications of Detroit. Originally Hull had intended to build

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<sup>68</sup>Woodford, Woodward, 55.

<sup>69</sup>The "war scare" was the result of the British impressment of American sailors, the Orders in Council by the English Government, the "Chesapeake" affair, and the American Embargo Act of 1807. See Pratt, U.S. Foreign Policy, 57-65.

<sup>70</sup>Report of Woodward, August 12, 1807, in MPHIC, XL, 173-177. The "Shawnee Prophet" and Indian Affairs under Hull will be discussed in Chapter Four of this study.

a small stockade, connected to the fort, and leaving out a portion of the town. Because of popular pressure, he later decided to expand his design. At this point Woodward had objected because the fortifications were on "too small a scale." "Had an attempt been made to have built a solid wall around the Territory," Hull told Dearborn, "or indeed from the Earth to the Sun it would have met his cordial approbation."<sup>71</sup>

Relations between the two officials were not improved over the issue of the Detroit Bank. While in Massachusetts, Hull had been approached by a group of Boston merchants who urged the establishment of a bank at Detroit to carry on the fur trade. Hull approved of the venture and told Woodward that three-fourths of the stock had already been subscribed for, leaving one-fourth for the people of Michigan.<sup>72</sup> Woodward was initially pleased with the thought of a Detroit bank. He believed that it would help concentrate the fur trade in that outpost and provide needed currency for the territory.

The legislative board passed an act establishing a bank at Detroit in September of 1806. Capital stock was originally set at \$100,000, but Woodward, who had been chosen president of the bank, objected, and had the capitalization set at \$1,000,000. He was also instrumental in extending the charter's life from thirty to one hundred and one years. Stockholders who together were proprietors in the amount

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<sup>71</sup>Hull to Dearborn, December 29, 1807, Ibid., 242-244.

<sup>72</sup>Hull to Woodward, April 1, 1806, in Carter, Terr. Papers, X, 47-48.

of twenty thousand dollars had the power to call a general meeting at any time. No limitation was placed on the number of notes to be issued, and security was not specified for those notes. These notes were to be payable on demand in gold and silver and were to be accepted as legal tender in all payments to the territory.<sup>73</sup> After the passage of this act, the legislative board forwarded it to Washington for Congressional approval. In the meantime, the bank opened its doors for business.

The Detroit Bank was not successful either in furthering the Michigan fur trade or in solving the territory's financial problems. Within a few months of its founding, the bank had put over a million dollars in paper money into circulation in the East--far enough from Detroit to make it difficult to determine the discount rate or to present it for redemption. These notes were distributed at a discount of from ten to twenty-five per cent. Soon the bank's eastern investors began to dispose of their holdings, and the script began returning to Detroit, for redemption in specie. Since the bank had a working capital of only twenty thousand dollars, and very little specie on hand, payment was refused.<sup>74</sup> When rumblings of the bank's default began to reach Washington, Madison requested that Hull send him copies of the territorial law respecting the erection of a bank.<sup>75</sup>

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<sup>73</sup>Terr. Laws, IV, 7-9.

<sup>74</sup>William Jenks, "The First Bank in Michigan," Michigan History, I, 41-62. When it closed, the bank had less than a hundred dollars on hand, with debts amounting to more than five hundred thousand dollars

<sup>75</sup>Madison to Hull, December 8, 1806, in Dom. Letters, SD, RG59, M40, roll 13, NA.



Both Woodward and Hull were quick to declare their innocence in the bank episode. "It was to prevent speculation, and not to encourage it," Woodward wrote to the editor of the Philadelphia Aurora, "that I suffered my name to be associated with this institution. . . ." <sup>76</sup> Hull confessed to Madison that while the Detroit Bank was initially a productive and commendable idea for Michigan, he had discovered that the "agents had improper views in the first instance--and I consider the management of those who have had the direction of it as highly reprehensible." <sup>77</sup> This naturally included Woodward, as president. Woodward responded by accusing Hull of seeking personal gain from the bank. Congress eventually vetoed the Detroit Bank Act, and the bank soon passed out of existence.

It is extremely doubtful that the Michigan officials expected to profit from the Detroit Bank. Original holdings in the institution were primarily in the hands of the eastern businessmen. Nathaniel Parker held nearly four thousand of a total of ten thousand shares, while Dudley Bradstreet accounted for nearly thirty-five hundred. Detrouiter Solomon Sibley possessed one hundred, while Griffin had ten. Hull owned five shares, while Woodward claimed only one. <sup>78</sup> Jefferson

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<sup>76</sup> Woodward to William Duane, February 17, 1808, in Woodward Papers, BHC.

<sup>77</sup> Hull to Madison, May 26, 1807, in MPHC, XXXVI, 196-197.

<sup>78</sup> List of the original stockholders of the Detroit Bank, Ibid., VIII, 575. Jenks notes that in this affair, Hull was "somewhat vain, impulsive, easily influenced and inexperienced and untrained in business," while the "Detroit subscribers were men of the highest personal, official and business standing." Jenks, "The First Bank in Michigan," Michigan History, I, 41-62.

decided that while Hull had been under suspicion in the bank affair in Michigan, he took a very small interest in it and abandoned it when he discovered its true nature.<sup>79</sup> While neither Hull nor Woodward had conspired to profit from the Detroit Bank, each continued to blame the other for its failure, and the breach between them widened. The affair also lowered Michigan's reputation in the East, making future investment in the territory a questionable venture. "It has all along been an unfortunate affair to those in this country," lamented Solomon Sibley: ". . .I regret very much ever having had anything to do with the cursed Bank."<sup>80</sup>

Considering Michigan's small population and frontier condition, its territorial period before the War of 1812 is notable for an unusual amount of recorded criticism, evident in petitions, denunciations, charges, and counter-charges by citizens and officials alike. One can find citizen dissatisfaction with both the territorial system of government and with specific officials. Conversely, there is official

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<sup>79</sup>Thomas Jefferson to William Duane, February 7, 1808, in Carter, Terr. Papers, X, 196-197.

<sup>80</sup>Sibley to William Flanigan, January 6, 1811, in Solomon Sibley Papers, BHC. In spite of Eastern outrage over the Detroit Bank, the institution was not without its supporters in Michigan. Businessmen like James May and Elijah Brush petitioned the governor and judges in the bank's support, maintaining that "whatever tends to diminish the circulating medium of this Territory does it under its present circumstances, an essential injury." The subscribers requested the legislative board to "suffer the Detroit Bank to go on as formerly." Petition to the Governor and Judges, December 10, 1808, in Petitions and Recommendations, Civil Affairs, Undated to 1819, Secretary of State Records, MSA. Hereafter cited as Petitions and Recommendations, Undated to 1819, MSA.

disgust with the intransigence of a backward population and with Congress for failure to appreciate territorial needs. There is also no absence of recrimination among the territorial officials themselves-- particularly among Woodward, Hull, and Griswold. This is not to say that early governmental efforts were a failure, however, for despite such controversy, needed legislation was passed and territorial progress was achieved. What is regrettable is that Michigan's early strides toward territorial maturity took place under a cloud of dissension and bitter controversy.

A frequent critic of Woodward and the territorial government was John Gentle, a Scot who owned a store in Detroit. Gentle had been denied a donation lot in Detroit and he responded by attacking the Michigan officials in a series of pointed and abusive articles in Eastern newspapers.<sup>81</sup> "Our high flying gentry are really curious animals," he wrote in 1807; "they will make laws one day and break them the next."<sup>82</sup> He criticized Michigan's tax program when the territory remained destitute and accused the governor and judges of trying to enrich themselves through the Bank of Detroit.<sup>83</sup> He was astute enough to sprinkle his calumnies with enough truths to cause many

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<sup>81</sup>"Judges Legislative Journal," MSA, 106-108. Gentle was refused a donation lot in Detroit because he refused to become an American citizen and failed to fulfill his duties in the Michigan militia. By persuading William Duane, the influential editor of the Philadelphia Aurora to publish his attacks on the governor and judges, Gentle aroused criticism for the Michigan officials throughout the East.

<sup>82</sup>Pittsburgh Commonwealth, May 6, 1807, copy in Woodward Papers, BHC.

<sup>83</sup>Ibid., September 9, 1807, copy in Woodward Papers, BHC.

Easterners to accept his accusations as facts. Bates warned Woodward that Gentle's remarks were affecting the minds of many in Washington, and that Michigan's proceedings were "censured with some severity" at the nation's capital.<sup>84</sup>

Woodward did finally respond to Gentle's attacks, but the damage had already been done. "I have no interest, direct or indirect," he wrote to the editor of the Philadelphia Aurora, "either in my own name, or in that of any other person to my use, in a single acre or foot of land, within the territory of Michigan."<sup>85</sup> He admitted that Gentle had a right to speak out if he felt that he had a just grievance, but maintained that there was no foundation to the charges against him.<sup>86</sup> Unfortunately for Woodward and the territorial government, Gentle's condemnations were often taken at face value, both in Washington and in Michigan. Woodward's biographer observes that Gentle's accusations "were believed by many people in Michigan, to the everlasting damage to Woodward's reputation. The things most commonly remembered about him today are the things Gentle wrote."<sup>87</sup>

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<sup>84</sup>Bates to Woodward, June 18, 1807, in Woodward Papers, BHC.

<sup>85</sup>Woodward to the Philadelphia Aurora, January 4, 1808, Ibid.

<sup>86</sup>Woodward to the Pittsburgh Commonwealth, January 1, 1808, Ibid.

<sup>87</sup>Woodford, Woodward, 50. Farmer's History of Detroit contains passages that discredit the governor and judges on the basis of Gentle's articles. See Farmer, History of Detroit, 26, 96, 134, and 314-316.

A second and more prominent figure responsible for fanning the territorial fires of dissension was Secretary Stanley Griswold. Griswold, a Congregational minister and an editor from Connecticut, early gained a sense of his own importance while serving as acting governor in Hull's absence. In that capacity he countermanded Hull's order requiring officers and soldiers to appear in full uniform when on military duty of any kind.<sup>88</sup> When Woodward prepared a bill in 1805 that would have ended Griswold's authority as acting governor, Griswold began to fear that Woodward was trying to get rid of him. In November of 1807, Abijah Hull, the governor's nephew, feeling that he had been wronged by Griswold and James Abbot, challenged them both to a duel. No blood was spilled, but relations between Hull and Griswold remained strained.<sup>89</sup>

Hull and Woodward were not unaware of Griswold's intrigues in Michigan. The governor told Dearborn that Woodward and Griswold had "long been at variance." Hull was convinced, however, that the "disorders and discontents generally with the Government are confined to a few."<sup>90</sup> Woodward's estimate was not so conservative. "The discord is both great and bitter," he said; "it seems to have resolved into a mere struggle between the Governor and the secretary."<sup>91</sup> More serious

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<sup>88</sup>William Jenks, "Stanley Griswold," Michigan History, XV, 5-17. Hereafter cited as Jenks, "Griswold," Michigan History, XV.

<sup>89</sup>For details of this affair, see MPHC, XXXVII, 94-98.

<sup>90</sup>Hull to Dearborn, March 4, 1807, in Letters Rec'd., WD, Main Ser., RG107, M221, roll 8, RFC, Chicago.

<sup>91</sup>Woodward to the State Department, July 18, 1807, in Woodward Papers, BHC.

were the allegations that Griswold was spreading disaffection among the Detroit militia and even encouraging desertion. Lieutenant-colonel Elijah Brush informed Hull that he had successfully gained recruits for the militia in spite of the "violent and lawless opposition" made by Griswold and his "unprincipled adherents."<sup>92</sup>

Hull was impressed enough with the mounting intrigues to issue a proclamation in January of 1808 that a "dangerous faction" existed in Michigan whose object appeared to be the "prostration of all Government."<sup>93</sup> In addition, he called Griswold before a special court of inquiry, but the evidence was not conclusive against him. To insure his future good conduct, he was forced to post a five hundred dollar bond.<sup>94</sup> In March Madison informed Griswold that Jefferson had revoked his commission as secretary.<sup>95</sup> That same month Reuben Atwater of Vermont was confirmed as the new secretary of Michigan.<sup>96</sup>

There is no doubt that a developing conflict between Woodward and Hull did not contribute to Michigan's territorial growth. "I owe

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<sup>92</sup>Elijah Brush to Hull, July 3, 1807, in MPHC, XL, 166-167. See also military officers at Detroit to Dearborn, January 15, 1808, Ibid., XXXVI, 355-356.

<sup>93</sup>Proclamation by Governor Hull, January 16, 1808, in Mich. Terr. Papers, I, 127-128, RG59, NA.

<sup>94</sup>For information on the Griswold Case, see Transcript of the Minutes of a Court of Inquiry, January 26, 1808, in Carter, Terr. Papers, X, 179-194.

<sup>95</sup>Madison to Griswold, March 16, 1808, Ibid., 210-211.

<sup>96</sup>Ibid. Atwater, a Vermont lawyer, was a first cousin of Governor Hull. See Stephen R. Bradley to the President, December 26, 1807, in Carter, Terr. Papers, X, 166-167.

it to Judge Woodward," Hull wrote in 1805, "to say that I have received great assistance from his talents, his zeal and industry."<sup>97</sup> Initially, Woodward was equally complimentary about Hull. This situation soon changed, however, as both Hull and Woodward were men of strong wills and each sought to gain the upper hand in directing the territory's development.

Hull's growing resentment of Woodward centered on the judge's intransigence and his preoccupation with visionary schemes. "The Judge is a man of fine talents," Hull told Dearborn, "but my opinion is, he wishes to undertake objects too great, and looks forward too far."<sup>98</sup> The governor complained to Jefferson that Woodward suggested many brilliant things but was unable to level his mind to the common, ordinary occurrences of life. The chief justice seemed committed to "surprise mankind" by the singularity and novelty of his schemes.<sup>99</sup>

Woodward considered Hull equally stubborn and opinionated. He resented the governor's unfounded fears of Indian attack and his belief in the need for a territorial militia dressed and drilled like Eastern professionals. Woodward, who spoke French, challenged Hull's ability to understand or to legislate for a population predominantly

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<sup>97</sup>Hull to Madison, August 3, 1805, in Mich. Terr. Papers, I, 6-7, RG59, NA.

<sup>98</sup>Hull to Dearborn, March 4, 1807, in Letters Rec'd., WD, Main Ser., RG107, M221, roll 8, FRC, Chicago.

<sup>99</sup>Hull to Jefferson, March 12, 1808, in Carter, Terr. Papers, X, 206-208.

French.<sup>100</sup> As territorial troubles mounted, Woodward apparently harbored some fears that Hull might seek to gain greater power through the use of the militia. He wrote Griffin from Washington in 1809 that a steadier executive in Michigan would have made a "wonderful difference" in the state of affairs there. "Turbulence, vexation and fickleness are too often the concomitants of those who wear the sword," he said, "not with the holy enthusiasm of defending liberty, but from the minor passion of military eclat."<sup>101</sup>

Despite their differences, Hull and Woodward continued to work together in directing Michigan's civil government. In September of 1806 the legislative board added twenty-six acts to the Woodward Code.<sup>102</sup> Besides the act to incorporate a bank at Detroit, these statutes dealt mainly with changes in the tax rates, reductions in the salaries and fees of local officials, provisions for paupers, and street plans for Detroit. One act provided for a four thousand dollar fine and imprisonment for three years for anyone convicted of raising a hostile body of men against the territory.<sup>103</sup> Another law allowed

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<sup>100</sup> Woodward to Madison, March 17, 1808, in Woodward Papers, BHC.

<sup>101</sup> Woodward to Griffin, January 15, 1809, Ibid.

<sup>102</sup> For the full text of these acts, passed from September 2 to June 2, 1807, see Terr. Laws, I, II, and IV, passim. These acts were adopted from the codes of New York, Virginia, Pennsylvania, Ohio, Connecticut, Maryland, Massachusetts, and Kentucky.

<sup>103</sup> Ibid., II, 4-6. Anyone apprehended committing a hostile act against the territory could be held on \$5,000 bail.



religious societies in Michigan to elect trustees and to hold real and personal property. No one society was to hold more than two thousand acres, and all the property of such a society was subject to taxation in the same manner as other property.<sup>104</sup>

Judge Bates left Michigan in November of 1806 to accept a territorial judgeship at St. Louis. While in Michigan he had exerted a moderating influence on both Hull and Woodward, and had proved to be a valuable member of the legislative board and the territorial Supreme Court. Hull told Dearborn that "the loss of Judge Bates will be great-- A man of intelligence, honor, and the greatest purity of mind."<sup>105</sup>

Tired of public condemnations and openly hostile to Hull, Woodward withdrew from the legislative board in November of 1806 and retired to Monticello, his estate on the River Raisin, named after the home of his famous friend. He told the other territorial officers that "my public duty imperiously exacts from me to withhold my attendance. . . . Two months patient and invariable attention, and even my own concurrence with the views of others, have not been sufficient to restore a Calm. Perhaps my absence may effect it."<sup>106</sup> He was also feeling sorry for himself. Unable to bring Hull around to his own views, he decided to sulk.

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<sup>104</sup>Ibid., IV, 16-17.

<sup>105</sup>Hull to Dearborn, March 4, 1807, in Mich. Terr. Papers, I, 6-7, RG59, NA.

<sup>106</sup>Woodward to the Legislative Board, November 5, 1806, in MPHC, XXXI, 566-568.

While Hull and Woodward continued to criticize each other, citizens in Detroit were finding fault with both of them. A group of Detroit citizens complained to the President that the history of Hull and Woodward was a history of repeated "injuries, abuses, and deceptions, all having a direct tendency to harass, distress and impoverish, if not absolutely to expel the present inhabitants."<sup>107</sup> These petitioners criticized territorial land policies, methods of adopting laws, unjust taxes, and unfair court practices, while calling for the removal of Hull and Woodward.<sup>108</sup> In this instance, there was some question as to the authenticity of the subscribers complaining to Jefferson. Hull later told Dearborn that over a hundred people who had signed this petition knew nothing of its contents and had asked him to erase their names.<sup>109</sup>

Even in voluntary exile Woodward attempted to generate opposition to Hull's reappointment as governor. In a letter to Washington in 1808 he maintained that he was aware of a number of "important indiscretions" in the governor's conduct. "I say 'indiscretions,'" he

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<sup>107</sup> Petition from the City Council of Detroit to the President, July 25, 1807, in Carter, Terr. Papers, X, 114-122. Carter notes that the authorship of this petition has not been established. The handwriting is evidently that of a clerk. He observes that "the language, however, is not unlike that of Stanley Griswold, and his enmity to Governor Hull and Judge Woodward would not be a bar to his having at least had a hand in the composition and circulation of the document. The signatures are all in the same hand." Carter, Terr. Papers, X, 115.

<sup>108</sup> Ibid.

<sup>109</sup> Hull to Dearborn, August 19, 1807, in MPHC, XL, 189-191.

wrote, "because if I thought there was more than indiscretions, I would not hesitate to say so, either to the general executive, or to the public."<sup>110</sup> Woodward's efforts proved in vain, however, for Hull was reappointed for a second term in April of 1808.<sup>111</sup>

Perhaps to ease the breach between the two men, Hull invited Woodward, still on the River Raisin, to preside at his inauguration and to administer his oath of office. Woodward refused to officiate on Hull's behalf. He argued that the current laws regarding the Michigan Territory did not authorize him to administer such an oath. In fact, no judge in Michigan possessed such authority. Going even further, he doubted that even the President possessed the power to administer Hull's oath, as he was not "specifically" the officer spoken of in the Ordinance of 1787, an officer that had since ceased to function. He told the governor that "no person" possessed the authority to administer his oath!<sup>112</sup> After delaying a month, Hull finally took the oath before George McDougall, a judge of the District Court.

Even Woodward's stubbornness could not dampen Hull's optimistic outlook as he began his second term as governor. In a public address in May of 1808, he defended his first term in office and asked the

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<sup>110</sup>An unaddressed letter from Judge Woodward, March 8, 1808, Ibid., XXXI, 566-568.

<sup>111</sup>For Hull's reappointment as Governor, see Carter, Terr. Papers, X, 203.

<sup>112</sup>Woodward to Hull, April 30, 1808, in MPHC, XXXVI, 212-213.

people of Michigan to judge him by his actions. Both the laws and the executive proceedings were a matter of public record, and were periodically transmitted to Congress. Only the law respecting the Detroit Bank had been repealed, and it had been adopted only in the hopes of aiding the territory. Detroit had been built up from the ashes of desolation into a small community worth more than before it was destroyed by fire. New lands had been opened up for settlement. The few dissensions existing in the territory had been raised by a "few unprincipled men" for their own advancement without any regard for the public interest. If the legislative board had been hampered, it was chiefly because for nearly a year, only one judge had been in the territory. Taxes had been light, and it was a singular achievement that Michigan had survived amid the threats of the British and the Indians. Hull warned his audience that its territorial government was only three years old, and if it was to survive, cooperation and future support were necessary.<sup>113</sup>

James Witherell's arrival in Michigan in October of 1808 as the new Supreme Court judge meant that a legislative quorum could finally be obtained, even though Woodward continued to pout on the River Raisin.<sup>114</sup> Hull considered Witherell's appointment a "most fortunate event," and the two men soon became fast friends.<sup>115</sup> At

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<sup>113</sup>Address of Governor Hull, May 27, 1808, Ibid., 225-229.

<sup>114</sup>The commission is in Carter, Terr. Papers, X, 215-216. Witherell did not reach Michigan until October, 1808.

<sup>115</sup>Hull to Witherell, February 25, 1809, in Benjamin Witherell Papers, BHC.

Hull's direction, the legislative board convened in November of 1808 and decided that three of its members would constitute a quorum, and two a majority. The board also decided that an act could be passed with only the signature of the presiding officer, instead of the signatures of the majority of the board. This new procedure blocked any interference that might arise from Woodward's absence, while minimizing the influence of his supporter, Judge Griffin. Evidently Hull's strategy was successful. A confidant of Woodward in Detroit informed him in mid-November that Griffin was "little more than a cipher" in the government and that there was a determination to "carry everything against him."<sup>116</sup> Several weeks later the same correspondent observed that Witherell was trying to take the lead in the government. "Although the Governor has hitherto made use of him as a tool to bring into shape some of his favorite projects," he said, "I am much mistaken if he does not soon get the upper hand of the governor."<sup>117</sup>

Armed with their new powers of legislation, Hull and Witherell adopted a series of forty-six new acts, popularly known as the "Witherell Code."<sup>118</sup> This new code contained some positive features. An act

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<sup>116</sup>N. Flannagan to Woodward, November 19, 1808, in MPHC, XII, 653-654.

<sup>117</sup>N. Flannagan to Woodward, December 2, 1808, in Woodward Papers, BHC.

<sup>118</sup>These laws can be found in Terr. Laws, II and IV, passim. For a list of the acts passed from November 9, 1808, to February 26, 1809--the Witherell Code--see MPHC, VIII, 593-594. These laws were adopted from the codes of Vermont, Connecticut, Massachusetts, New York, Pennsylvania, Virginia, and Ohio. As might be expected, Witherell's Vermont provided the greatest number of precedents.

passed in December of 1808 provided Michigan with a comprehensive law for the punishment of crimes and misdemeanors.<sup>119</sup> Provision was made for laying out a road from Detroit to the foot of the Maumee rapids.<sup>120</sup> Qualifications for grand jurors in the territory were defined.<sup>121</sup> Other acts dealt with the collection of territorial taxes,<sup>122</sup> the defining of the powers of justices of the peace,<sup>123</sup> and the sale of real estate for the payment of debts.<sup>124</sup>

An act passed early in 1809 dealt with the settlement of estates and the probate of wills. This act, containing an astounding ninety-seven sections, went into great detail concerning who could make valid wills, how they were to be witnessed, and procedures for those in line to inherit. Copies of wills proved in any state were to be accepted in Michigan.<sup>125</sup> Considering Michigan's frontier condition, it is doubtful that such an involved and lengthy document was truly necessary in 1809.

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<sup>119</sup>Terr. Laws, IV, 22-33. This act also declared private banks without legislative sanction illegal in Michigan, an obvious blow at Woodward, still serving as president of the Detroit Bank.

<sup>120</sup>Ibid., 35-36.

<sup>121</sup>Ibid., 66-68.

<sup>122</sup>Ibid., 38-39.

<sup>123</sup>Ibid., II, 53-59.

<sup>124</sup>Ibid., 42-46.

<sup>125</sup>Ibid., 13-40.

The legislative board passed an act in 1809 requiring Michigan residents to be responsible for their livestock. Citizens owning livestock were to build fences of strong and sound materials at least five feet high. Hedges had to be at least two feet high. If animals did stray into a neighbor's lands and cause some damage, the owner was to pay for the damage for the first offense. If the action was repeated, the owner was liable for double the amount of damages. Partition fences were to be equally maintained by both interested parties. If problems arose over a partition fence, the local justice of the peace could call in three "honest and able men" to make a binding judgment.<sup>126</sup>

The governor and judges also attempted to deal with the growing number of paupers in Michigan. They passed an act requiring each district to support its own poor, and to restrain paupers from going into other districts. If anyone transported a pauper into the territory with the intent to make that person a public charge, he risked a fine of three hundred dollars.<sup>127</sup> While this act spoke of "assistance" to the poor, it could also be implemented to "control" or even "prevent" the influx of paupers into Michigan.

Closely related to the problems of the poor were certain provisions for education in the territory. Overseers of the poor in each Michigan judicial district were authorized to divide their respective districts into sections convenient for erecting schoolhouses and school

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<sup>126</sup>Ibid., IV, 94-96.

<sup>127</sup>Ibid., II, 40-42.

districts, according to an act passed in 1809. The overseers were to serve as trustees for such school districts, and to take an annual census of children in their areas on the first Monday in May. Judges were to make an annual appropriation of from two to four dollars per pupil for the support of schools, to be collected as part of the territorial taxes. District treasurers were instructed to make annual reports on the state of their schools to the district judge in their area.<sup>128</sup>

To the surprise of no one, Woodward opposed the moves of Hull and Witherell in changing the territorial procedure for adopting laws. When a case came before the Supreme Court based on a law in the Witherell Code, Woodward declared that the law was invalid.<sup>129</sup> Hull, in response, said that only Congress possessed the authority to annul laws adopted by the governor and judges. In a sense, the citizens of Michigan were faced with their own legislative crisis. If the governor maintained that the Witherell Code constituted the law for Michigan, while the chief justice declared that it was unconstitutional, then the citizen on the street faced the dilemma of determining which set of laws to observe.<sup>130</sup>

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<sup>128</sup>Ibid., IV, 90-91.

<sup>129</sup>Gilpin, The Territory of Michigan, 31; Dunbar, Michigan, 199.

<sup>130</sup>Woodward's refusal to uphold the Witherell code is discussed in William Wirt Blume, ed., Transactions of the Supreme Court of the Territory of Michigan, 1805-1836 (6 vols.; Ann Arbor: University of Michigan Press, 1935-1940), I, xxv-xxxi. Hereafter this collection will be cited as Blume, Transactions. See also the Petition to the Governor and Judges, August 24, 1810, in Petitions and Recommendations, undated to 1819, MSA. This case concerning the conflict between the Woodward and the Witherell Code could not be appealed to the United States Supreme Court, as that body was not authorized to accept appeals from the territories.



Woodward outlined his objections to the Witherell Code in a letter to Hull in July of 1810. According to the Ordinance of 1787, the governor and judges had been given the power to govern. This power, however, was not conferred upon the "majority present," but rather the "majority of the whole"--in Michigan's case, at least three members. By their actions, Hull and Witherell had circumvented and distorted the spirit and the letter of the law according to the Ordinance of 1787.<sup>131</sup>

Woodward returned to the legislative board in August of 1810 to plead his own cause. He immediately told the other officers that the Witherell Code was unconstitutional and should be discarded. Witherell called Woodward's action "the most extraordinary and unwarranted stretch of power ever attempted to be exercised by the Judiciary over the Legislature of a free government."<sup>132</sup> He recommended that as the laws had already been in force for over a year and a half, they should be continued. Hull suggested passing a bill indicating which laws were, indeed, in force in Michigan. Woodward remained adamant, and in the end he managed to get his way.<sup>133</sup>

In September the legislative board finally settled the question of which laws were in force in Michigan. The board passed an act repealing all acts of the Parliament of Great Britain having any force in Michigan. Ancient French common law, or laws carried over

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<sup>131</sup>Woodward to Hull, July 23, 1810, in William Hull Papers, BHC.

<sup>132</sup>"Judges Legislative Journal," MSA, 54-55.

<sup>133</sup>Ibid.

from French Canada, were similarly repealed. Laws made by the governor and judges in either the Northwest or the Indiana territories were also declared to have no force in Michigan. Witherell's Code also went down to defeat, as the legislative board voted that all laws passed between June 2, 1807, and September 1, 1810, be repealed.<sup>134</sup> The board also made a rule that all future acts must be agreed to by a majority of the total board and signed by at least three of the territorial officials.<sup>135</sup> Woodward had regained his position of prominence.

It is interesting to observe that although Woodward desired the repeal of certain acts passed by Hull and Witherell, he later concurred in acts very similar in nature. He objected to an act for the maintenance and support of illegitimate children, adopted in 1809,<sup>136</sup> but signed an act in 1810 providing assistance for such children.<sup>137</sup> Similarly, he called for the repeal of an act concerning the construction of highways in Michigan,<sup>138</sup> adopted in 1809, but signed a bill similar in many respects for the opening and regulating of highways in 1817.<sup>139</sup> The question arises regarding the value and need of the

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<sup>134</sup>Terr. Laws, I, 900-903.

<sup>135</sup>For the acts passed between September 1, 1810, and January 14, 1812, see Terr. Laws, I, II, and IV, passim.

<sup>136</sup>Ibid., IV, 46-48.

<sup>137</sup>Ibid., 93.

<sup>138</sup>Ibid., 43-46.

<sup>139</sup>Ibid., II, 118-124.

laws adopted in the Witherell Code. In some cases, it is evident that Woodward rejected certain laws when he was not present at their adoption, and later accepted them when a party to their institution. Some of the Witherell acts were too advanced and complicated for a frontier community, but many were constructive and useful to Michigan. Many of their provisions were later incorporated into state law. It appears, however, that Woodward's objection rested more on the manner in which the code was adopted, rather than on its substantive defects. If Woodward doubted the constitutionality of the legislation instituted by Hull and Witherell, he was equally offended that it was passed without his concurrence, and threatened to displace his own legislative efforts. His fight with the legislative board was not only for responsible government, but also an effort to regain his own prestige and position.

Woodward's efforts to reassert his influence with the territorial officials included the championing of a movement among Michigan residents for more local autonomy and a representative in Congress. This was not a new cause for the chief justice. As early as April of 1806 he had sponsored a memorial to the Senate urging some form of local representation in Michigan to aid the legislative board in their deliberations. He also wanted a territorial delegate to Congress, although he believed the territory was not ready for a second stage of government.<sup>140</sup> "I have always considered. . .these territorial establishments, most wretched systems of government," he wrote in

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<sup>140</sup> Woodward to the Senate, 1806, in Am. State Papers, Miscellaneous, I, 461-463.

1806.<sup>141</sup> He believed the evil was in the "system" and not in the men," because power held by only a handful of officers would never produce harmony in the citizenry.<sup>142</sup> In 1809 he sponsored a petition to Congress which called for a Michigan representative to that body, and asked for a change in the structure of the territorial government.<sup>143</sup>

Despite numerous conflicts among the territorial officials, and grumblings among the people, Michigan's early legislative efforts from 1805 to 1812 were not without value or results. The governor and judges established a workable court system and adopted acts to maintain law and order. They transformed Detroit from a bed of ashes into a livable community engaging in trade and commerce. They began a program of education and public welfare in Michigan. It is undeniable that many laws passed by the legislative board were both unsuited and unfamiliar to a frontier community or differing national backgrounds. These officers frequently lacked the knowledge and practical experience for administering a western settlement. At the same time, they were hampered by the occasional neglect of Congress to give them guidance and support. If the territorial officials introduced legislation too complicated or too advanced for a frontier society, they also instituted a successful land program for destitute citizens and maintained peace with the Indians.

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<sup>141</sup>Woodward to the Legislative Board, November 5, 1806, in MPHC, XXXI, 566-568.

<sup>142</sup>Ibid.

<sup>143</sup>Petition to Congress by Citizens of Detroit, 1809, Ibid., XII, 544-545.

## CHAPTER III

### THE FOUNDATIONS OF JUSTICE

One of the earliest concerns of the governor and judges in 1805 was the creation of a judiciary system for the preservation of law and order. Under the act creating Michigan Territory, there was incorporated by reference that part of the Ordinance of 1787 which provided for the appointment of a court to consist of three judges who would have common-law jurisdiction.<sup>1</sup> In July of 1805 the legislative board adopted an act establishing a supreme court for Michigan Territory. This court was to consist of three judges, appointed and commissioned by the President. The judge holding the earliest commission was to be the chief justice.<sup>2</sup>

According to this act, the Michigan Supreme Court was to have "original and exclusive jurisdiction in all cases, both in law and equity, where the title of land is in question; original and concurrent jurisdiction in all cases where the sum, or matter of dispute, exceeds two hundred dollars; and appellate jurisdiction in all cases whatsoever."<sup>3</sup>

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<sup>1</sup>U.S. Stats., II, 309.

<sup>2</sup>Terr. Laws, I, 9-16. Woodward became Michigan's first chief justice.

<sup>3</sup>Ibid. Blume observes that the Michigan Supreme Court had the same jurisdiction as the federal district court of Kentucky in cases concerning the United States. "In cases not concerning the United

The court was also to have original and exclusive jurisdiction of all criminal cases where the punishment was capital, and of all cases of divorce and alimony.<sup>4</sup>

The Supreme Court was required to hold one session each year, beginning on the third Monday in September. Special sessions could be called if two of the justices deemed it necessary, while one judge was authorized to hold court. If no judge attended, the clerk was to adjourn court until the following day, and so from day to day for ten days. If no judge appeared by then, matters were to be carried over into the next session.<sup>5</sup>

It was the responsibility of the Supreme Court to establish rules and regulations respecting the admission of counsel and attorneys and modes of trial and the conduct of business. If no person appeared to represent the United States or Michigan Territory, the court could appoint an attorney to prosecute in the court on their behalf. The court was empowered to punish contempts committed against its authority, and to issue writs of prohibition and mandamus. It was made lawful for the court to award costs to the party or parties in whose favor judgment was rendered. In suits of equity, oral testimony and the examination of witnesses were to be admitted. If the court required a special report, it was empowered to employ one or more commissioners for this

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States," he notes, "the court had only a common-law jurisdiction such as had been conferred on the general courts of the older territories." Blume, Transactions, I, xlix.

<sup>4</sup>Terr. Laws, I, 9-16.

<sup>5</sup>Ibid.

purpose. Justices of the peace were authorized to take affidavits of any person concerning proceedings in the Supreme Court. Anyone committing perjury in such affidavits was subject to the same penalty as if it had been committed in open court. The governor was authorized to adjourn or move the court in the event of "war, pestilence, or other public calamity."<sup>6</sup>

Between 1805 and 1812, the Michigan Supreme Court adopted a number of rules to facilitate the business of the court. Any attorney wishing to serve as counsel who had not been previously accepted was required to "wait on the judge or judges at his or their chambers to satisfy him or them of their pretensions."<sup>7</sup> The court was to be opened with the words, "The Supreme Court of the Territory of Michigan is now sitting, silence is commanded on pain of imprisonment."<sup>8</sup> Questions were not to be put directly to a witness in the French language, but to a clerk or other person sworn to interpret truly, translated into English, and if no objection arose, put to the witness and the answer translated in the same manner. It was also a rule of the court that "in every criminal trial the jury be polled on rendering the verdict,

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<sup>6</sup>Ibid.

<sup>7</sup>Rules of the Supreme Court, MPHC, XII, 536-544. In 1812 there were thirty-eight court rules. By 1818 some fifty-six court rules had been adopted. In 1819, 168 rules were recorded. Over half of these rules were passed at sessions held by Woodward alone. For a table of court rules, see Blume, Transactions, I, 609-611; IV, 535-553.

<sup>8</sup>MPHC, XII, 536-544.

that is to say, every juror shall be asked separately whether the prisoner is guilty or not guilty."<sup>9</sup>

The governor and judges passed a further act regarding the territorial Supreme Court in February of 1809. This act provided that the high court was to have original and exclusive jurisdiction in all cases where the United States was a party. In addition, this statute provided that the Supreme Court was to have concurrent jurisdiction in all cases where the matter in dispute exceeded five hundred dollars, instead of the previous level of two hundred dollars as established by the act of 1805.<sup>10</sup>

After the erection of a Supreme Court, the governor and judges decided that several district courts were necessary in Michigan. Hull had originally established four judicial districts in the territory. In July of 1805 the territorial officers changed this number to three. Court was to be held in the district of Erie on the third Monday in May and the first Monday in September. Huron and Detroit were combined into one district, with the court meeting on the first Monday in May and the third Monday in August. Court in the district of Michilimackinac was to be held on the fourth Monday in June. Each court, to be in session as long as business necessitated, was to be a court of record.<sup>11</sup>

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<sup>9</sup>Ibid. The court rules also stipulated that upon the swearing of the jury, both plaintiff and defendant were to deposit on the table of the clerk three dollars in twenty-five cent pieces. If the verdict was for the plaintiff, he was to pay the jury fee; if the verdict was for the defendant, he was to pay.

<sup>10</sup>Terr. Laws, II, 60-62.

<sup>11</sup>Ibid., I, 17-19. For a brief description of the first session of the district court in Detroit, see Burton, History of Wayne



This act outlined the duties and responsibilities of the district courts. One of the territorial judges was to attend each district court, and if one judge allotted to a particular district was unable to hold court, another was to take his place. The jurisdiction of these courts was to be "over all persons, causes, matters, or things, which shall exceed the value of twenty dollars, whether brought before them by original process, or by any legal ways or means whatsoever; except in cases exclusively vested in any other court."<sup>12</sup> All criminal cases and civil proceedings could be appealed to the Supreme Court. The proceedings of the district court were to conform to the law and practice of the Supreme Court. Territorial judges were no longer required to constitute the district courts when a new act was passed in April of 1807. According to this act, the governor was to appoint one person residing in the district to be chief justice, along with two other district residents to be associate justices. Any two justices were empowered to hold court.<sup>13</sup>

The governor appointed many minor officials in Michigan to assist the Supreme Court in the preservation of law and order. Justices of the peace, appointed in the several districts, were to hear, try, and determine all pleas and actions of a civil nature where the debt

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County, II, 1134-1135. For Hull's proclamation establishing Michigan's first four judicial districts, see MPHC, XXXVI, 118-121.

<sup>12</sup>Terr. Laws, I, 17-19.

<sup>13</sup>Ibid., II, 7-9. The district courts were abolished in 1810, due to a lack of business. The powers of the district court were divided between the Supreme Court and the justices of the peace. See Terr. Laws, I, 186-192.

or other matter in demand did not exceed thirty dollars. Justices could grant writs of summons, warrant, or execution, which were to be directed to the marshal or his deputy to be executed and returned to the justice. A justice could accept the confession and acknowledgment of any debt from a debtor to a creditor in any case where the debt did not exceed the court's jurisdiction. Justices were empowered to grant subpoenas in due form of law for witnesses, in all causes, triable or pending in any court of law in the territory, so that said witnesses could give their testimony or deposition as evidence.<sup>14</sup> It is apparent that the office of justice of the peace was intended to handle civil cases of a modest nature at the local level, thus relieving the higher courts of many everyday problems and complaints. By an act adopted in September of 1810, the jurisdiction of the justices was increased to include all civil actions where the debt or damage did not exceed one hundred dollars.<sup>15</sup>

Two important territorial appointments were those of marshal and attorney general. Marshals, required by law to post ten thousand dollars security for good behavior, were to carry out the rules and orders of the courts, serve warrants and writs, apprehend criminals, and to jail those breaking the law.<sup>16</sup> In 1807 Hull appointed and

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<sup>14</sup>Ibid., 53-59.

<sup>15</sup>Ibid., IV, 99. Justices of the peace were established in Wayne County as early as 1796. Farmer, History of Detroit, 197.

<sup>16</sup>Terr. Laws, I, 2-6. In August of 1805 James May was commissioned marshal for Michigan Territory.

commissioned one marshal for each judicial district in Michigan Territory.<sup>17</sup> That same year the legislative board provided for the appointment of an attorney general, who was to "prosecute and defend all suits, both criminal, for and against the United States of this [Michigan] territory, and to perform all proper official duties required of him by the legislative, executive, or judicial powers of Michigan, or of the United States of America."<sup>18</sup> Previous to this, the court had appointed an attorney to prosecute on behalf of the United States and Michigan Territory.

Under a law adopted in August of 1805, the Supreme Court could summon twenty-four of the "most discreet" inhabitants of the territory, and the district court could summon the same number for the district, to serve as a grand jury. The law stated that "the said inhabitants, or any sixteen of them, shall be a grand jury, who shall be sworn to inquire of, and present, all offenses and misdemeanors whatsoever, cognizable by the said court."<sup>19</sup>

In Michigan Territory, grand juries also occasionally made recommendations concerning local conditions. A grand jury in the district of Huron and Detroit in 1806 presented Peter Audrain, clerk of

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<sup>17</sup>Ibid., IV, 19-20. The ten thousand dollar security was reduced to four thousand dollars in 1807.

<sup>18</sup>Ibid., 15. At the first regular session of the Supreme Court in July of 1805, Solomon Sibley was assigned by the court as counsel for the Territory and the United States. Elijah Brush became attorney general for Michigan in 1807.

<sup>19</sup>Ibid., 33. This act was extended to the county courts in December of 1817.

the district court for that area, with a variety of suggestions. Bakers should stamp their bread with a stamp containing their respective names, together with the weight of each loaf. Unruly "quadrupeds" should be effectively restrained. The grand jurors noted that "there prevails an extremely pernicious and slothful custom of throwing dead animals and other kinds of filth in, or along, the [Detroit] river."<sup>20</sup> They recommended that persons guilty of such offenses should be fined, as well as others who left unburied animals on their farms and lots. Persons convicted of intoxication on Sunday should also be fined. The grand jury condemned persons in the habit of racing horses on the public highways for private pleasure. They further demanded "for the general welfare of this country, that all public hazard games, and public hazard game houses, should be abolished, particularly on Sundays, as they influence all ranks to the loss of their time and money, and finally lead men into such excesses as are destructive to morality and injurious to society in general."<sup>21</sup>

In addition to the construction of a court system and the appointment of officials to uphold law and order, the governor and judges also provided legislation defining the penalties for lawbreakers. In December of 1808 they passed an act for the punishment of crimes and misdemeanors, the first extensive act concerning criminals in Michigan

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<sup>20</sup>Presentment of the Grand Jury of the District of Huron and Detroit, August 20, 1806, in MPHC, XII, 628-630.

<sup>21</sup>Ibid.

Territory. This law contained forty-eight different sections and covered almost as many different crimes and misdemeanors.<sup>22</sup>

This act prescribed death by hanging as the penalty for several offenses in Michigan--treason, murder, and arson with murder. A person could be convicted of treason and sentenced to death upon confession in open court or on the testimony of two witnesses to the act of treason.<sup>23</sup>

Whipping, fines, and imprisonment were penalties that could be meted out for certain crimes at the discretion of the judges. One of the few crimes in 1808 that called for life imprisonment was rape, which also carried a thousand dollar fine. For manslaughter, a person could be given one hundred stripes, confined to hard labor for ten years, and fined up to three thousand dollars, "or any or all the above punishments, according to the nature and aggravation of the offense."<sup>24</sup> A horse thief could be given one hundred stripes, fined three hundred dollars, and imprisoned for seven years. For forgery, the penalty was the pillory, a two thousand dollar fine, and three years in jail. A person convicted of adultery faced a five hundred dollar fine.<sup>25</sup>

This act also provided certain safeguards for law enforcement officers and persons accused of crimes. Officers charged with keeping

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<sup>22</sup>Terr. Laws, IV, 22-33.

<sup>23</sup>Ibid. See also Louis Burbey, "History of Executions in Michigan," Michigan History, XXII, 442-457; Albert Post, "Michigan Abolishes Capital Punishment," Ibid., XXIX, 44-50.

<sup>24</sup>Terr. Laws, IV, 22-33.

<sup>25</sup>Ibid.

the peace would not be held accountable for the injury or death of persons "unlawfully and riotously assembled" who resisted attempts by officers to disperse or apprehend them. Persons arraigned in court who chose to stand mute were to be regarded as having pled "not guilty." Anyone indicted for a crime could challenge six of the jurors at his trial. The defendant in a case was entitled to compel witnesses to appear in his behalf. In all criminal cases, a person convicted in a lower Michigan court had the right of appeal to the territorial Supreme Court. In any criminal action, the district courts and the Supreme Court were authorized to lessen the bond required "as the nature and circumstances of the case shall require, any law, usage, or custom to the contrary, notwithstanding."<sup>26</sup>

The governor and judges included physical punishment and fines as an alternative to imprisonment because they believed in the frontier concept of swift justice and because there were inadequate jail facilities in Michigan.<sup>27</sup> When Congress had granted 10,000 acres to help rebuild Detroit after the fire of 1805, part of the proceeds from the sale of that land were to go towards the construction of a jail for the territory.<sup>28</sup> In 1810 the grand jury for the district of Huron and Detroit reported to the Supreme Court concerning such a jail that

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<sup>26</sup>Ibid.

<sup>27</sup>Beverly Bond observes that in the Northwest Territory, "the swift punishment that was usually dealt out was another deterrent from crime. The common penalty for petty crimes was a fine or a whipping, and often both." Bond, The Old Northwest, 499.

<sup>28</sup>U.S. Stats., II, 398-399.

"almost five years have passed, Since this grant was made, during which time, the territory has been, and Still is left without any jail. . . ." <sup>29</sup> During this early period, jails were makeshift affairs, with private citizens often renting facilities to the territory for this purpose. <sup>30</sup>

The territorial officers attempted to deal with the problem of jails and prisoners in an act passed in 1809. The act provided for a common jail in every judicial district in Michigan, maintained by the district. Marshals were made liable for escapes from the jails in their districts. An interesting provision of this act was that people committed to jail "having the means and ability, shall bear his or her own reasonable charges for conveying or sending him or her to such jail, and shall also pay for his or her own support while in jail." <sup>31</sup> Prisoners could provide such necessities as "they shall think fit." Jailers were forbidden to demand any payment for their services other than that prescribed by law. If a jailer unlawfully wronged or cheated a prisoner in his custody, he could be assessed treble damages. Furthermore, any jailer, upon the tender of money by a prisoner, who refused to furnish that prisoner with "good and wholesome food and drink," or

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<sup>29</sup>Presentment of the Grand Jury, September 22, 1810, in Carter, Terr. Papers, X, 327-328. On the need for a territorial jail, see also Chris Tuttle to the Legislative Board, May 24, 1807, in Michigan Executive Acts, 1805-1820, Sec. of State Records, MSA. Hereafter cited as Mich. Exec. Acts, 1805-1820, MSA.

<sup>30</sup>See Farmer, History of Detroit, 214, concerning Detroit's first jail.

<sup>31</sup>Terr. Laws, II, 62-64.

demanded unreasonable prices for such food and drink, was required to pay the prisoner five dollars for every offense committed.<sup>32</sup>

The Michigan Supreme Court handled over four hundred cases between 1805 and 1812. Most of the court's work was involved with civil matters, as crimes of violence were uncommon. Property cases, breaches of contract, and actions for debt constituted the usual business of the high court. But the court also handled cases involving larceny, assault and battery, manslaughter, and murder.

Property cases and suits for breach of contract accounted for nearly half of the litigation to come before the Supreme Court in this period. One of the first property cases to come before the high court in 1805 involved the Northwest Company, a fur trading company operating out of Montreal. Joseph Labelle, a company representative, left Montreal in April of 1805 with a crew and two boats of merchandise. His destination was Kaminitague Bay on Lake Superior by way of Lakes St. Clair and Huron. Near Michilimackinac, high seas and blowing winds forced Labelle to put in for that port. Upon reaching shore, Labelle and his party journeyed inland to seek shelter.<sup>33</sup> David Duncan, collector of customs at Michilimackinac, upon learning of the arrival of two unauthorized vessels containing trading materials, promptly seized both the boats and the contents. Duncan asked company representative, William McKay, to take an oath guaranteeing that the goods were not to

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<sup>32</sup>Ibid.

<sup>33</sup>Deposition of Joseph Labelle, August 7, 1805, in Blume, Transactions, II, 40-41.



be disposed of within the United States. When McKay refused, Duncan ordered the goods to be confiscated.<sup>34</sup>

Judges Bates and Griffin held court in October of 1806 to consider the seizure at Michilimackinac. As the boats were pursuing a normal route from Montreal to a western part of Canada, and as such vessels were entitled to periodic stops for reasons of refreshment or repair, the judges decided that their stop at Michilimackinac was not illegal. Furthermore, under the circumstances, the Northwest representative was justified in refusing to take an oath regarding the future disposition of the goods. The court decided that the "Seizure was at all events premature and irregular" and ordered that "the packages of goods, wares and merchandise enumerated in the libel be restored to the claimants. . . ."<sup>35</sup>

Albert Gallatin applauded the action of the Michigan court concerning the seizure at Michilimackinac. He informed George Hoffman, a collector at Michilimackinac, that the Attorney General had ruled that the "decision of the [Michigan] court, of the principal question in the libel, that the seizure was premature, is correct. . . ."<sup>36</sup>

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<sup>34</sup>Deposition of Germain Pothier, September 16, 1806, Ibid., 49-51. Pothier, a justice of the peace for Michilimackinac, was a witness to the seizure of the boats and merchandise.

<sup>35</sup>"Transactions of the Supreme Court of the Territory of Michigan, July 1805 to October, 1814," 29-30. This manuscript volume is in the Burton Collection of the Detroit Public Library. The remaining four manuscript volumes of this collection are in the Bentley Library at the University of Michigan in Ann Arbor. Hereafter volumes of this collection will be cited as "Supreme Court Transactions."

<sup>36</sup>Albert Gallatin to George Hoffman, April 9, 1807, in Solomon Sibley Papers, BHC.

An important property case in 1806 demonstrated Woodward's dominance of the court and his willingness to cite precedents from the laws of other states or territories when the laws of Michigan Territory were inadequate. This case was the result of an incident that occurred in the fall of 1804. The Detroit firm of Hugh Pattinson and Company had been awaiting the delivery of 420 gallons of whiskey and thirty-seven gallons of wine, together worth one thousand dollars. The sloop General Hunter commanded by Captain Rough landed at the headwaters of the St. Joseph River, where Rough unloaded Pattinson's goods. Local merchant William Burnett refused to store the supplies in his store, but informed Rough that a man named Ducharme, a Pattinson employee, would arrive the next day to take charge of the goods. In the meantime, Rough and Burnett persuaded a local trader named Charles Chandonet to store Pattinson's wares.<sup>37</sup>

Trouble soon arose over the ship's cargo. There was evidently some misconception regarding the nature of the goods, for when Rough's men began unloading the barrels, Chandonet asked him, "Do you not know Captain Rough, that liquor is not permitted to come into the country, as it is liable to be taken and destroyed by the Indians?"<sup>38</sup> Rough discounted any danger and maintained that he had been ordered to deliver the goods to this place by the shipper. Chandonet agreed to take charge

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<sup>37</sup>Complaint of Hugh and Richard Pattinson, September 16, 1806, in Blume, Transactions, II, 75-76.

<sup>38</sup>William Burnett to William Wells, March 2, 1806, in Solomon Sibley Papers, BHC.

of the property, but refused to accept any responsibility should the Indians come and take it. To this Captain Rough made no reply, and no more was said. After the liquor was stored, two Potawatomi Indians approached Chandonet and asked him who owned the liquor. When he assured them it was the property of Pattinson, the Indians told him to prevent anyone from taking it until their chief arrived from upriver.<sup>39</sup>

Ducharme arrived the next day to assume control of Pattinson's goods. Recognizing the danger of seizure of the cargo by Indians, Ducharme decided to reship it to safety. Chandonet advised against this, stating that it would be wiser to wait for the chief. If Ducharme promised that none of the liquor would be sold at St. Joseph, it was probable that the Indians would allow him to take it somewhere else. When Ducharme refused this advice, Chandonet threatened to inform the Indians should Ducharme attempt to reload the goods. Ducharme later obtained Chandonet's keys, opened his warehouse, and loaded half the liquor before the Indians arrived. Upset over Ducharme's actions, the Indians carried off Pattinson's supplies themselves. When Captain Rough finally returned from Chicago and learned of the loss, he promised to hold Chandonet personally responsible.<sup>40</sup> Pattinson later secured a warrant for Chandonet's arrest for trespass, seeking one thousand dollars in damages.<sup>41</sup>

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<sup>39</sup>Ibid.

<sup>40</sup>Ibid.

<sup>41</sup>Warrant for Charles Chandonet, October 16, 1805, in Blume, Transactions, II, 74.

Chandonet's case came before the Michigan Supreme Court in September of 1806. Defended by Solomon Sibley, Chandonet pleaded innocent to the charges against him, but was found guilty by a jury composed equally of British and American subjects. Woodward found him liable for damages to the amount of eight hundred dollars.<sup>42</sup> Sibley immediately asked for a new trial.

Woodward, backed by Griffin, refused to overturn the decision in the Chandonet case when the court heard Sibley's appeal in October. Bates dissented, primarily on the ground that Woodward and Griffin had based their decision on the precedents set forth in the Indiana laws. "In the case of Pettinson versus Chandonet," Bates said, "I was of [the] opinion that the laws of Indiana adopted previously to the 1st July 1805 had not an obligation in Michigan."<sup>43</sup> Indiana Territory, established in 1800, included by 1802 all the region set forth as Michigan Territory in 1805. In this particular case Woodward discovered that there was no suitable Michigan statute which applied, and therefore felt justified in citing a precedent from the Indiana laws to support his decision. As usual he persuaded Griffin to support him and ordered Chandonet to pay the damages. Four years later, after Bates had left the territory, the

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<sup>42</sup>"Supreme Court Transactions," I, 18-19, 21.

<sup>43</sup>Bates to Woodward and Griffin, no date, in Thomas M. Marshall, ed., The Life and Papers of Frederick Bates (2 vols.: St. Louis: Missouri Historical Society, 1926), I, 84-86. Hereafter cited as Marshall, Bates Papers. Blume observes that "Statutes of the Northwest Territory that were in force when Indiana became a separate territory in 1800 continued in force in the new territory, and such as were not repealed by the governor and judges of Indiana Territory continued in force in Michigan Territory." Blume, Transactions, I, xxxvii.

legislative board passed an act declaring that any laws made by the governor and judges in the Northwest or Indiana territories were to have no force in Michigan.<sup>44</sup> In the future, Woodward would have to base his decisions solely on Michigan statutes.

Occasionally the Supreme Court became involved in marital problems in Michigan. Early in 1812 Bridget Belcher asked the high court for a divorce from her husband, Daniel Sheridan. After marrying Bridget in 1811, Sheridan, a soldier in the United States Army and part of the Detroit garrison, soon gave himself over to drinking and violent abuse to his wife. Sheridan's drinking usually dissipated what money the family could acquire, leaving Bridget without funds to support their two children.

Troubles between Bridget and Daniel also stemmed from Bridget's decision to obtain a tavern license for her house. One evening Daniel came home to find a stranger sitting in his house drinking spirits. Enraged, Sheridan proceeded to kick, beat, and abuse his wife's client, finally tumbling him outside into the street. Turning his wrath upon his wife, Daniel began beating her in earnest. When he picked up a club and seriously threatened her life, she escaped through the bar room to the home of James May. She later informed the Supreme Court through her attorney, George McDougall, that she feared for her life from abuse from her husband, and that she was "ready to prove to your Honors

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<sup>44</sup>Terr. Laws, IV, 84.

satisfaction, that he the said Daniel is raving Mad & distracted, and a proper subject for Bedlam."<sup>45</sup>

Upon examining the facts in this case, Woodward became convinced that Daniel was primarily to blame for the couple's difficulties. Daniel had written a confidential letter to his wife, who promptly turned it over to the high court. In this letter Daniel confessed that "that unfortunate accident was not produced thru any contemplated design or Mallicious forethought but the unguard[e]d effects of momentary passion. The frequent abuses and bad treatment I experience from the officers, together with the wrongs and impossitions of the Men, encouraged and countenanced by their officers, sours my temper in the highest degree the refliction of which renders me sometimes distracted."<sup>46</sup> In March of 1812 Woodward ruled that a divorce be granted to Bridget Sheridan. The court directed the plaintiff to renouce any business debts against her husband or his companions, in return for which Daniel was to pay his wife fifty dollars. Daniel was also assessed the cost of the suit.<sup>47</sup>

Difficulties between Americans and their British neighbors across the Detroit River were resolved occasionally by the Michigan Supreme Court. Constant problems to both American and British commanders were the deserters from both armies who crossed the Detroit River to seek sanctuary on the other side. There was no formal agreement between

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<sup>45</sup>Petition for Divorce from Bridget Sheridan, February 5, 1812, in Blume, Transactions, II, 381-383.

<sup>46</sup>Daniel Sheridan to Bridget Sheridan, Ibid., 383-384.

<sup>47</sup>"Supreme Court Transactions," I, 401-402.

England and the United States respecting the return of deserters, but there developed an unofficial "gentleman's agreement," that a search party from one side of the river would be assisted by the garrison officers on the other side.<sup>48</sup> The American civil population in Michigan was upset over this practice, and particularly by the British habit of employing Indians to apprehend British deserters. Acting Governor Griswold complained to Madison in 1805 that Indians were intercepting strangers and deserters between Detroit and the settlements to the south. He told Madison that some Americans were "fearful to pass on that road, particularly strangers."<sup>49</sup>

Friction between British and American authorities resulted from the desertion of two British soldiers from Fort Malden in December of 1805. Captain Adam Muir and Ensign John Lundie, together with several soldiers and Indians, left Malden in the hopes of apprehending the deserters. Muir's party met Thomas Nowlan, a deputy United States marshal traveling by boat from Detroit to the mouth of the River Rouge, and proceeded to search his vessel. Finally allowed to proceed, Nowlan arrived at Joseph Weaver's establishment on the River Rouge, where he again confronted the British officers. While all were enjoying breakfast, a British sentinel announced the approach of a canoe with two men in it. Suspecting that the craft contained the deserters, the British started in pursuit of it, leaving a guard behind. Meanwhile Morrison, one of

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<sup>48</sup>Woodford, Woodward, 81.

<sup>49</sup>Griswold to Madison, December 21, 1805, in MPHC, XXXI, 548-550.

the British deserters, walked into Weaver's store, presumably for breakfast, and was immediately seized by the remaining British guard. Outraged by the British action, Nowlan called on the other Americans present to assist him in taking Morrison into protective custody. After accomplishing this, Nowlan transported Morrison to Detroit and hid him at the home of Conrad Seek, a tailor.<sup>50</sup>

The British authorities at Malden attempted to secure Morrison's return from Detroit through the assistance of American officers Captain Henry Brevoort, Lieutenant Porter Hanks, and Captain Abraham Hull, the governor's son. These officers, discovering Morrison's hiding place, proceeded to the house of Conrad Seek. What followed was nothing short of comic opera. Armed with swords and pistols, the officers forced their way into Seek's home, placed a pistol to Morrison's head, and dragged him into the street. "Murder! Fire! Indians! was loudly vociferated from the throats of all the men, women and children that were in the house at the time," reported the Philadelphia Aurora.<sup>51</sup> People rushed from their houses with guns, swords, shovels, and barrels and buckets of water, looking for the Indians who were attacking, or for a roaring fire. Baker John Harvey, seeing Morrison overpowered, grabbed hold of him to prevent his capture, and in the process managed to tear off most of his clothes.

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<sup>50</sup>Statement of the Magistrates to Stanley Griswold, December 14, 1805, Ibid., 551-553.

<sup>51</sup>Philadelphia Aurora, November 10, 1806, quoted in Farmer, History of Detroit, 183-184. John Gentle is credited with the authorship of the article. The same day of this incident, a rumor had been circulated in Detroit that seven hundred Indians were lying in ambush in the woods, ready to massacre the inhabitants of Detroit.



Meanwhile, Seek had raised a crowd, which pressed in upon Muir and his prisoner. Muir, aware of the growing crowd, "presented his pistol to Morrison's naked breast, swearing that since he could not take him alive, he would have him dead. Morrison . . . struck the pistol to one side and, instead of killing Morrison, the ball went through the calf of his [Muir's] own leg."<sup>52</sup> The British officers were then placed under arrest for disturbing the peace.

Griswold expressed outrage to the British officials at Malden over the British intrusion on American soil. "I am under the painful necessity of informing you," Griswold wrote, "that I consider it, not only as an outrage upon the private rights and peace of our citizens, but as an insult upon our government, and an act of hostility against our nation."<sup>53</sup> Major Alexander Campbell denied authorizing the acts of Muir and Lundie, while complaining that the River Rouge incident was "greatly misrepresented." "A single, ignorant 'unarmed' soldier, I understand," Campbell retorted, "did seize on a thief and a deserter from this Post, but gave him up to a party of American citizens when demanded."<sup>54</sup> Campbell similarly denied any blame or authorization for the events at Detroit. He urged continued amicable relations between Britain and the United States. Campbell decided that if his officers had "violated the laws of the United States, to their justice I leave them."<sup>55</sup>

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<sup>52</sup>Ibid.

<sup>53</sup>Griswold to Alexander Campbell, December 16, 1805, in MPHC, XXXI, 553-554.

<sup>54</sup>Campbell to Griswold, December 19, 1805, Ibid., 554-555.

<sup>55</sup>Ibid.

Muir, Lundie, and Brevoort appeared before the Supreme Court in September of 1806 on a charge of disturbing the peace. The three were found guilty at a session held by Woodward and Bates. Muir was fined forty-four dollars and ordered imprisoned seventeen days; Brevoort was fined \$250 and sentenced to seventy-five days in jail. Lundie was fined \$8,880 and sentenced to six months imprisonment.<sup>56</sup> According to the Philadelphia Aurora, the decisions "were received, by the citizens, with a mixture of approbation and wonder;--of approbation, inasmuch as, collectively taken, they fully answered their expectations--but of wonder, as the offenders were so unequally dealt with, in view of the respective aggravation of their crimes."<sup>57</sup>

A short time after handing down these strict sentences, Woodward suspended the jail terms and reduced the fines to sixteen cents each! Apparently he felt that he had taught the British government a lesson and chose to dismiss the matter. Lieutenant Colonel Grant of Amherstburg, commenting on the change of sentence to British Military Secretary James Green, observed that the council in Detroit had decided that only a fine up to \$100 could be levied, and "Judge Woodward not concurring (As I am told) that the fine was sufficient to mark the sense he had of the outrage committed on their Government, changed the former sentence on the part of Captain Muir and Ensign Lundie to a few cents."<sup>58</sup>

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<sup>56</sup>"Supreme Court Transactions," II, 24-25. Lieutenant Hanks was fined fifty dollars and court costs.

<sup>57</sup>Philadelphia Aurora, November 20, 1806, quoted in Blume, Transactions, I, 59.

<sup>58</sup>Grant to James Gree, October 19, 1806, in MPHC, XV, 37-38.

Woodward had managed to express his outrage at the British interference in Michigan, while maintaining good relations between the two governments.

Slavery was another source of contention between Michigan's territorial officials and the British in Canada. A British law of 1793 provided that children of slaves owned by Canadians would remain in bondage only until they reached the age of twenty-five.<sup>59</sup> Woodward was brought face to face with slavery in the Territory when attorney Harris Hickman applied for a writ of habeas corpus on behalf of the Denison family--James, Scipio, Lizette, and Peter, Jr. These four were owned by a widowed British citizen named Catherine Tucker, who lived in the Huron District. Her husband, William, had purchased the parents of the Denisons in 1784. With the exception of Peter, Jr., all the children had been born before 1793. They decided to sue for their freedom under the British law.<sup>60</sup>

In dealing with the Denison case, Woodward realized that he was dealing with the general question of slavery in the territory. In no uncertain terms, the chief justice declared that "in this Territory slavery is absolutely and peremptorily forbidden. Nothing can reflect higher honor on the American government than this interdiction."<sup>61</sup> But while he expressed a repugnance to slavery in general, he found himself confronted with the necessity of upholding the law and the agreement

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<sup>59</sup>Woodford, Woodward, 85.

<sup>60</sup>A. B. Woodward: The Denison Decision, in Woodward Papers, BHC.

<sup>61</sup>Ibid.

with England in 1794, protecting the property rights of British settlers. As the Denisons constituted "property," they were to be considered possessions of the Tuckers.<sup>62</sup>

Hickman disagreed with Woodward's interpretation, claiming that the agreement with England in 1794 never intended property to mean "human property." Woodward countered by claiming that property was the "creature of civilized society," protected by law; it was both the "child of caprice" and the "victim of force." Magistrates and public officials, also the creation of civilized society, were bound by the trust and the known will of the nation or society delegating their power and authority. "The term property," Woodward pointed out, "is here used with a latitude the most extensive of which it can possibly be made susceptible; it is lands, houses, effects and property of every kind."<sup>63</sup> He admitted that if the condition, "slaves only excepted" had been added, doubt as to the nature of the law would not exist.

Woodward defended his interpretation of property in the Denison case by citing laws that existed in Michigan prior to American occupation. A French ordinance of 1709 had permitted French settlers to own slaves. When the British gained control, this property right was continued. Although the Michigan country was contracted to be ceded to the United States by the Treaty of 1783, Woodward insisted that it was not in fact ceded until the eleventh day of June, 1796. Until that date, British

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<sup>62</sup>For Woodward's views on this case, see also "Supreme Court Transactions," I, 65, 70-78.

<sup>63</sup>A. B. Woodward: The Denison Decision, in Woodward Papers, BHC.

law continued to be in effect. Thus, all slaves living on the 31st day of May, 1793, and in the possession of settlers in this territory on July 11, 1796, continued so for life. Children of slaves born after 1793, previous to the erection of Wayne County, would continue in servitude for twenty-five years, after which they would be free.<sup>64</sup>

The Supreme Court decided that as the Denisons were the property of the Tuckers before 1793, they could not be included in the twenty-five year clause. By Jay's Treaty of 1794, the Tuckers were confirmed in their possession, and accordingly the court ordered the Denisons restored to the Tuckers. Woodward pointed out that the Constitution made treaties part of the "supreme law of the land." "If a treaty duly ratified is in hostility with a local regulation previously made," he concluded, "the provision of the treaty is paramount and must prevail over the local regulation."<sup>65</sup>

Michigan's high court again considered the question of slavery in a case involving several runaway slaves from Canada. These slaves belonged to Matthew Elliott of Amherstburg and Richard Pattinson, a successful merchant of Sandwich.<sup>66</sup> Elliott was not popular in Detroit, but journeyed to that city to recover his slaves, who had been given shelter by Richard Smyth. Elliott retained Elijah Brush, who applied to the

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<sup>64</sup>Ibid.

<sup>65</sup>"Supreme Court Transactions," I, 70-78.

<sup>66</sup>Elliott was unpopular in Michigan because of his association with the British in the Revolutionary War. Concerning the loss of Elliott's slaves, Woodford observes that "there was an almost universal conspiracy among Detroiters to make certain their master did not recover them." Woodford, Woodward, 88.

Supreme Court for the return of the escapees. After an initial hearing before Woodward in October of 1807, Elliott was threatened by a mob upon leaving the courtroom. He was finally forced to seek refuge in the fort. A crowd later followed him to Brush's house and threatened to manhandle him. Richard Smyth, who was in the crowd, said that the assembly was "willing to Support the Constitution, but that if the Court decided the slaves of Mr. Elliott Should be restored, the Court should be tarred and feathered."<sup>67</sup> Brush finally persuaded the crowd to disperse. The next day Brush and Elliott were able to walk the streets of Detroit unmolested.

Woodward was upset over Elliott's treatment at the hands of the Detroit citizenry. He declared that Elliott had every right to be a suitor in the courts. While Elliott was undertaking that mission, he would be accorded the protection of the laws. Woodward confessed that he understood the popular feeling against Elliott, but urged Detroit citizens to "abstain from all illegal and unauthorized Violence."<sup>68</sup>

In October of 1807 a petition for the extradition of the runaway slaves came before Woodward's court. Elijah Brush contended that the property of one citizen accidentally found within the territory of another country was to be returned to the lawful owners. Similarly, according to the principles of common law, it was injurious to the lawful proprietor of any article to deprive him of or to withhold from him his property. Finally, Brush maintained that both the United States and

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<sup>67</sup>Affidavit of Elijah Brush, November 4, 1807, in Blume, Trans-  
actions, II, 215-218.

<sup>68</sup>Ibid.

Great Britain recognized slaves as property, and that "by the treaty we are bound to respect and protect the subjects of his Britanic Majesty in the full enjoyment and use of their lawful property as well as our own."<sup>69</sup>

In considering the first of Brush's arguments, Woodward conceded that according to the law of nations, countries should and did restore property when it was found accidentally within their borders. The case of property, however, was a different matter from that of persons. The murderer, the traitor, the deserter from military service were all received by other nations, and they did not hold themselves bound to restore them when demanded. "If it has been sometimes done," Woodward said, "it has been as a matter of courtesy from one nation to another. It is regarded as a matter of favor, not as a matter of right."<sup>70</sup>

Woodward denied that persons were the same as property at common law. They could become so only by particular statute, and the rights of persons were also protected by statute. Woodward ruled that "neither the principles of the law of nations or of the common law are strictly applicable to causes of this kind."<sup>71</sup> He reminded Brush that the Ordinance of 1787 stated that neither slavery nor involuntary servitude was to exist in the territory, except for the punishment of crimes. Only persons in the actual possession of British settlers within the territory

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<sup>69</sup>"Supreme Court Transactions," I, 112.

<sup>70</sup>Ibid., 113.

<sup>71</sup>Ibid. See also A. B. Woodward: The Pattinson Decision, Woodward Papers, BHC.

on July 11, 1796, or fugitives from lawful labor in some other state or territory had to be restored to their former owners or conditions.

Concerning the question of property, Woodward recognized that while Britain compelled her own subjects to restore to one another their respective slaves, she did not restore the slaves of the American master. Her laws did not provide for the restoration of the American military deserter, although she was always eager to reclaim her own. There was thus a want of reciprocity. "The principle which leads the American government to enforce the return of slaves from one part of the United States to another," Woodward decided, "ought not to be extended to other countries in the absence of reciprocal provisions."<sup>72</sup>

Woodward's decision in the Pattinson case demonstrated both his repugnance to slavery in Michigan and his determination to prevent the British from forcibly returning their slaves to Canada. He admitted that in the consideration of this case he had shown "how dangerous it is to admit even the smallest degree of injustice and oppression into a free government. It tends to demonstrate that nothing can be stable that is not just, that nothing can be morally harmonious and beautiful that is not perfectly consistent with rectitude."<sup>73</sup> Taking advantage of the lack of reciprocity between the two countries, the Denisons slipped across the border into Canada and lived freely for several years. They later returned to Detroit and spent the rest of their lives unmolested.<sup>74</sup>

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<sup>72</sup>"Supreme Court Transactions," I, 116.

<sup>73</sup>Ibid. A copy of this decision can also be found in MPHC, XII, 519-522.

<sup>74</sup>Woodford, Woodward, 90-91.



Michigan's high court handled eight cases dealing with Indians in the years before the War of 1812. Six of these involved crimes of a violent nature. One of the first cases to confront the court was that of Kiscacon, commonly called the "Chippewa Rogue." While the Supreme Court dealt with Kiscacon's case in 1805, the crime for which he was indicted was committed three years earlier. In March of 1802 he killed a Frenchman named Antoine Loson.<sup>75</sup> In September of 1805 the Michigan grand jury presented an indictment against Kiscacon for murder. It was not until July of 1807 that Territorial Marshal William Scott reported to the Supreme Court that he had successfully apprehended the fugitive. Kiscacon, however, never reached a Michigan jail. Scott reported that "in bringing him [Kiscacon] to prison, he was rescued from me by an Indian called Little Cedar, his son and other Indians unknown."<sup>76</sup>

Hull took an interest in Kiscacon's case in 1807. He informed Secretary of War Dearborn of the events surrounding the death of Loson, and related Kiscacon's escape from the authorities. Hull admitted that after the Indian's escape, "nothing since had been done on the Subject. His Father the little Cedar, is an influential Chief. Until very lately, he and all of his tribe have been unfriendly to the United States."<sup>77</sup> Because of the incident, Little Cedar had more recently expressed his good faith and friendship to the United States, and applied to the

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<sup>75</sup>Indictment for Murder for Kiscacon, September 19, 1805, in Blume, Transactions, II, 17-18.

<sup>76</sup>Statement of Marshal William Scott, July 31, 1807, Ibid., 19.

<sup>77</sup>Hull to Dearborn, December 28, 1807, in MPHC, XL, 240-241.

governor for the pardon of his son. Hull was in favor of pardoning Kiscacon. "I believe it would be attended with useful consequence," he told Dearborn; "Kish-cou-cough is himself an influential man."<sup>78</sup> The Supreme Court took no further action on the matter.

Another Chippewa named Wabouse came to trial before the Supreme Court in September of 1806, with justices Bates and Woodward in attendance. Wabouse had killed a man a few days earlier near Detroit. He was indicted for manslaughter, convicted, and sentenced to be "burnt in the left hand."<sup>79</sup> According to the account of this case in the Philadelphia Aurora, the "sentence of the court was, that he [Wabouse] should be branded in the hand with a 'cold iron,'--which sentence was solemnly carried into execution in the presence of the court--and the Indian bid depart for his own tribe."<sup>80</sup>

Murder, not manslaughter, was the indictment against Maccouse, a chief of the Chippewa Nation. Maccouse (also called "Michome" or "Michorice"), after killing one of his own people near Detroit, promptly reported his deed to Governor Hull. The Indian claimed that he had slain the deceased because he was a "bad man," a murderer of his own people. This man, he claimed, had even attempted to poison him. Hull

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<sup>78</sup>Ibid.

<sup>79</sup>"Supreme Court Transactions," I, 25.

<sup>80</sup>Philadelphia Aurora, November 20, 1806, quoted in Blume, Transactions, I, 67-68. See also Farmer, History of Detroit, 179. This is the only case of branding as a punishment appearing in the "Supreme Court Transactions." This particular sentence was later cited to prove that Woodward was unfit to be a judge. See Detroit Gazette, November 8, 1822.

later explained to Madison that Maccouse, "being at the head of the Nation, and by their laws and customs having all the powers of government vested in him, he considered that he only did his duty."<sup>81</sup> The Chippewa chief was subsequently arrested and placed in jail. In November of 1806 the grand jury returned an indictment for murder against him.<sup>82</sup>

Hull was clearly worried that the arrest of Maccouse might spark hostilities among the Huron River and St. Clair Indians. He informed Madison that Maccouse was a "very powerful chief," with a "very numerous family and connections." The governor admitted that "they have made some threats, but I think they will not dare to commit any outrage."<sup>83</sup> Hull suggested a Presidential pardon for the chief, but before it arrived, Maccouse had already been acquitted.<sup>84</sup>

An Indian named Nantamee was found dead in September of 1807 near Detroit. Authorities subsequently arrested an Indian named Totaganee, although Marshal Scott admitted serious doubts as to his being present when the crime was committed. Brought into court on a writ of habeas corpus, Totaganee was confronted by witnesses to determine his role in the death. The court record noted that "the court after hearing the whole testimony, and it appearing that the prisoner [Totaganee] had

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<sup>81</sup>Hull to Madison, November 13, 1806, in Mich. Terr. Papers, I, 63-64, RG59, NA.

<sup>82</sup>"Supreme Court Transactions," I, 26.

<sup>83</sup>Hull to Madison, November 13, 1806, in Mich. Terr. Papers, I, 63-64, RG59, NA.

<sup>84</sup>Hull to Madison, January 2, 1807, in MPHC, XXXI, 569-570.

been taken by Mistake, and the attorney general being present, and not requesting that the prisoner be bailed, he was discharged."<sup>85</sup>

Michigan's Supreme Court did not handle many cases dealing with Indians between 1806 and 1812. Those few cases that did come before the court usually involved a crime of violence, often the action of one Indian against another. There is little evidence that Indians appearing before the court were either harassed or deprived of their rights. In several cases, Indian defendants were either pardoned or dismissed from prosecution because of a lack of evidence. No Indians were executed for crimes by order of the court in this period.

Over fifty cases of assault and battery came before the Supreme Court between 1806 and 1812. This is not surprising, considering that Michigan was very much a frontier community. Petty quarrels and arguments among Detroit's inhabitants, occasionally fueled with a liberal amount of local "spirits," often resulted in brawls and fisticuffs.

The conduct of Richard Smyth, Detroit tavern owner and justice of the peace, is typical of that of Detroiters who appeared before the Supreme Court on charges of assault and battery. In April of 1808 Abijah Hull and James McCloskey of Detroit were assaulted and beaten by William and David Robinson of that city. Smyth, happening along, witnessed the assault. Instead of trying to prevent the two Robinsons from continuing their attack, Smyth encouraged them to continue, actually assisted them in the beating, and even prevented observers from intervening on behalf of Hull and McCloskey. The record does not show whether Smyth was

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<sup>85</sup>"Supreme Court Transactions," I, 32.

punished or not, but Attorney General Elijah Brush characterized Smyth's behavior as "offending against the peace and dignity of the United States and of this Territory."<sup>86</sup>

Perhaps the most interesting case of assault to reach the Supreme Court grew out of a quarrel between David Robinson of Detroit and George McDougall, justice of the peace for the district of Huron and Detroit. In April of 1808, Robinson refused to answer questions in a hearing conducted by McDougall. Robinson angrily charged that McDougall was a "traitor and had committed forgery and that he was a rascal a lyor a madman a knave and a fool. . . ."<sup>87</sup> The indictment against Robinson does not specify what the original disagreement was between the two men. McDougall subsequently charged Robinson with using abusive language to a judge.

Before Robinson came to trial on this first charge, he managed to vent his wrath on McDougall in such a way as to produce a second warrant for his arrest. One April night Robinson stopped by the home of Richard Smyth and asked him to go for a walk. Smyth later reported that when they reached Charles Curry's corner, Robinson "ran straight forward and jumped upon two 'Venetian Window Shutters' which was then lying in the middle of the street, opposite the said corner."<sup>88</sup> When Smyth finally asked Robinson what he was doing, the latter replied that he "had brought

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<sup>86</sup> Affidavit of Elijah Brush, September 26, 1808, in Blume, Transactions, II, 410-411.

<sup>87</sup> Statement of Elijah Brush, September, 1808, Ibid., 262.

<sup>88</sup> Affidavit of Richard Smyth, September 17, 1808, Ibid., 263-264.

McDougalls Window Shutters there and by God he would break them to pieces."<sup>89</sup> After persuading Robinson to stop, Smyth aided the distraught man in retrieving the broken shutters from the street.

Woodward was outraged at Robinson's behavior before McDougall. "The application of such language to a justice of the peace," Woodward complained, "especially when in the actual discharge of his functions as such, is little calculated to reflect lustre on the character of an orderly citizen."<sup>90</sup> While such abusive language directed at a private citizen might not constitute a basis for slander, it did so when addressed to an officer of the court in his official capacity. Woodward recognized that the Supreme Court and the district court had concurrent jurisdiction regarding the Robinson incident. He observed, however, that "the magistrates, in the exercise of their appurtenant discretion, have ruled the party to enter into recognizance for appearance at the Supreme Court, and a power does not seem to be possessed to change this course."<sup>91</sup>

In spite of his rather bizarre behavior, Robinson fared unusually well when he came to trial before the Supreme Court. He pleaded not guilty to the charge of using abusive language to a judge, and was acquitted by a jury.<sup>92</sup> Later the attorney general decided not to prosecute Robinson for his destruction of McDougall's venetian blinds.

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<sup>89</sup>Ibid.

<sup>90</sup>Opinion of A. B. Woodward, May 7, 1808, Ibid., 416-419.

<sup>91</sup>Ibid.

<sup>92</sup>"Supreme Court Transactions," I, 142-143.

It is evident that the Supreme Court, like the legislative board, operated in a climate of occasional abuse and disrespect. Michigan's frontier inhabitants retained many raw edges, and their behavior could periodically shock the finer sensibilities of an easterner like Woodward. "A public Officer is called upon here, not only to do his part of public duty," Woodward lamented, "but to defend himself privately against the low animosities of turbulent, uninformed men for so doing. He cannot walk or turn a corner in the streets, without being assailed by the most vulgar and insolent abuse."<sup>93</sup>

Woodward suffered personal abuse from Captain John Whipple because of his handling of a case involving James Peltier. Peltier had appealed to the Supreme Court to assist him in the recovery of a debt. Whipple, a relative of Peltier and a friend of Governor Hull, was upset when Woodward ordered a continuance instead of settling the case immediately. Whipple later accosted Woodward in the streets of Detroit, accused him of prejudice and called him a "damned rascal." This was too much for Woodward, who swore out a warrant charging Whipple with assault and ordering him to appear at the next Supreme Court session under a twenty-four dollar bond.<sup>94</sup>

The language of Woodward's observations on the Whipple assault is noteworthy. Woodward stated that "however a readiness to revenge a supposed injury or offense by the immediate application of personal

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<sup>93</sup> Woodward to the Legislative Board, November 5, 1806, in MPHC, XXXI, 566-568.

<sup>94</sup> Woodward's consideration of the warrant of John Whipple, June 30, 1808, in Blume, Transactions, II, 253-255.

force may at Sometimes be considered as tending to preserve in their vigor that Spirit and intrepidity which form natural and valuable parts of the human character," it was still not to be doubted that in "civilized Society, there are, and there ought to be, limits within which the passions Should not be permitted to intrude."<sup>95</sup> The departments of justice constituted such a sanctuary; all were in danger when that asylum was attacked to which all must flee as a last resort for peace and safety. While Woodward admired Whipple as a military man, he could not condone his disregard for civil authority. "In no part of the United States," Woodward warned, "is it, perhaps, more necessary to enforce a practical Convention that the military is at all times to be Subordinate to the Civil Power."<sup>96</sup>

Woodward's signing of the warrant against Whipple led many to believe that the chief justice would sit in judgment on his own case. Contrary to such expectations, Witherell and not Woodward handled the proceedings.<sup>97</sup> Whipple, pleading guilty as charged, was fined fifty dollars and costs. He was further required to post a bond of three hundred dollars to insure his good behavior for one year.<sup>98</sup>

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<sup>95</sup>Ibid.

<sup>96</sup>Ibid.

<sup>97</sup>C. M. Burton observes that Woodward's actions in this case "show that Woodward considered himself 'a law unto himself' whenever he was interested." MPHC, XXIX, 648. Campbell notes that this case was an instance when Woodward's conduct "reached such a pitch as to be beyond excuse." Campbell, Political History of Michigan, 250. The record shows, however, that when Whipple pleaded guilty and received his fine, Woodward was marked "absent." Blume, Transactions, I, 124.

<sup>98</sup>"Supreme Court Transactions," I, 180.



Governor Hull created a new sensation in the Whipple case by pardoning the defendant and revoking his fine. The Supreme Court failed to recognize Hull's action, observing that it doubted that the "executive Magistrate of this Territory possesses the power to pardon, as exercised in this case."<sup>99</sup> The Michigan grand jury was equally upset over Hull's action. In a memorial to Congress, they charged that the governor "unlawfully and without any power or right, attempted to pardon one of his particular favorites for a gross violation of the rights of the judiciary, leaving those who had been subject to punishment for other subordinate offenses, but who were not his favorites or partisans, to the regular course of the law."<sup>100</sup> Hull was forced to back down. His defense, that he had attempted to "leave everyone happy," must have sounded less than convincing to the Secretary of War. Hull declared that if he had exceeded his authority, it "was an error of the head and not of the heart."<sup>101</sup>

Woodward suffered another personal assault in 1811, this time at the hands of Whitmore Knaggs, a rough frontiersman and a follower of Hull.<sup>102</sup> Knaggs, appointed as assistant superintendent of Indians by Hull, felt a personal bond to the governor. When Woodward criticized Hull for allegedly encouraging Negro slaves to run away from their

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<sup>99</sup> Ibid., 245.

<sup>100</sup> Memorial to the President for the removal of Hull, in MPHC, VIII, 589-592.

<sup>101</sup> Hull to the Secretary of War, December 23, 1809, in Carter, Terr. Papers, X, 302-303.

<sup>102</sup> Knaggs had been kidnapped as a child and raised by Indians. Woodford notes that Knaggs' "return to civilized life did not remove any of his rough edges." Woodford, Woodward, 69.

Canadian masters, and for supplying them with arms, Knaggs set out to avenge his friend.<sup>103</sup>

George Wilson, a visitor from Massachusetts, described the eventual confrontation between Woodward and Knaggs in a deposition to the grand jury. Wilson, an eyewitness to the affair, was attending a party at the home of William Forsyth, at which Judge Woodward was also a guest. In the midst of the festivities, Knaggs, accompanied by John Anderson, showed up at the party and challenged Woodward to come out into the gallery. When Woodward did so, Knaggs proceeded to berate and threaten him. Knaggs finally struck Woodward on the chest, knocking him back against the bannisters. "They then went to it," Wilson said, "finally falling down at the end of the gallery."<sup>104</sup> When others of the party attempted to intervene, Anderson told them to "let them fight it out." Nevertheless, through the intervention of several of the male guests, Knaggs and Anderson were finally compelled to leave the field. Knaggs left in a bloody condition; Woodward went up with the guests for tea before departing.<sup>105</sup>

It was Woodward who issued the assault warrant for Knaggs. When Knaggs appeared at a preliminary hearing in the summer of 1811, he was

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<sup>103</sup>See MPHC, XXXVI, 278, concerning the affair between Knaggs and Woodward.

<sup>104</sup>Deposition of George Wilson, July 22, 1811, in Woodward Papers, BHC.

<sup>105</sup>Ibid. Robert Hankard, a deputy marshal, later reported to the court that before the assault both Anderson and Knaggs had been waiting for Woodward, Knaggs intending to "pull Judge Woodward out of his carriage and give him a good whipping." Record in the case of the United States of America against Whitmore Knaggs, July 25, 1811, in Blume, Transactions, II, 336.

astonished to find Woodward on the bench. Woodward had requested either Witherell or Griffin to issue the warrant; both had chosen to ignore the incident. Failing this, the chief justice concluded that "in matters where the public is concerned, and becomes the party injured, though the judge, or justice, may also, incidentally, sustain injury, yet he may act; taking care that he do not abuse the confidence reposed in him to the oppression of individuals."<sup>106</sup>

Knaggs finally came to trial in October of 1811. Woodward was present, but took no active part in the proceedings, allowing Witherell to preside. A jury found Knaggs guilty of assault and battery.<sup>107</sup>

Criticism continued to follow Woodward, as many believed that he had illegally tried his own assault case. In characteristic fashion, the chief justice continued to ignore such charges. "I flatter myself," he wrote Henry Clay, "that in repelling the assaults directed on myself, in subjecting to the course of justice the immediate offenders, and in defeating the malice of their ignominious authors and abettors, I have been so fortunate as to have alike sustained my personal and official rights, and the honor of the Republic which I serve."<sup>108</sup> Even Knagg's own counsel, Elijah Brush, had praise for Woodward's handling of the affair. Brush found that Woodward's general conduct as judge met his "decided approbation," and that the chief justice, "possessing a

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<sup>106</sup>Opinion of A. B. Woodward, Ibid., 339-341.

<sup>107</sup>"Supreme Court Transactions," I, 382-383.

<sup>108</sup>Woodward to Henry Clay, March 31, 1812, in Woodward Papers, BHC.

discriminating mind, and sound legal attainments, he [Woodward] has uniformly exhibited at all times, and on all occasions, a strict and undeviating integrity, assiduity, temperance, and urbanity, marked with a degree of politeness, not always to be met with in a judicial character."<sup>109</sup> Considering the comments Woodward usually provoked, Brush's words must have come as a surprise, indeed!

Michigan's Supreme Court before the War of 1812 often reflected the frontier surroundings in which it dispensed justice. Court was usually held in the private homes of Detroit citizens while occasionally meeting in the back room of a local tavern.<sup>110</sup> The hours of court sessions were not always regular, as the judges also had obligations to meet as members of the land and legislative boards, and as presiding judges of the various district courts.<sup>111</sup> Frequently, judges would be absent from Detroit or the territory, often hampering the work of the court. During judicial sessions, it was not uncommon for a surprised claimant to witness suitors and attorneys eating lunch, or passing a bottle around the room. Woodward and Witherell, never the best of friends, often sat with their backs to each other. On occasion Woodward would request the clerk to mark him absent, lean back in his chair, and fall asleep.<sup>112</sup>

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<sup>109</sup>MPHC, XXXVI, 249.

<sup>110</sup>See Farmer, History of Detroit, 179, on meeting places of the early Supreme Court.

<sup>111</sup>The obligation of Supreme Court justices to attend the district courts ended in 1807.

<sup>112</sup>Woodford, Woodward, 94.

While the court's atmosphere was occasionally informal, its attention to business was decidedly serious.

A significant power of the Michigan Supreme Court justices was their ability to resolve themselves into legislators at will. If the judges discovered the inadequacy of a particular statute for Michigan during a judicial hearing, they could recess the court and immediately convene as the legislative board, without moving from their chairs. After a suitable statute had been adopted to correct the deficiency, court could be reconvened and the proceedings continued. Such power was far from arbitrary, however, as the judges were restricted to adopting statutes from established states. Congress also retained the right to approve or disapprove such actions by the legislative board.

Michigan's judicial officers fulfilled their duties in these early years with both wisdom and competency. Woodward, the dominant figure on the bench, took the lead in writing decisions and in conducting the business of the court. Griffin, never a strong personality, usually sided with Woodward and supported his opinions. Bates, an able judge, worked well with Woodward. Campbell observes that his resignation was a "serious misfortune for Michigan."<sup>113</sup> Witherell, while often in opposition to Woodward, faithfully carried his share of the court load and provided a needed counterweight to the influence of the chief justice.

In spite of the problems of conflicting cultures, foreign threats, and a frontier community with severe economic disorders, Michigan's territorial officers erected a judicial system that successfully

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<sup>113</sup>Campbell, Political History of Michigan, 239.

maintained a climate of law and order. Blume observes that "the Supreme Court of the Territory, in spite of adverse conditions, managed to conduct its business in an orderly and fairly dignified manner."<sup>114</sup> It also brought justice to the citizens of Michigan.

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<sup>114</sup>Blume, Transactions, I, liv.

## CHAPTER IV

### HULL AND INDIAN AFFAIRS

Approximately ten thousand Indians resided in Michigan Territory when William Hull assumed the office of governor. The principal Michigan tribes included the Chippewa, the Potawatomi, the Miami, the Menominee, the Ottawa, the Huron, and the Wyandots. With the exception of the Wyandot and the Huron, which were Iroquoian, these tribes belonged to the Algonquian language group. The Chippewa, also known as the Ojibwa, occupied the Upper Peninsula. To the west of the Chippewa were the Menominee, whose hunting grounds extended into Wisconsin. The Ottawa occupied the upper two-thirds of the Lower Peninsula. The Miami lived in the southwestern part of Michigan, but were gradually pushed south into Indiana by the Potawatomi. The Huron lived in southeastern Michigan. For a time, the Wyandots lived near the western end of Lake Superior, but later moved to the region of the Detroit River.<sup>1</sup>

Hull expressed early optimism to Secretary of War Henry Dearborn concerning his role as Superintendent of Indian Affairs in Michigan. The Indians residing on the borders of Lake Erie, Sandusky, and on the Miami were frequent visitors to Detroit and had found it convenient to visit that post by water. Hull soon discovered that the business of the Indian

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<sup>1</sup>Dunbar, Michigan, 27-39; Gilpin, The Territory of Michigan, 39.

Department was "arduous and difficult," and that it required great patience and skill. At the same time he was confident that fair treatment would win the Michigan Indians to the American cause. "If in any way they obtain a promise favorable to them," he told Dearborn, "they never forget it, untill it is performed, and they never forgive a breach of it."<sup>2</sup> As long as the United States gave them what it had promised, they would be satisfied.

Dearborn outlined Hull's duties as Indian Superintendent in a letter to the governor early in 1806. Hull was authorized to hire a carpenter and a blacksmith to serve the needs of the Indians at Detroit. He was also to furnish the necessary iron and steel to keep their tools and weapons in good repair. He was instructed to hire a farmer to teach agriculture to the Indians, to furnish a few domestic animals for their use, and to induce Indian women to engage in domestic manufactures by providing them with cards, wheels, and other spinning supplies. He was to erect a council house at Detroit, thirty-two by twenty feet, for the accommodation of any visiting Indians. Expenses for these services and supplies were to be reported to the Secretary of War. Dearborn reminded Hull that the entire appropriation for the Indian Department was small and urged him to use moderation in his expenditures at Detroit.<sup>3</sup>

Hull wasted little time in acting on Dearborn's recommendations. Early in 1806 he reserved land not only for an Indian council house, but

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<sup>2</sup>Hull to Dearborn, September 19, 1805, in MPHC, XL, 58-59.

<sup>3</sup>Dearborn to Hull, January 28, 1806, in Misc. Letters Sent, WD, RG107, M370, roll 2, NA.



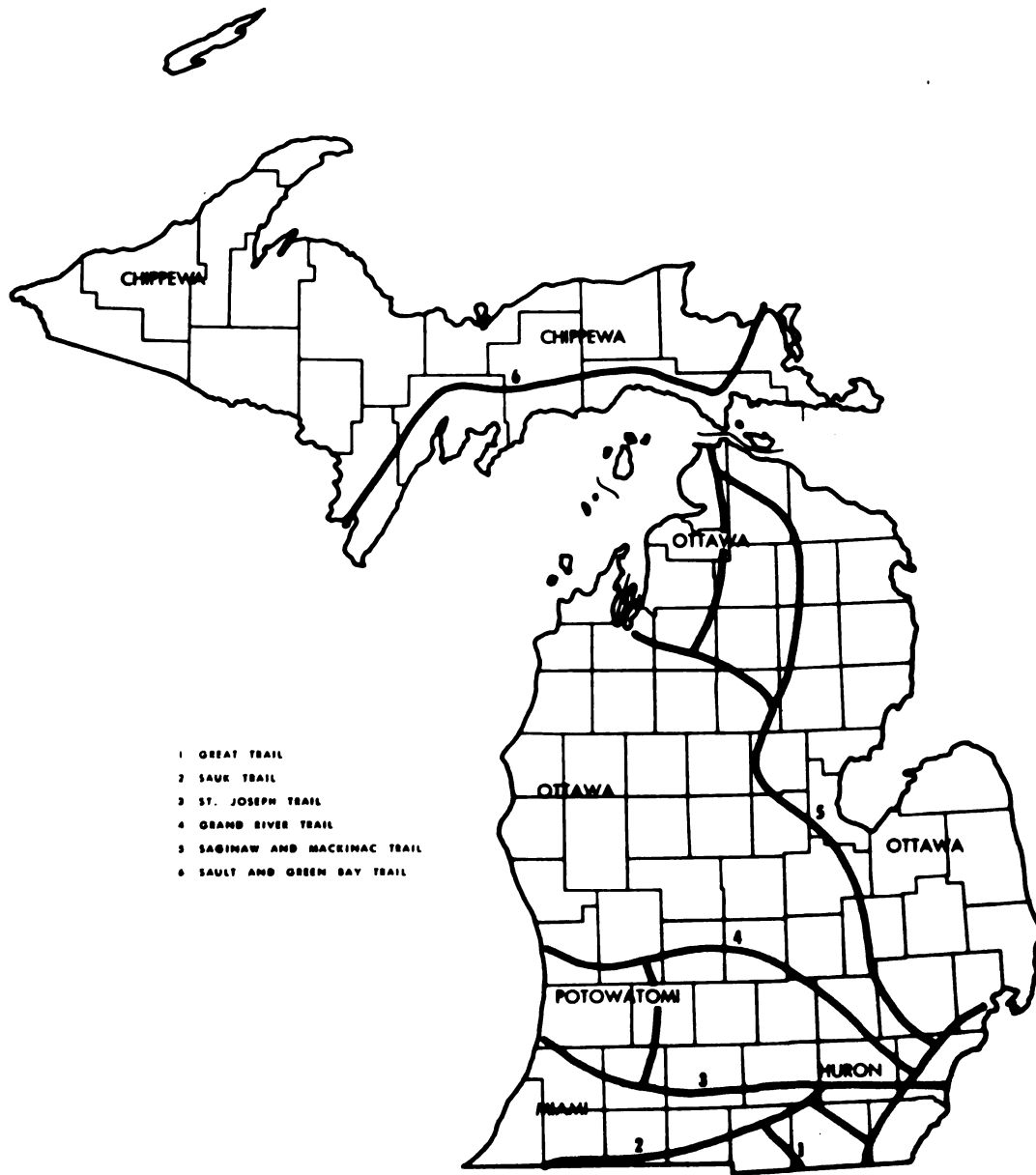


Figure 3. Major Indian Trails and Tribal Areas

Source: Richard Welch, County Evolution in Michigan (Lansing: Michigan Department of Education, 1972), 18.

also for a carpenter and a blacksmith shop. He also increased the length of the council house from thirty-two to forty-five feet, claiming that it would be a convenient place for Detroit residents to attend church and to hold court, as long as these activities did not interfere with the accommodation of the Indians. He estimated that the completed building would cost at least sixteen hundred dollars.<sup>4</sup>

Pleased with the progress on the Detroit council house, Hull turned his attention to finding competent workmen to aid and instruct the Indians in husbandry and mechanics. He hired a carpenter to make ploughs, harrows and other farming utensils, and a blacksmith to shoe horses and to mend farming implements. He also employed several private workmen to repair the weapons of the Indians. This was particularly important in Michigan because hunting constituted the major part of their living. Hull decided that it was an "essential service" to keep their guns, spears, and other weapons in good condition.<sup>5</sup>

Hull informed Dearborn in 1807 that he was making great progress in his Indian program at Detroit. Indians were building themselves comfortable houses and had even applied to the governor for windows, which he had promised to supply. In addition to building materials, he had also provided them with ploughs, harrows, carts, axes, chains, scythes, iron wedges, spears for fishing, horse traces, and a variety of other useful articles. Every gun and trap that had been brought in had been

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<sup>4</sup>Hull to Dearborn, February 20, 1807, in Letters Rec'd., WD, Main Ser., RG107, M221, roll 8, NA.

<sup>5</sup>Ibid.

repaired. He reminded Dearborn that such success could not be obtained without expense. The British had spent ten times as much as the Americans on presents for the Michigan Indians, but their gifts had been in the form of trinkets, guns, ammunition, and "Gew-Gaws." The American presents were more practical and would have a more lasting effect on the Indians. "An attention to Agriculture and the domestic arts will ameliorate their condition," Hull said of the Indians, "and make them more comfortable than any other pursuits."<sup>6</sup>

While pleased with Hull's progress in Indian affairs in Michigan, Dearborn was upset over the governor's practice of exceeding his appropriations. The Secretary was in favor of providing more articles to the Michigan Indians, but reminded Hull that he could not spend money that he did not possess. It was the usual practice of the War Department to receive estimates from the various territories concerning financial needs, and then to reduce them if they were too high. Dearborn warned Hull that if his Michigan program were carried into effect, it would require nearly all the funds appropriated for Indians in all parts of the United States!<sup>7</sup>

Hull was disappointed that Dearborn found his system too expensive. The governor pointed out that if the Indians were refused bread

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<sup>6</sup>Hull to Dearborn, May 15, 1807, in Letters Rec'd., WD, Main Ser., RG107, M221, roll 8, NA.

<sup>7</sup>Dearborn to Hull, June 16, 1807, in Letters Sent by the Secretary of War Relating to Indian Affairs, 1800-1824, Record Group 75, M15, roll 2, CHL. Hereafter Letters Sent by the Secretary of War Relating to Indian Affairs will be cited as Letters Sent, WD, Ind. Aff.

when they were hungry, and if they could not have tobacco when they longed for it, they would become dissatisfied and troublesome. The Michigan Indians greatly outnumbered the white settlers and their friendship was important to the future of Detroit. This friendship would be especially important if Indians outside of Michigan were to make war on the territory. Inexpensive presents had already secured the good faith of Indians in the Detroit vicinity. In defense of his actions, Hull reported that "scarcely an outrage has been committed by them on our People, since I have been in the Country."<sup>8</sup>

Dearborn believed that Hull was being manipulated by the Michigan Indians, whose needs arose chiefly from "idleness." He warned Hull that if Indians were continually fed without being encouraged to work, they would become even less industrious and depend primarily on begging for their subsistence. The Secretary further suspected that the Indians around Detroit were putting their favors "up for auction," and maintained that in any conflict between England and the United States, their presence would make little difference. He told Hull that they were continually short of supplies because they spent far too much time consulting together on hostile measures.<sup>9</sup>

Convinced of the importance of his Indian program, Hull continued to submit bills for supplies in excess of his appropriations. He believed that if the Indians around Detroit were not fed, they would be

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<sup>8</sup>Hull to Dearborn, September 9, 1807, in Letters Rec'd., WD, Main Ser., RG107, M221, roll 8, NA.

<sup>9</sup>Dearborn to Hull, April 30, 1808, in Misc. Letters Sent, WD, RG107, M370, roll 3, NA.

forced to plunder that post to survive. If his own government refused to support him, he would be compelled to tell the Indians to starve or to go to the British for aid. He told Secretary of War William Eustis in 1810 that he was unable to give them even half the provisions they needed to exist. In light of Michigan's defenseless position, this was not a sound policy.<sup>10</sup>

Eustis, like his predecessor, found it necessary to warn Hull to exercise greater economy in his Indian accounts. Hull, he noted, had received over four thousand dollars in 1810, a sum more than adequate to his needs. Eustis instructed him to determine what items could be reduced and what services could be dispensed with in order to prevent excessive spending. He recommended a cutback on the amount of coal being used for blacksmiths and the trading houses, and the dismissal of the sub-agent at Michilimackinac. He noted that over eight thousand rations of bread and seven thousand of meat had been issued to the Indians in October of 1809. "It is hoped & expected," he cautioned Hull, "that this may be avoided in future."<sup>11</sup>

In addition to providing supplies for the Indians, Hull also supported plans for their education. He was in favor of Gabriel Richard's proposal to teach Indian children around Detroit to read and write, and to master agricultural and mechanical skills. Dearborn told Hull in 1808 that the War Department would contribute such funds as it could afford

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<sup>10</sup>Hull to Eustis, January 25, 1810, in MPHC, XL, 310-311.

<sup>11</sup>Eustis to Hull, January 1, 1810, in Letters Sent, WD, Ind. Aff., RG75, M15, roll 3, CHL.

to such a project. As soon as Richard's school was in actual operation, the War Department would advance from two to four hundred dollars a year for the project.<sup>12</sup>

At his academy at Spring Hill, near Detroit, Richard planned to teach academic subjects, but placed his major emphasis on vocational skills. Here Indians would be encouraged to make their own bread, to raise hemp and flax, to build their own homes, and to take care of sheep and cattle which would provide them with both food and clothing. Girls would be taught how to spin wool, work a shuttle, and to take care of a home.<sup>13</sup> Richard outlined a program of rewards, proposing to present tools and household implements to those children proving themselves to be proficient scholars. He also proposed that at the end of an Indian boy's education, he would receive one cow, a pair of oxen or a horse, and a farm suitable in acreage to the degree of his educational progress. This program would help the Michigan Indians to realize that they were "all Brothers" and part of the same family.<sup>14</sup>

Hull commented on Richard's progress at Spring Hill in a report issued in 1809. He observed that he had given Richard over three hundred dollars, as well as provisions and implements for husbandry. He reported that Richard had had twelve Indian children under his instruction during

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<sup>12</sup>Dearborn to Hull, April 30, 1808, in Misc. Letters Sent, WD, RG107, M370, roll 3, NA.

<sup>13</sup>Woodford and Hyma, Gabriel Richard, 88.

<sup>14</sup>Memorial to Congress by Rev. Gabriel Richard, January 19, 1809, in Carter, Terr. Papers, X, 262-266.

the past six months and that they had made "good progress in learning."<sup>15</sup> The Indian school had received furniture, clothing, farm implements, more than a dozen spinning wheels, a "Spinning Jenny," an organ, timber, a surveying compass, several hundred books, and a printing press. Five or six persons had been employed to teach the children various skills. From his observations, both the Indian children and their parents appeared to be "very much satisfied" with their new condition.<sup>16</sup>

Richard's Spring Hill project came to an end in 1811 because of a shortage of funds. Hull informed Richard that he could not advance additional monies until he received authorization from Washington. Although Thomas Jefferson had been sympathetic with the Detroit priest's efforts to educate Indian children, Richard was unsuccessful in convincing President James Madison of the need for prompt financial assistance.<sup>17</sup> He was finally forced to give up the Spring Hill property, but refused to abandon his plans for Indian education. He told Jefferson that he planned to continue working with Indian children and that with patience and determination he would succeed in improving their condition.<sup>18</sup>

When Hull became governor in 1805, Indians had ceded only a small portion of their lands in Michigan to the United States. According to the Treaty of Greenville in 1795, the United States had received a strip of land six miles wide along the Detroit River between the Raisin

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<sup>15</sup>Certificate by Gov. Hull, November 9, 1809, Ibid., 291-292.

<sup>16</sup>Ibid.

<sup>17</sup>Jefferson to Madison, December 7, 1809, Ibid., 300-302.

<sup>18</sup>Woodford and Hyma, Gabriel Richard, 89.

River and Lake St. Clair, all of Mackinac Island, and small strips of land both north and south of the Straits of Mackinac.<sup>19</sup> One of Hull's most important duties as governor would be to obtain new lands from the Indians.

In 1806 Dearborn authorized Hull to meet with the chiefs of Indian tribes in southeastern Michigan to obtain further land cessions for the United States. The governor was instructed to restrict the number of chiefs attending as much as possible, but to be sure that the various nations were all represented. He was to secure the necessary articles for these negotiations and to hire commissioners at the rate of three dollars a day to treat with the Indians. Interpreters would receive one dollar a day. Curious whites were to be discouraged from attending and liquor was to be prohibited. Dearborn instructed Hull not to pay more than two cents an acre for Indian land, while noting that one cent an acre would probably be sufficient. Part of the sum agreed upon was to be paid immediately, and the rest in annual payments, partly in money and partly in goods. Hull was to bargain for a tract containing nearly five million acres in southeastern Michigan. He was permitted to draw on the War Department for necessary expenses, but was cautioned against unnecessary expenditures.<sup>20</sup>

Early the next year Hull began his preparations for meeting with the Indians. He informed Dearborn that he had decided to publicize

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<sup>19</sup>The text of this treaty can be found in Charles Kappler, ed., Indian Treaties, 1778-1883 (New York: Interland Publishing, Inc., 1972), 39-45. Hereafter cited as Kappler, Treaties.

<sup>20</sup>Dearborn to Hull, July 22, 1806, in Letters Sent, WD, Ind. Aff., RG75, M15, roll 2, CHL.



the forthcoming negotiations to give the Indians time for serious deliberation. He also promised to restrict the number of chiefs attending as much as possible and to spend only that amount "consistent with the public interests."<sup>21</sup> The governor anticipated some difficulty in restricting attendance, however, because it was an Indian custom to attend in large numbers. Jealousies would undoubtedly be aroused if some members were prevented from attending. Hull did not plan to meet with the Indians until June, as they were presently engaged in hunting, and would soon be occupied with making sugar and planting until the beginning of summer. Hull was confident of the importance of such negotiations. "If the treaty can be effected, and the lands can soon be opened for sale," he told Dearborn, "it will be of vast advantage to this Country, and likewise to the United States."<sup>22</sup>

Hull called for a meeting of the southeastern Indians in June south of Detroit to discuss the proposed treaty negotiations. The meeting was only partially successful, as the Indians in the Saginaw Bay area refused to attend, complaining that they had not received their annuity. This money had been withheld, chiefly to recompense settlers in that area who had suffered from theft by the Indians. While the Wyandots had sent representatives, they were also upset over their failure to receive annuities. In this case the money had been sent to Michigan, but it had been transferred in bills of large denominations. Hull was forced to

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<sup>21</sup>Hull to Dearborn, February 20, 1807, in Letters Rec'd., WD, Main Ser., RG107, M221, roll 8, NA.

<sup>22</sup>Ibid.

tell the chiefs that he could not pay them until he could get the money exchanged.<sup>23</sup> He later complained to Dearborn that this was a recurring problem in Michigan. It would be better if Michigan annuity payments were either sent in small New York bank bills or deposited in one of the Banks of Albany or New York, on which he could draw for necessary expenses.<sup>24</sup>

In spite of the absence of certain tribes, Hull was confident that the meeting had been useful in paving the way for a successful treaty negotiation. While he admitted to the presence of a "secret influence" among the Indians against any cession of their land, he confided to Dearborn that he had reason to believe a treaty would be concluded in a manner advantageous to the United States and satisfactory to the Indians. Over four hundred Indians had attended the meeting, including twenty chiefs. He had provided them with a concoction of ice water, sugar, and liquor, as well as tobacco bought at a "very extravagant price."<sup>25</sup>

Hull's efforts to secure a favorable treaty were postponed in August of 1807 because a war scare with Great Britain upset the Michigan frontier. He reported to Dearborn that many territorial inhabitants lived in fear of the Indians, believed to be greatly under the influence of the British. While many tribes did not seem to be openly hostile,

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<sup>23</sup>Hull to the Chiefs of the Wyandot, Delaware, and Munsee Nations, November 11, 1806, in MPHC, XL, 118-119.

<sup>24</sup>Hull to Dearborn, May 15, 1807, in Letters Rec'd., WD, Main Ser., RG107, M221, roll 8, NA.

<sup>25</sup>Hull to Dearborn, July 11, 1807, Ibid.

they were known to be treacherous, and had often been influenced by agents of the British Government. Hull still considered the conclusion of a favorable treaty a necessity to Michigan, but believed that it was his duty first to place Detroit and the territory in a state of defense against possible attack. "Our situation is critical," he told Dearborn, "and my determination is to do all in my power, in any event for safety and protection."<sup>26</sup>

Hull experienced some difficulty in dealing with the Indians when they finally assembled in November at Brownstown, on the river below Detroit, to discuss a treaty. The Shawnee Prophet was urging Michigan Indians to have no dealings with the whites. British agents from Malden continued to stir up trouble among the tribes. Frenchmen who had already settled within the tracts to be granted by the Indians, and fearful that their claims would not be recognized by the American government, attempted to disrupt the final negotiations. In spite of these obstacles, Hull felt confident that he would bring negotiations to a successful conclusion.<sup>27</sup>

The Treaty of Brownstown was the result of Hull's patient negotiation.<sup>28</sup> Representatives of the Chippewa, Ottawa, Wyandot and Potawatomi ceded an area to the United States that included roughly the southeastern one-quarter of the Lower Peninsula. In return, the United States promised to pay ten thousand dollars in money and goods

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<sup>26</sup>Hull to Dearborn, August 4, 1807, Ibid.

<sup>27</sup>Hull to Dearborn, November 4, 1807, Ibid.

<sup>28</sup>This treaty is also referred to as the Treaty of Detroit.

immediately, one-third each to the Chippewa and the Ottawa, and one-sixth each to the Potawatomi and the Wyandot. There was also to be an annual payment to the Indians, in the same proportions, of twenty-four hundred dollars. Two blacksmiths were to be assigned to the Indians for a period of ten years to assist them in agriculture. The Indians retained hunting and fishing rights on land ceded to the United States. Several small tracts of land within the Brownstown cession were designated as reservations for the Indians.<sup>29</sup>

It is evident that Hull was pleased with his part in the Brownstown Treaty. "As yet I have heard of no complaint from a single individual of the Indians, respecting it," he told Dearborn; "I believe a treaty was never made on fairer principles."<sup>30</sup> The governor, after carefully explaining the treaty, had given the Indians considerable time to examine its provisions. They had not been forced to accept the completed treaty. It had been the result of their own choice.<sup>31</sup>

Hull experienced treaty difficulties with the Wyandots in 1809. These Indians were dissatisfied with the refusal of the American government to grant them the lands between the Brownstown and Maguago Rivers south of Detroit. They claimed that General Anthony Wayne in the Treaty of Greenville had promised that area to them forever.<sup>32</sup> Hull attempted

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<sup>29</sup>Kappler, Treaties, 92-94.

<sup>30</sup>Hull to Dearborn, December 23, 1807, in Letters Rec'd., WD, Main Ser., RG107, M221, roll 8, NA.

<sup>31</sup>Ibid.

<sup>32</sup>Speech of the Principal Chiefs and Warriors of the Wyandot Nation to Governor Hull, September 30, 1809, in Mich. Terr. Papers, Fn-5, CHL.

to explain to them that they had given up claims to the land by later treaties, but the Indians disclaimed any such actions, saying they had been deceived. The governor told Secretary Eustis that the Indians in question were an "intelligent and industrious people," and more civilized than any of their neighbors. In an effort to satisfy them, he recommended that they be granted nearly twelve thousand acres below the Huron River, while retaining preemptive rights for the United States. He was sure that in less than fifty years any remaining Wyandots would wish to remove from the area. Hull reminded Eustis that the Wyandots were one of the most important tribes in Michigan and that their friendship was important to the United States. It was therefore expedient to take all reasonable steps to satisfy them.<sup>33</sup>

The influence of unscrupulous whites on the Michigan Indians occasionally threatened Hull's efforts to pacify and to civilize them. Traders around Detroit often found Indians ready to buy their whiskey. Conditions were often similar to the south. Reverend Joseph Badger wrote to Hull from Lower Sandusky in 1805 that unprincipled whites had upset the Wyandots in his area with their bad habits and disgraceful behavior. Many of these whites were running away from their creditors and they hoped to make a profit by duping the unsuspecting Indians, who had been exposed to "every vice, drunkenness, "lewdness, Gambling" and the "most blasphemous profanity."<sup>34</sup> If such influences were not removed, any missionary work among the Indians would be in vain.

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<sup>33</sup>Hull to Eustis, May 9, 1811, in Carter, Terr. Papers, X, 357-358.

<sup>34</sup>Joseph Badger to Hull, July 30, 1805, in MPHC, XL, 63-65.

Trouble between Indians and whites occasionally erupted in Detroit in consequence of Hull's practice of having Indian repairs made within the garrison. Indians bringing in tools and weapons to be repaired often managed to obtain spirits from local traders. Thus fortified, they often became problems to the soldiers of the fort. Hull informed Eustis in 1810 that drunken Indians had assaulted members of the Detroit garrison and that these soldiers had been forced to fight back in self-defense. Several Indians had been wounded as a result.<sup>35</sup> Until he could find suitable workmen outside the garrison, Hull continued the program of Indian repairs, hoping for a minimum of friction between the two groups.

The Wyandots complained to Hull in 1811 of white intruders on lands still reserved to them. These Indians had ceded land to the United States along the Huron River south of Detroit. Even though this land had not been surveyed or put up for sale, white settlers had already invaded the area. Several Wyandot chiefs reminded Hull that it had been the custom for such lands to remain areas for Indian hunting and fishing until surveyed and disposed of by the United States. The United States had guaranteed these hunting and fishing rights by treaty. If the American government did not intervene on their behalf, the Indians threatened to burn the settlers' houses.<sup>36</sup>

Hull had mixed feelings regarding the white settlers in the disputed area. He considered them a "well-disposed people" who were

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<sup>35</sup>Hull to Eustis, May 25, 1810, in Letters Rec'd., WD, Main Ser., RG107, M221, roll 37, NA.

<sup>36</sup>Hull to Eustis, April 25, 1811, in Carter, Terr. Papers, X, 355-356.

willing to pay for the land, and admitted that their settling there would be "useful to the Country."<sup>37</sup> At the same time he had neither encouraged settlement there nor promised these people they had any chance of staying. In May he finally informed them by proclamation that they were violating the law by moving into an area still reserved to the Indians. He also reminded them that the President could use force if necessary to secure their removal.<sup>38</sup>

Occasionally complications between Indians and whites in Michigan arose because certain tribes wished to reward a particularly deserving white man. Chiefs of the Chippewa, Ottawa, Wyandot, and Potawatomie nations submitted a petition to Congress requesting that a three-mile-square tract of land on the Miami River be awarded to Dr. William Brown of Detroit "as a compensation to him for his past services, as also to enable him to continue those valuable services to us and our children hereafter."<sup>39</sup> These Indians recognized that under United States law they were prevented from selling or otherwise disposing of any of their lands to an individual, and therefore wished to cede the tract in question to the American Government, with the understanding that it subsequently would be turned over to Brown.<sup>40</sup>

Hull was unsuccessful in his efforts to assist these Indians on behalf of Brown. He informed the chiefs that it was not within his

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<sup>37</sup>Ibid.

<sup>38</sup>Proclamation of Governor Hull, May 1, 1811, in MPHC, XL, 334-335.

<sup>39</sup>Petition to Congress by the Chippewa and Other Nations, November 16, 1808, in Carter, Terr. Papers, X, 242-243.

<sup>40</sup>Ibid.

power to grant their request, but did consent to write to Congress on the matter. In a letter accompanying the Indian petition to Washington, he told Congress that these chiefs were sincere in their request and considered the grant to Brown a "debt of Justice for past services," and a means of insuring his future help.<sup>41</sup> While the Indians appreciated the governor's efforts on their behalf, Congress was not impressed; the petition was rejected by the Committee on Public Lands in 1810.

Despite his belief that assistance and fair treatment would eventually win over the Michigan Indians to the American side, Hull constantly feared that some outside influence would turn them against the white settlements. Captain Josiah Dunham at Fort Michilimackinac warned him in 1807 that there appeared to be an "extensive movement" among the Indians in his area, which seemed to carry with it a good deal of the "dark and mysterious." Belts of wampum were circulating rapidly from one tribe to another and a warlike spirit was in the air.<sup>42</sup> The news was also ominous from Green Bay. Justice of the peace Charles Reaume informed Hull that same year that the Indians in his area were "very badly disposed towards the Americans at the different posts."<sup>43</sup> Many appeared engaged in preparing for war against the American forts.

The Shawnee Prophet, the brother of Tecumseh, was an important influence in keeping the Michigan Indians in a continual state of agitation during Hull's administration. The Prophet claimed that the "Master

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<sup>41</sup>Certificate of Governor Hull, November 21, 1808, Ibid., 243-244.

<sup>42</sup>Josiah Dunham to Hull, May 20, 1807, in MPHC, XL, 123-126.

<sup>43</sup>Charles Reaume to Capt. Dunham, June 4, 1807, Ibid., 136-137.



of Life" had appeared to him in a trance, and had granted him the power to cure diseases and to evade death. The Prophet had been instructed to tell his followers to forsake the food, drink, clothing, and customs of the white man. Indians were to refuse to sell any more of their land. Any marriage between an Indian girl and a white man was to be regarded as a deadly sin. The Prophet warned that only through a strict observance of Indian customs and law could his followers hope to become a great people.<sup>44</sup>

Dearborn suspected that British influence was behind the growing popularity of the Prophet in Michigan. He informed Hull in 1807 that "many of the Sentiments expressed in the talk of the new Prophet are evidently dictated by some other hands or hearts than those of mere Savages."<sup>45</sup> He advised Hull to be on his guard, and to store enough provisions at Detroit for a force large enough to repel any surprise attack. The governor was also to ascertain British troop strength in nearby Canada, as well as the number and size of cannon in their fortified positions. This information was to remain confidential and was to be sent to the War Department as soon as Hull had assembled it.<sup>46</sup>

The British war scare in 1807 excited fears in many Michigan inhabitants that the Indians would soon attack Detroit. In July a group

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<sup>44</sup>Dunbar, Michigan, 201-202; Glen Tucker, Tecumseh: Vision of Glory (New York: Bobbs-Merrill Company, Inc., 1956), 35-92. Hereafter cited as Tucker, Tecumseh.

<sup>45</sup>Dearborn to Hull, July 30, 1807, in Misc. Letters Sent, WD, RG107, M370, roll 3, NA.

<sup>46</sup>ibid.

of settlers adopted a resolution declaring that any Indian attack upon the settlements would be considered as incited by the British Government. If such an attack came, Michigan residents would take action not only against the Indians but also against the British across the Detroit River.<sup>47</sup> Exactly what action these settlers planned to take was not specified. Hull warned Dearborn in August that many Michigan residents were in a "high state of alarm," primarily from fears of an Indian attack and the belief that the United States was on the eve of a war with Great Britain.<sup>48</sup> He informed the Secretary that he was already building new stockades and blockhouses for Detroit, but complained that the post remained in need of stronger defenses.

While the threat of war with Britain soon subsided, British influence among the Indians continued in Michigan. Many tribesmen had journeyed to the British post of Malden to confer with the military, who had urged them to remain there. In November alone, after visiting the British, nearly eight hundred had stopped at Detroit to see Hull. These Indians had received presents of food, clothing, guns, and ammunition from the British, and they expected the same treatment from the Americans. With his limited budget, Hull was often unable to satisfy their wants. He told Dearborn that while he had been as generous as possible, his presents did not begin to compare in value to those of the British.

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<sup>47</sup>Resolutions Passed for the Protection of the Territory of Michigan, July 25, 1807, in MPHC, XL, 163-164.

<sup>48</sup>Hull to Dearborn, November 24, 1807, Ibid., 169-171.

Nevertheless, it was important for him to continue to give the Indians gifts, for it was better to "feed them than fight them."<sup>49</sup>

In an attempt to maintain friendly relations with the Indians, Hull addressed members of the Ottawa and Chippewa Nations at Michilimackinac in August of 1809. He emphasized that his purpose in coming was not to ask them to sell their lands but to protect them in the peaceable enjoyment of them. He promised that any white man who had made encroachments on the Indian lands would be removed, and injuries would be redressed. In the future, white men would not be allowed in Indian country without permission. Hull distributed gifts of food and clothing, medals for Indian leaders, and American flags to be flown in the villages.<sup>50</sup>

While at Michilimackinac, Hull attempted to interest the northern Indians in the pursuits undertaken by their brothers to the south. Instead of hunting, fishing, and trapping, southern tribes were engaging in the cultivation of crops. He pointed out that these southern Indians were warmly clothed, lived in comfortable homes, had barns filled with the produce of the earth, and possessed "all necessities, and indeed the comforts of life."<sup>51</sup> The addition of agricultural skills to those of hunting would make the lives of the northern Indians even more productive.

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<sup>49</sup>Hull to Dearborn, November 24, 1807, in Letters Rec'd., WD, Main Ser., RG107, M221, roll 8, NA.

<sup>50</sup>Hull's Speech to the Ottawa and Chippewa Nations at Michilimackinac, August 28, 1809, in MPHC, VIII, 567-571.

<sup>51</sup>Ibid.

"Cultivate the Earth," Hull advised them, "and you are as sure of produce as you are that the seasons revolve."<sup>52</sup>

Hull warned the northern Indians of the dangers of being influenced by outside forces. He urged the Ottawa and the Chippewa to cease their "ridiculous pilgrimages" to the one who styled himself a prophet. Any who had made such a trip only demonstrated their sufferings, their poverty, and their ignorance. Similarly, the British were not to be looked to as brothers. Once they had ruled the land, but their time had passed. Many living Indians bore the scars from British wars in which they had fought with no interest and no reward. Hull warned that "trifles and gew-gaws" were the only rewards for the best blood of the Indian nations. The American Father would look after his children. He did not ask them to shed their blood in his battles; he was strong enough to fight them without Indian assistance.<sup>53</sup>

As Indian unrest in the territory continued to grow, Hull issued similar warnings to southern Indians assembled outside of Detroit in 1810. He reminded them that many Michigan Indians had been persuaded to make the arduous journey to the Wabash to listen to the empty promises and false hopes of the Shawnee Prophet. Many of these died from hunger and fatigue, while those who did return had found only misery and

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<sup>52</sup>Ibid.

<sup>53</sup>Ibid.

distress. Such pilgrimages would only bring hardships to any foolish enough to undertake them.<sup>54</sup>

Hull expressed the hope that the Michigan Indians would remain quiet and satisfied, and he labored to reduce the threat of outside influences. He continued to give presents to Indians returning from British forts to counteract the English influence. He also continued to speak against the doctrines of the Shawnee Prophet. Even with his efforts for peace, Hull realized that a single spark could ignite an Indian war against the settlements. He warned Eustis that if Indian trouble broke out in any part of the country, it would immediately spread to other areas. If this occurred, Michigan would be in a defenseless position.<sup>55</sup>

Michigan residents, alarmed over growing Indian hostility, petitioned Congress in 1811 for assistance. Their memorial warned that if the Indians became "gratified with the taste of blood," they would be impossible to control. Even the tenderest infant would not be safe from the stroke of the relentless tomahawk. The population of the territory, including French, British, and American, white and black, was under five thousand. There were only two garrisons--one at Detroit with ninety-four men, and one at Michilimackinac, with seventy-nine men. In addition, there was a "double frontier" in Michigan--the British

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<sup>54</sup>Speech of Governor Hull to Different Nations, September 3, 1810, in Lewis Cass Papers, Clements Library, University of Michigan, Ann Arbor. Hereafter Clements Library will be cited as CL.

<sup>55</sup>Hull to Eustis, July 12, 1810, in Letters Rec'd., WD, Main Ser., RG107, M221, roll 37, NA.

were on one side, and the Indians were on the other. Every individual house was a frontier--no one farm was covered by another in the rear of it. "The inhabitants are so dispersed," these petitioners lamented, "that, to assemble one hundred men, upon any one spot, on a sudden nocturnal notice, is physically impossible."<sup>56</sup> If Michigan was to continue in peace and security, she would need additional garrisons.

Hull's attempts to keep the Michigan Indians at peace eventually proved futile. As the threat of hostilities with Britain increased, he was more acutely aware of the potential Indian danger to the territory. He warned Eustis that if war with England came, the Indians would be excited to hostility against the United States, and the northern frontier would be the first object of attack.<sup>57</sup> Upset over the defenseless state of Detroit and the growing Indian menace, Hull journeyed to Washington in October of 1811 to seek assistance for Michigan. When he finally returned the following year, he marched at the head of an army, determined to subdue by force an Indian population he had been unable to win by friendship.

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<sup>56</sup>Petition to Congress by Michigan Inhabitants, December 27, 1811, in Am. State Papers, Indian Affairs, I, 780-782. Woodward was the principal author of this petition.

<sup>57</sup>Hull to Eustis, May 31, 1811, in MPHC, XL, 335-336.

## CHAPTER V

### MICHIGAN AND THE WAR OF 1812

Michigan Territory in 1812 was not prepared to become involved in any war between England and the United States. Its population, still principally French in origin, was under five thousand, and was scattered throughout the territory. Communications between Detroit and the settlements to the south were severely restricted by distance, Indians, and the "black swamp." The Michigan militia was considered by many to be an ineffective force should hostilities with the British break out. Acting governor Reuben Attwater warned Secretary Eustis late in 1811 that Michigan militia men could not be compared to those in New England for fighting skill and dedication. If war came to Michigan, there would not be an adequate military force to defend the territory.<sup>1</sup>

Hull expressed fears concerning Michigan's weakened condition to Eustis while in Washington to secure aid for the territory. He told the Secretary that there were fewer than one hundred regulars at Detroit, while the British had nearly one hundred men at Amherstburg and another fifty at St. Joseph's Island, at the mouth of the St. Mary's River. Two armed British ships controlled Lake Erie. There were

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<sup>1</sup>Reuben Attwater to Eustis, December 15, 1811, in MPHC, XL, 355-356.

nearly fifty thousand Canadians that could possibly be brought to bear against Michigan. Finally, many of the Indians in Michigan and Canada had more reason to favor the British rather than the American cause. Hull warned Eustis that "the British force, which can be brought to operate against us, in the Territory, is more than ten to one, without including the Indians."<sup>2</sup> If war with England did come, the British would attempt to take possession of Michigan by gaining the assistance of the Indians there. Considering Michigan's defenseless state, he concluded that it would "be in their power to do it."<sup>3</sup> He called for sufficient American naval vessels to control the Great Lakes. He also maintained that Detroit was the logical and most strategic place to station more regulars; if war with Britain came, they could move rapidly against Upper Canada.<sup>4</sup>

The War Department considered Hull the logical choice as commander on the Detroit front, and commissioned him brigadier general in April. Upon receiving his orders, he left for Dayton, Ohio, to assume command of three untrained regiments of Ohio militia, under Colonels Duncan McArthur, James Findlay, and Lewis Cass. The strength of these three regiments was nearly fifteen hundred. Hull then marched his forces to Urbana, Ohio, where he was joined by Lieutenant Colonel James

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<sup>2</sup>Hull to Eustis, March 6, 1812, Ibid., 362-368.

<sup>3</sup>Ibid.

<sup>4</sup>Ibid. Gilpin notes that "without sufficient provisions, control of Lake Erie, or more men--any one of which could have saved him--he [Hull] was destined to lose." Gilpin, The War of 1812 in the Old Northwest (East Lansing: The Michigan State University Press, 1958), 30. Hereafter cited as Gilpin, The War of 1812.



Miller with the Fourth United States Infantry, composed of about five hundred officers and men.<sup>5</sup>

Hull's immediate objective was to reinforce Detroit, which necessitated a northward march of nearly two hundred miles through wilderness and Indian country. He also planned to leave a chain of garrisons at intervals along the way to defend his line of communications and to protect the territory from both the British and the Indians. Problems arose when the Ohio militia refused to move until they had been paid. Hull, who had received no orders to pay the men, ordered them to march. When one company refused to obey the call he ordered a unit of regulars to force them to comply. In two weeks the force reached the Rapids of the Miami.<sup>6</sup>

Unaware that war had already been declared, Hull committed a blunder on the Miami he was later to regret. He chartered the schooner Cayauga and another small craft to sail to Detroit with a cargo of sick soldiers, officers' wives, and medical supplies, as well as his personal baggage and official correspondence. When the Cayauga was off Fort Malden, the British captured her, along with Hull's orders and military papers. The British had already learned of the declaration of war. The second vessel arrived safely at Detroit.<sup>7</sup>

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<sup>5</sup>Fred Hamil, Michigan in the War of 1812 (Lansing: Michigan Historical Commission, 1960), 8-10. Hereafter cited as Hamil, The War of 1812.

<sup>6</sup>Gilpin, The War of 1812, 47-48; Harry L. Coles, The War of 1812 (Chicago: The University of Chicago Press, 1965), 45-47.

<sup>7</sup>Hull to Eustis, July 7, 1812, in MPHC, XL, 402-403.

Three days after his arrival at Detroit, Hull received a letter authorizing a move against Fort Malden. Eustis told him that if he had enough men to attack the British without leaving Detroit in an exposed position, he should take possession of Fort Malden and extend his conquests "as circumstances may justify."<sup>8</sup> Hull recognized that the British controlled the Great Lakes, and that he lacked sufficient carriages for his artillery. At the same time, the eagerness of his officers for an attack on Canada was an important factor in persuading him to undertake the venture. He began preparations for a movement across the river.<sup>9</sup>

Early in July Hull crossed the Detroit River at Belle Isle without opposition to begin an invasion of Canada. Instead of moving on Fort Malden, less than twenty miles away, he decided to establish his headquarters at Sandwich and await the construction of his gun carriages. In the meantime, he attempted to win over the local population. In a rather high-sounding proclamation, he promised to emancipate the Canadians from their "Tyranny and oppression," while protecting their persons, property, and rights. He also warned that any white man found fighting at the side of an Indian would suffer instant destruction. Anyone who continued to incite the Indians against the United States risked a "severe and relentless system of retaliation."<sup>10</sup>

Hull's pacification program experienced some early success. Many British militiamen decided to return home, while others deserted

<sup>8</sup>Eustis to Hull, June 24, 1812, Ibid., 397.

<sup>9</sup>Gilpin, The War of 1812, 73; Coles, The War of 1812, 47.

<sup>10</sup>Proclamation of General Hull, July 13, 1812, in MPHC, XV, 106-107.

to the American army.<sup>11</sup> There was also a noticeable effect on the Michigan Indians. While in Canada, Hull informed Eustis that the size of his command and his bold move into Canada had caused many Indians to desert the British cause and to return to their homes.<sup>12</sup> Even the British General Isaac Brock recognized Hull's success in stirring up the local population. He informed Sir George Prevost, Governor-General of Canada, that Hull's "insidious proclamation" had made a great impression on the minds of the people. "In fact a general sentiment prevails," he told Prevost, "that with the present force resistance is unavailing . . . ." <sup>13</sup>

While Hull remained inactive at Sandwich, problems of supplying his army and Detroit began to plague him. Since the British controlled the Great Lakes, supplies had to travel overland from Ohio, along the same route taken by Hull in his march to Detroit. Early in August Tecumseh and a band of warriors severed Hull's line of communications at Brownstown. Hull dispatched Major Thomas Van Horne with about two hundred soldiers to reopen the southern route. Near Brownstown, Tecumseh with twenty-four warriors ambushed Van Horne's force, killing eighteen and driving them from the field in panic. The road to the south remained closed.<sup>14</sup>

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<sup>11</sup> Hamil, The War of 1812, 12; Coles, The War of 1812, 47-48.

<sup>12</sup> Hull to Eustis, July 14, 1812, in MPHC, XL, 413-415.

<sup>13</sup> Isaac Brock to George Prevost, July 20, 1812, Ibid., XV, 115-116.

<sup>14</sup> Gilpin, The War of 1812, 96-97; Reginald Horsman, The War of 1812 (New York: Alfred A. Knopf, 1969), 37-38.

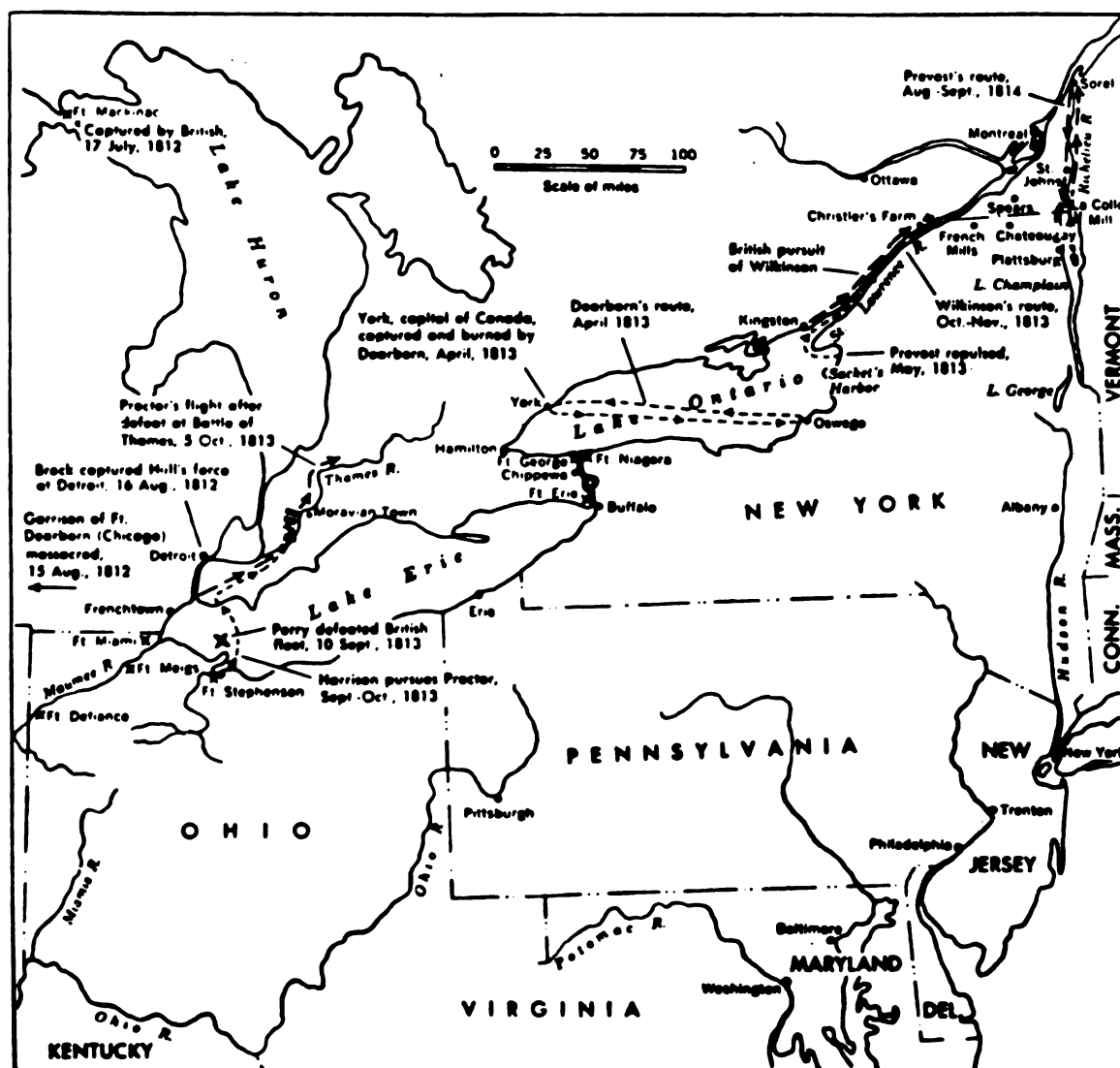


Figure 4. War of 1812, Northwest Territory

Source: Major James Ripley Jacobs, USA, Ret., and Glen Tucker, The War of 1812 (New York: Hawthorn Books, Inc., 1969), 49.

By early August Hull had apparently abandoned any plans for an attack on Fort Malden. Van Horne's defeat had destroyed chances for supply from the south, and had demonstrated the unreliability of the militia. Without supporting artillery, a frontal attack on the British fort would be impossible. Hull had learned that no attack would be made against the British at Niagara, and that General Brock was proceeding westward with reinforcements for Malden. Perhaps most distressing was the news that Fort Michilimackinac had fallen. Hull informed Eustis that he had "every reason to expect, in a very short time, a large body of Savages from the north, whose operations will be directed against this Army."<sup>15</sup> He decided to recross the river to Detroit to attempt to reopen his supply lines.

While Hull fortified his position at Detroit, he sent Lieutenant Colonel Miller south with a force of over six hundred men to open the supply route to Ohio. A British force of about one hundred and fifty regulars and two hundred and fifty Indians waited in ambush for Miller's troops at Monguagon, fourteen miles south of Detroit. This time the American force stood their ground. The enemy was driven back, with over one hundred killed and wounded. Miller's force suffered over eighty casualties. Instead of proceeding south to the River Raisin, where Captain Henry Brush and a small detachment waited with supplies, Miller encamped and sent a runner to Detroit for assistance. Hull finally decided to recall Miller's force to Detroit. He had made two unsuccessful attempts to open a passage to the south,

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<sup>15</sup>Hull to Eustis, August 4, 1812, in MPHC, XL, 433-435.

and his fears of complete encirclement continued to grow. These fears were increased with General Brock's arrival at Malden in the middle of August.<sup>16</sup>

Hull made a final attempt to reach the needed supplies at the River Raisin. He ordered Cass and McArthur to lead a party of about four hundred men south by a back trail. Hull evidently believed that the British would not attack Detroit, and that the urgent need for provisions justified the absence of so large a force from the American post. It is also probable that he suspected Cass and McArthur of leading a movement to depose him, and was glad to see them gone from Detroit. Cass later admitted to Eustis that "we . . . determined in the last resort to incur the responsibility of divesting the General [Hull] of his command. This plan was eventually prevented by two of the Commanding officers of regiments being ordered upon detachment."<sup>17</sup>

On August 15 General Brock demanded that Hull surrender Detroit. He told the American commander that he did not wish to join in a "war of extermination," but warned that the hundreds of Indians who had swelled the ranks of his army would be beyond his control the moment the battle began.<sup>18</sup> In spite of this threat, Hull's answer was firm and direct. "I have no other reply to make," he told Brock, "than to inform you, that I am prepared to meet any force, which may

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<sup>16</sup>Coles, The War of 1812, 50-51; Gilpin, The War of 1812, 99-104.

<sup>17</sup>Cass to Eustis, September 10, 1812, in MPHC, XL, 477-485.

<sup>18</sup>Brock to Hull, August 15, 1812, Ibid., 451.

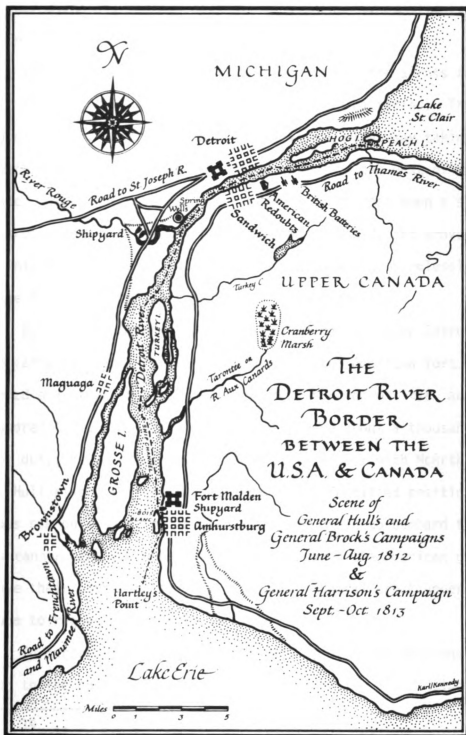


Figure 5. War of 1812, Detroit Area

be at your disposal, and any consequences, which may result, from any exertion of it, you may think proper to make."<sup>19</sup>

That same evening the British guns opened fire across the Detroit River, and were answered by the American batteries. This artillery duel quickly emptied Detroit of civilians, with many taking shelter in the fort while others hid in a large ravine to the west of the stockade. Judge Woodward had just arisen from his bed when a shot came through the room, struck the pillow and the bed, and drove them right into the fireplace. The spent ball then rolled harmlessly out upon the floor.<sup>20</sup> The firing continued into the night.

By the next morning Hull had decided to surrender Detroit. In the early dawn Brock's forces advanced on the American fort. He commanded over three hundred regulars, four hundred militia, and about six hundred Indians. Inside Detroit there were about a thousand men fit for duty, besides the four hundred still absent with McArthur and Cass. Hull also possessed the advantage of a fortified position with numerous cannon. When the British artillery began to bombard the fort, Hull's cannon were strangely silent. He ordered the American gunners to leave their posts and sent an officer to General Brock under a flag of truce to request a cessation of hostilities.<sup>21</sup>

In surrendering Detroit, Hull gave up over two thousand fighting men to the enemy. The articles of capitulation also included the

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<sup>19</sup>Hull to Brock, August 15, 1812, Ibid., 452.

<sup>20</sup>Farmer, History of Detroit, 276; Woodford, Woodward, 109.

<sup>21</sup>Hamil, The War of 1812, 19-20; Horsman, The War of 1812, 40-41.



force under McArthur and Cass, and the men under Brush at the River Raisin. Brush ignored the order to surrender and withdrew his men safely to Ohio. Cass and McArthur returned to Detroit under orders, and bitterly instructed their men to stack their arms. Both officers and enlisted men were critical of Hull's action and accused him of cowardice.<sup>22</sup> Hull, the other officers of the regular army, and all enlisted regulars were sent to Quebec as prisoners of war. The officers and men of the Michigan and Ohio militias were allowed to return home on parole, with the promise that they would not serve in the war until exchanged. Leaving Colonel Procter in command at Detroit, General Brock returned to Niagara.<sup>23</sup>

A court-martial demanded by General Hull was finally convened in January of 1814. He was charged with treason, cowardice, neglect of duty, and unofficer-like conduct. His former officers were the chief witnesses against him. Cass and McArthur, now generals, were

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<sup>22</sup>Milo Milton Quaife, ed., War on the Detroit, the Chronicles of Thomas Vercheres de Boucherville and the Capitulation by an Ohio Volunteer (Chicago: The Lakeside Press, 1940), 303-309. Hereafter cited as Quaife, ed., War on the Detroit. Cass and McArthur had returned to within several miles of Detroit the day before the capitulation. Hamil notes that "already deeply involved in a plot to supplant their incompetent commander, they neither went to his support nor informed him of their whereabouts. However justified may have been their lack of confidence in Hull, their conduct helped to bring about the result they feared." Hamil, The War of 1812, 20.

<sup>23</sup>Gilpin, The War of 1812, 117-120. Brock was evidently surprised in his easy conquest of Detroit. He wrote George Prevost on August 16 that 2,500 troops had surrendered, and about twenty-five pieces of ordnance had been taken without one British loss. "I had not more than 700 troops including Militia, and about 400 Indians to accomplish this service," he told Prevost; "when I detail my good fortune, Your Excellency will be astonished." Brock to Prevost, August 16, 1812, in MPHC, XV, 132.

among the most hostile. General Henry Dearborn served as president of the court.<sup>24</sup>

The prosecution charged Hull with treason for surrendering military papers aboard the Cayuga to the British, for retreating from Canada, and for surrendering Detroit. Hull pointed out that if the Secretary of War had informed him of the outbreak of war--an event already known to the British--the ship with military documents would never have been sent. In any event, there were no papers on board that could possibly inform the British that Americans contemplated or had undertaken war with England. "If this were so," he asked the court, "how is it to be accounted for that the Enemy should have assailed her in a hostile manner before she was captured?"<sup>25</sup> The court could find little evidence to support a charge of treason in this affair, or in Hull's actions in Canada and Detroit, and eventually dismissed it.

Charges of cowardice, neglect of duty, and unofficer-like conduct were levied against Hull in connection with his retreat from Canada and the surrender of Detroit. He stated that a withdrawal from Canada was necessary because of a lack of artillery, the advance of British reinforcements from Niagara, and the Indian threat from the north after the fall of Michilimackinac. "My further intention was to concentrate my forces at Detroit," he added, "that I might from thence open & secure my communications with the State of Ohio.

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<sup>24</sup>Dunbar, Michigan, 212; Campbell, Political History of Michigan, 306.

<sup>25</sup>The Defence of General Hull, in MPHC, XL, 572.

Upon which, in my judgment the salvation of the Army depended."<sup>26</sup>

Perhaps it is as easy to condemn Hull for bad judgment as it is for cowardice in the Malden affair. He contended that an important reason for moving against the British post was to quiet dissension among his troops and to maintain confidence in his leadership. He failed to achieve either goal by retreating from Canada without taking offensive action. He might have fared better had he initially resisted the pressures of his subordinates and remained in a defensive position at Detroit. There is little support for his further contention that he undertook the Malden expedition only with the understanding that additional land and sea forces would soon be available to him. In the same order from Eustis advising him to exercise his own judgment in seizing the British stronghold, the Secretary cautioned that "it is also proper to inform you that an adequate force cannot soon be relied on for the Reduction of the Enemies forces below you."<sup>27</sup>

The strongest evidence of Hull's cowardice and misconduct remained the surrender of Detroit. He again pointed out that a lack of supplies, a superior opposing force, and a grave mistrust of the ability of his own troops contributed to the decision to surrender. It is evident that a major reason for Hull's decision was his fear of Indian depredations. Had his army been defeated in battle and Detroit overrun by the enemy, the Indians would have gone on a bloody rampage. "The country would have been deluged with the blood of its Inhabitants,"

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<sup>26</sup>Ibid., 617.

<sup>27</sup>Eustis to Hull, June 24, 1812, Ibid., 397.

he told the court; "neither women nor children would have been spared."<sup>28</sup> Hull had no assurance that the Indians would remain pacific even after a peaceful surrender. His decision to capitulate, made without consulting his subordinate officers, was a very personal decision, and the final responsibility must rest with him. Hull was guilty of being afraid, not for his personal safety, but for the safety of Michigan.

It cannot be said that Hull's court-martial was conducted in an open and impartial manner. Having lost many of his private papers aboard the Cayuga, he was refused permission to examine the files of the War Department in order to copy documents needed for his defense. A change in procedure at the trial allowed the witnesses to be examined in the presence of each other, and their opinions admitted as evidence, even though they were interested in the outcome of the trial. It was also questionable that Dearborn, whose actions at Niagara freed Brock for an attack on Detroit, should sit as presiding judge. A student of Hull's court-martial has concluded that he was "made the scape-goat for inefficiency everywhere . . . the government neglected to throw about him the safeguards which are granted the meanest criminal."<sup>29</sup>

In March of 1814 the court-martial at Albany delivered its verdict. Hull was acquitted of treason, but convicted on the other three charges. The court imposed the sentence of death, but recommended that the President show mercy to the general. In April

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<sup>28</sup>The Defence of General Hull, Ibid., 638.

<sup>29</sup>John Van Deusen, "Court-Martial of Gen. William Hull," Michigan History, XII, 668-694. Hereafter cited as Van Deusen, "Hull," Michigan History, XII.

President James Madison approved the finding of the court, but remitted the execution of its sentence. Hull was dishonorably discharged from the army.<sup>30</sup>

Michigan came under British control with the defeat of Hull and the surrender of Detroit. The day of the capitulation, General Brock proclaimed that present territorial laws would continue in force until further notice or "so long as the peace and safety of the said Territory will admit thereof."<sup>31</sup> Religious freedom was to be continued. Any arms in the hands of the militia or of private citizens were to be delivered to the British.

With Brock's return to Canada, Colonel Henry Procter assumed the office of governor of Michigan. He reaffirmed Brock's order that American laws would continue in force in Michigan. Civil officers remaining in the territory were to continue in their respective offices. Courts of justice were to be held as usual.<sup>32</sup> New laws in Michigan did not have to be adopted from the laws of any American states, and a majority was not necessary to adopt new laws when any territorial officers were absent. The expenses of the civil administration were to be "defrayed quarterly, by the proper Officer in the military department paying the lawful amount thereof to the civil treasurer."<sup>33</sup>

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<sup>30</sup>Ibid., 692.

<sup>31</sup>Proclamation by Major-General Isaac Brock, In Mich. Terr. Papers, I, 195, RG59, NA.

<sup>32</sup>No session of the Supreme Court in Michigan was held during the period of British occupation. Blume, Transactions, I, 221.

<sup>33</sup>Regulation of the Civil Government of the Territory of Michigan, in Mich. Terr. Papers, I, 200, RG59, NA.

Duties, customs, and revenues accruing according to the laws of the United States were to be paid to the military department. Internal duties and revenues were to be paid to treasurers as prescribed by law. Procter also assumed control over the offices of postmaster, register and receiver of the land office, and the superintendent of Indian affairs.<sup>34</sup>

Procter offered the position of secretary of the territory to Judge Woodward, the only important American official remaining in Michigan. Unsure of the constitutionality of such an appointment under American law, he declined any official position but decided to stay in Michigan and serve as an intermediary between the British and the Americans until he could receive instructions from Washington. Some of the justices of the peace also decided to remain with him.<sup>35</sup>

Woodward defended his decision to remain in Michigan in a letter to Secretary of the Treasury Albert Gallatin in September of 1812. "It was thought respectful and conciliatory that an American citizen should, in present circumstances, be selected for the purpose," he told Gallatin, "and particularly one of the officers of the late government."<sup>36</sup> Of these, he was the only one left. By staying, he hoped to maintain a slim American hold on the territory, protect American claims, and continue territorial laws if possible.

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<sup>34</sup>Ibid.

<sup>35</sup>Gilpin, The Territory of Michigan, 59-60; Woodford, Woodward, 110-111.

<sup>36</sup>Woodward to Albert Gallatin, September 7, 1812, in Woodward Papers, BHC.

In addition, he believed that he could intercede for his countrymen and prevent the pillage of their properties by the Indians.<sup>37</sup>

While awaiting an official reply from Washington concerning his activities under the British--a reply he never received--Woodward provided valuable service to the inhabitants of Michigan. He took the lead in raising money to ransom unfortunate captives taken by the Indians, destined for torture or death, who were frequently paraded through the streets of Detroit. He provided necessities for sick prisoners unable to be moved from Fort Malden. He supplied food and shelter for those dispossessed outside of Detroit, who flocked to him for assistance. In a very real sense, Woodward served as a buffer between the citizenry and the military.<sup>38</sup>

There were those who interpreted Woodward's actions in Michigan during the British occupation as traitorous. "I see in the public newspapers, that Judge Woodward is said to have accepted an office under a foreign government . . ." Stanley Griswold wrote to Secretary of State James Monroe; "if this be correct information, I presume our government will consider it sufficient cause for vacating his office as a Judge of that Territory."<sup>39</sup> In November of 1812, George Poindexter of Mississippi introduced a resolution in Congress to repeal the act establishing Michigan Territory. He was upset

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<sup>37</sup>Ibid.

<sup>38</sup>Woodford, Woodward, 112-113.

<sup>39</sup>Stanley Griswold to James Monroe, November 2, 1812, in Carter, Terr. Papers, X, 416-417. Griswold announced his availability to replace Woodward should that judge be removed.

that the Michigan officials continued to draw their salaries, even though one of them was a prisoner of the British and the other had accepted a commission under British authority. Poindexter called for a reorganization of the Michigan government. He wanted to eliminate the present territorial officers and to appoint others made of "more sterling stuff."<sup>40</sup> No action was taken on the resolution.

It is doubtful that Woodward can be truly accused of collaborating with the enemy during the War of 1812. He accepted no official position under British authority and received no remuneration from the crown. He performed no official acts under the British and did not conduct a single session of court. His stay in Michigan was voluntary, to offer what assistance he could to the people of the territory.

By January of 1813, Woodward had heard nothing from Washington, and he evidently felt that the absence of approval might signify disapproval. As he prepared to leave the territory, he received a memorial from Detroit citizens asking him to stay. These citizens called him the "rock of our safety" and implored him to reconsider his decision to leave.<sup>41</sup> Woodward was impressed by this show of support and decided to stay. In an address to Detroit residents early in 1813, he promised to stand by them, even though they might be

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<sup>40</sup>Annals of Congress, Twelfth Congress, Second Session, XXV, 195-196.

<sup>41</sup>Address of the Citizens of Detroit to A. B. Woodward, January 6, 1813, in Woodward Papers, BHC.



"abandoned by all."<sup>42</sup>

In the fall of 1812, William Henry Harrison was appointed to take command of a new Northwestern army, with orders to protect the western frontier, retake Detroit, and then move against Upper Canada. He began assembling men and equipment in Ohio for a move against the British at Detroit. Harrison sent General James Winchester with a force of over twelve hundred men to the Rapids of the Miami, to begin construction of sleds for an attack on Malden. Harrison promised to send Winchester reinforcements from Ohio, which would assist him in his advance on Detroit.<sup>43</sup>

Winchester's decision to engage the enemy without reinforcements proved tragic. On the Miami he received pleas for help from residents at Frenchtown on the River Raisin south of Detroit. Winchester sent a force of nearly seven hundred men to Frenchtown, which drove off a small British detachment and secured the settlement. Winchester later arrived with over two hundred reinforcements. Several days later General Procter crossed the Detroit River on the ice with nearly six hundred regulars and militia and several hundred Indians. He surprised Winchester's army, defeated it, and compelled the entire force to surrender. He then withdrew to Malden with over five hundred American prisoners. The American wounded were left at the River Raisin.<sup>44</sup>

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<sup>42</sup>A. B. Woodward to Certain Citizens of Detroit, January 6, 1812, in Mich. Terr. Papers, I, 218-220, RG59, NA.

<sup>43</sup>Hamil, The War of 1812, 23-24; Coles, The War of 1812, 113-114.

<sup>44</sup>Horsman, The War of 1812, 84-85; Gilpin, The War of 1812, 163-168.

Procter's abandonment of American prisoners at the River Raisin produced one of the most shameful episodes in the War of 1812. Over eighty prisoners were left in the hands of some fifty Indians and several interpreters. The Indians became drunk, massacred many of the Americans, and took the rest to distant camps to be held for ransom, tortured, or killed. Robert Richardson, a member of Procter's force at the River Raisin, told John Askin that the prisoners were left "without any proper protection and were the same evening murdered by the Indians . . . we have not heard the last of this shameful transaction."<sup>45</sup>

The River Raisin Massacre created new tensions between Procter and many Michigan residents. Openly critical of his actions in this affair, they feared that Indian attacks would next be directed against Detroit. Procter in turn suspected that there were movements in Detroit toward organized resistance against the British because of the massacre. He decided to banish a number of potential troublemakers from the territory. He also admitted to Major-General Roger Sheaffe at Fort George that after these dissidents had been removed, it was his intention to "bring over as many of the Inhabitants as I can to take the oath of Allegiance to His Majesty, & if I find they can be trusted, Arm them in Defence of the Territory."<sup>46</sup>

Upset over this latest British move, Detroit citizens asked

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<sup>45</sup>Robert Richardson to John Askin, February 7, 1813, in Askin Papers, II, 750.

<sup>46</sup>Procter to Roger Sheaffe, February 4, 1813, in MPHC, XV, 242-243.

Woodward to speak to Procter on their behalf. They asked him to present the British officer with a series of resolutions that stated that he had violated the August 16 capitulation.<sup>47</sup> Woodward informed Procter that it was unlawful either to banish Michigan citizens or to compel them to take an oath of allegiance to England. He pointed out that in a state of open and declared war a subject or citizen of one party could not transfer his allegiance to another party without incurring the penalties of treason. "The law of nations does not justify either coercion upon any man to bear arms against his country," he told Procter; "a man of spirit ought rather die ten thousand deaths."<sup>48</sup> Procter's reaction to this latest defiance of British authority was to declare martial law.

Difficulties between Woodward and Procter were increased because of the case of Whitmore Knaggs. Knaggs, formerly a member of Hull's forces, had left Michigan for Pennsylvania after Detroit's capitulation, but had found little assistance in the East. Returning to the territory, it was his misfortune to arrive at Frenchtown in time to witness Winchester's defeat by Procter. After the battle, Knaggs was apprehended by the British, accused of being a member of Winchester's army, and made a prisoner of war.<sup>49</sup>

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<sup>47</sup>Resolutions of the Citizens as to the Orders of Gen. Procter, Ibid., XXXVI, 276-280.

<sup>48</sup>Woodward to Procter, February 10, 1813, in Woodward Papers, BHC.

<sup>49</sup>Statement of Whitmore Knaggs, Unaddressed, May 24, 1813, in MPHC, XV, 302-304.

Woodward labored unsuccessfully to secure Knaggs's release from a British jail. Procter accused Knaggs of violating his parole and of being under arms. Woodward pointed out that Knaggs had only returned to visit his family and had carried arms to defend himself from Indians. The chief justice admitted that Knaggs was an "ignorant and a turbulent man"--he had once assaulted Woodward--but declared that in this instance he was not to blame. Even General Winchester had filed an affidavit stating that he was not a member of his force.<sup>50</sup> Procter was not impressed and refused to release his prisoner.

By the beginning of 1813, Woodward had decided to leave Michigan. An important reason for this decision was Procter's growing animosity towards the chief justice. The British officer considered Woodward an "artfull designing, & Ambitious Man," and told his superiors at Fort George that the chief justice had ingratiated himself with his own government and had remained in the territory merely to court his own popularity. Procter also admitted that he no longer could either get along with Woodward or control his actions in Michigan.<sup>51</sup> In February of 1813, Woodward was granted a pass to leave the territory. He was the last territorial judge to depart from Michigan.

At Albany Woodward reflected on his recent service in Michigan. He reminded Monroe that he had held no official position under

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<sup>50</sup>Woodward to Procter, January 29, 1813, in Mich. Terr. Papers, I, 243-246, RG59, NA. See also the Affidavit of General Winchester, 1812, in MPHC, XV, 307.

<sup>51</sup>Procter to Roger Sheaffe, February 4, 1813, in MPHC, XV, 242-243.

the British and had accepted no financial rewards. He was critical of Winchester's military activities in Michigan, labeling his advance to the River Raisin as "a measure as erroneous and indiscreet, in substance; as it was weak, and defective, in execution."<sup>52</sup> He also doubted that everyone would either understand or accept his activities in Michigan. "To expect that in the singular, perhaps unexampled situation in which I was placed, unaided alone," he wrote, "the counsel of my own government cut off, the course which I have pursued would meet with the entire, or at the least, the immediate approbation of every mind, might be to expect too much."<sup>53</sup>

By September of 1813 the tide of war was turning in favor of the Americans. The destruction of the British fleet by Lieutenant Oliver Perry in the battle of Lake Erie gave the United States control of the upper lakes. Faced with a severed supply line, Procter decided to abandon Fort Malden. He burned the public buildings at that post, as well as at Detroit, and destroyed his surplus supplies. Both British and Indian forces began a retreat towards Lake St. Clair and the Thames River. General Harrison's force, ferried across the lake by Perry, pursued the British up the Thames. In early October the Americans engaged and defeated the British in the battle of the Thames.<sup>54</sup>

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<sup>52</sup>Woodward to James Monroe, March 22, 1813, in Mich. Terr. Papers, I, 234-237, RG59, NA.

<sup>53</sup>Ibid.

<sup>54</sup>Gilpin, The Territory of Michigan, 62-63; Coles, The War of 1812, 129-135.

Michigan again came under American control with the arrival of McArthur's force at Detroit in late September. General Harrison proclaimed that the civil government of Michigan should be reestablished and that the former officers should renew the exercise of their authority. All British appointments and commissions were declared at an end, and all citizens regained their rights and privileges. The last incumbent territorial officers who were forced to resign because of the British occupation were to resume their offices until further changes were made known.<sup>55</sup> General Lewis Cass was appointed military administrator. In late October President Madison named him governor of the territory.<sup>56</sup>

Sporadic fighting continued in Michigan for over a year following the battle of the Thames. In July of 1814 Major George Croghan led an expedition against Fort Michilimackinac. On the way to that post, he stopped at St. Joseph Island with a force of over seven hundred men in five ships. Finding the fort deserted, he ordered it burned. He finally arrived at Michilimackinac in August. When the ships' guns could not be elevated to assault the fort, Croghan landed his forces for a frontal assault by land and was defeated by the British.<sup>57</sup> In October General McArthur led a mounted force of over six hundred men across the St. Clair River into Canada and occupied

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<sup>55</sup>Proclamation by William Henry Harrison, September 29, 1813, in Carter, Terr. Papers, X, 449-450.

<sup>56</sup>Commission of Lewis Cass as Governor, October 29, 1813, Ibid., 453.

<sup>57</sup>Gilpin, The War of 1812, 242-245.

the small settlement of Baldoon. He then engaged in raids on British supplies at Oxford and Brantford, and defeated a detachment of British militia. When word arrived of the approach of British regulars, McArthur led his men back to Detroit. His was the last action of any importance on the Michigan frontier before the coming of peace in December of 1814.<sup>58</sup>

Michigan began a slow return to normalcy with the end of the War of 1812. As the Treaty of Ghent called for the return of all conquered territory, Ford Malden was handed over to the British while the Americans occupied Michilimackinac. In an effort to erase feelings of hostilities, prominent Detroit citizens staged a "Pacification Dinner" and invited their former enemies from across the river to participate. Michigan had survived enemy attacks, Indian depredations, and the occupation by a foreign power. Her citizens began the difficult task of rebuilding a devastated frontier.

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<sup>58</sup>Gilpin, The Territory of Michigan, 67.

## CHAPTER VI

### CASS AND INDIAN AFFAIRS

As the newly appointed governor of a war-torn and ravaged Michigan Territory, Lewis Cass also assumed the duties of superintendent of Indian affairs. In that capacity he spent many months away from Detroit and his other governmental responsibilities. As Indian superintendent, Cass reduced British influence over the Michigan tribes, prevented outbreaks of tribal warfare, and secured millions of acres of Indian land for American settlement. His fairness and his sense of justice earned him the respect and the friendship of both red men and white.

Michigan's second governor was born in Exeter, New Hampshire, in 1782. At the age of ten he was enrolled in Phillips Exeter Academy, and was the classmate of Edward Everett and Daniel Webster. Cass joined his father, a professional soldier, at Marietta, Ohio, about 1799, and studied law. He was admitted to the bar at the age of twenty and four years later was elected to the Ohio legislature. In 1807 he was appointed United States marshal for Ohio, a position he held until 1812. He continued a lucrative law practice and invested substantially in Ohio lands. With the outbreak of the War of 1812, Cass, already a brigadier general in the Ohio militia, closed his law office and journeyed to Dayton where he was designated colonel of a



regiment of militia. Before the war with Britain had ended, he was chosen to replace Hull as governor of Michigan Territory.<sup>1</sup>

Cass was an excellent choice. His service as an Ohio legislator, marshal, and lawyer gave him a first-hand knowledge of government and law. He was also familiar with life on the frontier. His military experiences taught him the responsibilities of command and administration. One of his recent biographers notes that he was "richly endowed with self-assurance which, leavened by a sincere and kindly interest in others, provided him with a quality of leadership."<sup>2</sup>

The War of 1812 had devastated Michigan Territory and imposed hardships on both Indians and whites. At Detroit Cass discovered that extensive war damage to farms, fields, and crops made it difficult for both groups to find enough to eat. In 1813 he told William Woodbridge, the newly appointed territorial secretary, that "the Indians daily come in throwing themselves upon our mercy. Their situation is truly deplorable."<sup>3</sup> Because of the destruction caused by the recent hostilities, Cass wondered if Michigan was really "worth possessing."<sup>4</sup>

Michigan's weakened condition and a continuing British threat

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<sup>1</sup>Willis Dunbar, Lewis Cass (Grand Rapids: William B. Eerdmans Pub. Co., 1970), 8-13; Andrew McLaughlin, Lewis Cass (New York: Houghton, Mifflin & Co., 1892), 33-52.

<sup>2</sup>Woodford, Lewis Cass, The Last Jeffersonian (New Brunswick: Rutgers University Press, 1950), 32. Hereafter cited as Woodford, Cass.

<sup>3</sup>Cass to William Woodbridge, November 9, 1813, in Cass Papers, BHC.

<sup>4</sup>Ibid.

across the Detroit River combined to influence Cass's adoption of a realistic and practical Indian policy. "I am no enthusiastic believer in Indian friendship and professions," he wrote Secretary of War John Armstrong in 1814, "but I have no doubt but important advantages will result from their assistance and cooperation."<sup>5</sup> British attempts to influence the Michigan Indians forced the new governor to devise ways to keep them at peace and to retain their loyalty. He decided that even though many whites might despise the Indians, it was wise to attach the various tribes to the United States either by appealing to their affections and interests or by compelling them to remain at peace with the whites by a display of force. The only question remaining was which method--force or gentle persuasion--could best secure Indian allegiance with the most economy.<sup>6</sup>

Cass expressed early displeasure with the state of Indian affairs in Michigan. He complained to Armstrong that he possessed neither the manpower nor the resources to deal adequately with the Indians. The governor was confident, however, that he could improve the Indian situation in Michigan if he was granted discretionary power to employ needed assistants and to purchase sufficient Indian presents. Without this authority, detailed instructions from Washington would be necessary. He complained to the War Department that there were so few statutory provisions regulating either the intercourse with the Indians or the expenditures made on their behalf

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<sup>5</sup>Cass to the Secretary of War, July 25, 1814, in Letters Rec'd., WD, Main Series, RG107, M221, roll 60, FRC, Chicago.

<sup>6</sup>Cass to the Secretary of War, September 3, 1814, Ibid.

that an officer without discretionary authority or detailed instructions could have his drafts protested and his accounts rejected in Washington. "I feel no disposition to be placed in either of these situations," he told the War Department in 1814.<sup>7</sup>

Cass outlined plans for his Indian program in Michigan in a letter to Armstrong in September of 1814. One of his first concerns was to reverse the poor record of American trading practices with the Indians. British medals given to the Indians were of solid materials, while the American ones were hollow. The British gave presents freely to the Indians to win their good will. While the Americans gave annuities to the Indians, they did not consider these as "gifts" but rather payment for ceding their lands to the United States. Cass decided that a just distribution of presents to the Indians, to gain their trust and friendship, was worth more than a million dollars spent on troops, arms, and expeditions against them. He informed Armstrong that presents to the amount of not less than thirty or forty thousand dollars should be distributed to the Indians north and west of Detroit.<sup>8</sup>

The governor's estimate of annual expenditures for the Indian Department at Detroit in 1814 amounted to more than twenty thousand dollars. Over eight thousand dollars was designated for twenty-two interpreters. Nearly five thousand more was intended for additional interpreters, together with their quarters, food and fuel. Money

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<sup>7</sup>Cass to the Secretary of War, July 25, 1814, Ibid.

<sup>8</sup>Cass to General Armstrong, September 3, 1814, in Cass Papers, BHC.

required for council houses, office rent, firewood, postage and letters, and other expenses amounted to an additional four thousand dollars. Some three thousand was earmarked for expeditions among the Indians to retard British influence.<sup>9</sup>

Because of the strategic importance of Detroit, Cass felt that such large Indian expenditures were necessary. He considered Detroit in peace or war the "most important point" in relation to the Indians of the United States. They had to pass through the Detroit area to preserve their communications with the British. At Detroit, the Americans could observe British machinations among the Indians. Cass did not believe that thirty or forty thousand dollars for Indian presents was excessive. If they were treated liberally they would remain friendly to the United States. After a few years their numbers would decrease and they would pose no threat to Michigan. Then their friendship would be useless.<sup>10</sup>

While awaiting confirmation of his Indian budget for Michigan, Cass published a list of rules and regulations for the territorial Indian department. These rules applied to the newly appointed Indian agent at Detroit, Gabriel Godfroy, as well as any subagents and interpreters employed by the Indian department.<sup>11</sup> Presents purchased for Indians on a warrant from the governor were to be obtained from

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<sup>9</sup>Ibid.

<sup>10</sup>Ibid.

<sup>11</sup>For a list of the agents and interpreters in Michigan in 1814, see Cass to the Secretary of War, September 3, 1814, in Carter, Terr. Papers, X, 475-477.

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designated stores. At the end of each month, the secretary would collect accounts from the stores and charge them to the accounts of the respective purchasers. Goods were to be distributed in the presence of "two respectable citizens." Accounts would be scrutinized by the governor at the end of the purchasing period. Presents sent to the agent at Detroit or to subagents elsewhere in the territory were to be checked against invoices. Annuities were to be distributed in the presence of three citizens.<sup>12</sup>

These rules also outlined the expected behavior of agents, subagents, and interpreters. Agents and subagents were to be informed on the condition of their charges, and were to determine if anyone was giving the Indians false information or attempting to prejudice them. Interpreters were required to interpret truly, and to inform the agents of whiskey sales to the Indians of which they had knowledge. Agents, subagents, and interpreters were to be paid quarterly. Cass warned that any person in the Indian department "deficient in zeal, industry, or fidelity" would be immediately dismissed.<sup>13</sup>

The War Department informed Cass in October of 1814 that his estimates concerning the annual expenditure of the Indian department

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<sup>12</sup>Copy of the Regulations for the Indian Department, September 15, 1814, in Cass Papers, BHC.

<sup>13</sup>Ibid. Cass was pleased with his initial changes in the Detroit department. He informed Monroe that when he arrived in Detroit, the Indian department was so distorted that a system was necessary to insure the good conduct of several persons in that department. After posting his new regulations, he told Monroe that "I flatter myself they are so framed as to attain this object, as well as to prevent the misapplication of any of the funds appropriated to the purpose." Cass to Monroe, September 20, 1814, in Cass Papers, BHC.

at Detroit were thought reasonable and that his program respecting presents to the Indians was also approved. It is evident that much of Cass's later success as Indian superintendent was based in part on the government's willingness to support his programs. Armstrong told Cass that General John Mason, the Superintendent of the Indian Office in Washington, had spent forty thousand dollars for presents for the western Indians, and had also made up new American medals. "Your regulations for the Government of the Indian Department are approved of," Armstrong told Cass, "and it requires only a strict and honest execution of them by the several Agents to place that Department on a sound and good foundation."<sup>14</sup>

Cass continued his plans for Indian reorganization in Michigan in 1815. Upset over British success in trading with the Indians, he called for the establishment of American agencies at Michilimackinac, Green Bay, and Fort Dearborn to supply the Indians and to gain their confidence. He wanted these agencies, together with one at Fort Wayne, to be directly responsible to him.<sup>15</sup> The War Department soon established these posts and replaced them, as well as one at Piqua, Ohio, under his direction.<sup>16</sup>

With the exception of Detroit, Cass considered Michilimackinac

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<sup>14</sup>Secretary of War to Governor Cass, October 24, 1814, in Carter, Terr. Papers, X, 495-496.

<sup>15</sup>Cass to A. J. Dallas, July 20, 1815, in Letters Rec'd., WD, Main Series, RG107, M221, roll 60, FRC, Chicago.

<sup>16</sup>Francis Paul Prucha, Lewis Cass and American Indian Policy (Detroit: Wayne State University Press, 1967), 5. Hereafter cited as Prucha, Cass.

the most important point respecting Indians on the northwestern frontier. The trade and movement of the Indians in that area were often extensive, and the British had established an important base at Drummond Island, forty miles from Michilimackinac. Furthermore, Michigan winters cut off communications between Michilimackinac and the southern part of Michigan for up to six months. Cass wanted a responsible person stationed on Mackinac Island to counteract British influence on the Indians and to watch for hostile movements among the tribes.<sup>17</sup> In December of 1815, Major William Puthuff was appointed Indian agent at Michilimackinac.

In addition to new agencies, Cass recommended the establishment of new regulations concerning trade and intercourse with the Indians. He suggested that agents grant trading licenses to individuals only within specified areas and that subagencies be built in certain remote places.<sup>18</sup> He called for a Michigan statute barring anyone in the Indian Office from trading with the Indians, because he felt that existing federal statutes were too vague. He suggested that monies paid to the Indians be in goods or specie, as any paper money would be worthless to them. He called for a body of interpreters to travel

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<sup>17</sup>Cass to William Crawford, October 27, 1815, in Carter, Terr. Papers, X, 606-608. George Graham, chief clerk of the War Department, told Cass that President Madison had consented to a post at Michilimackinac primarily because of the governor's efforts to secure it. George Graham to Governor Cass, December 29, 1815, in Carter, Terr. Papers, X, 613.

<sup>18</sup>Before this, agents applying for licenses at one agency who were refused because of misconduct, merely went to another agency to get licenses.



continually through Indian country to keep the Indians friendly, to apprehend unlicensed traders, and to notice unusual Indian activity. Finally, he recommended a continuation of gifts to Indians to preserve their good will. Troops and expeditions against them were expensive and the results were unsure. He believed that gifts to the Indians were cheaper than campaigns against them, and were more successful in promoting peace.<sup>19</sup>

Certain limitations tended to reduce Cass's effectiveness as Indian superintendent. He complained to Secretary of War Crawford in 1815 that he was often unable to attend to Indian affairs because of his duties on the legislative board and his attention to citizen complaints. When he did try to meet the needs of the Indians, they frequently brought him insignificant problems and complaints. In addition, they expected to be fed when they called upon him. Cass asked Crawford for more supplies and rations, as well as for an assistant to help in carrying out his responsibilities in respect to the Indians.<sup>20</sup>

War Department clerk George Graham informed Cass in April of 1816 that he would shortly receive the monies necessary to effect friendly relations with the Indians. Besides the annuities for the Ottawas, Chippewas, and Potawatomies for the years 1813 through 1816,

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<sup>19</sup>Cass to A. J. Dallas, July 20, 1815, in Letters Rec'd., WD, Main Series, RG107, M221, roll 60, FRC, Chicago.

<sup>20</sup>Cass to Crawford, September 8, 1815, in Governor Lewis Cass Correspondence Book, May 17, 1814, to March, 1820, Sec. of State Records, MSA. Hereafter cited as Cass Correspondence Book, 1814-1820, Sec. of State Records, MSA.

Cass would also receive nearly twenty thousand dollars worth of goods to be distributed in presents to the Indians when it seemed expedient. Graham apologized for the delay, but promised to forward needed Indian goods as soon as possible.<sup>21</sup>

Occasionally Cass encountered financial difficulties even after he had received payment from Washington for his Indian program. According to a treaty signed by the Ottawas, Chippewas, and Potawatomies in 1817, the United States government agreed to pay annuities of over nine thousand dollars, as well as annuities due these Indians by former treaties.<sup>22</sup> This amounted to over twelve thousand dollars, and was to be paid in specie. In 1819 Cass received a draft for slightly over ten thousand dollars from Washington to pay the annuities, over two thousand dollars short. He sent two men and a wagon to cash the draft at the United States Branch Bank at Chillicothe. Once there, they waited for two weeks before the bank's cashier told them that he could not cash the draft and give them the silver necessary for the Indian annuities. They were forced to return to Michigan empty-handed. The expense to the territory for this trip had been over three hundred dollars. Cass asked Calhoun to send him the money necessary to complete the payment of annuities and to make future

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<sup>21</sup>George Graham to Governor Cass, April 19, 1816, in Carter, Terr. Papers, X, 627-629.

<sup>22</sup>Charles Kappler, Comp. & ed., Indian Treaties, 1778-1883 (New York: Interland Publications, Inc., 1972), 145-151. Hereafter cited as Kappler, Indian Treaties.

drafts on New York banks in order to pay off the Indians.<sup>23</sup>

If Cass occasionally seemed harsh when viewing the Indians as potential enemies, or aloof when regarding them as uncivilized beings, he could also sympathize with their problems and work to better their condition. "I doubt whether the eye of humanity in a survey of the world could discover a race of men more helpless and wretched," he told Crawford in 1816.<sup>24</sup> For much of the year, many Michigan Indians subsisted on roots. There were even reports that during the late war certain Indians had killed and eaten their own children. Cass was uncertain whether the Indians could successfully adopt a program of civilization. Nevertheless, he believed that their condition could be improved, principally by changing them from hunters to tillers of the soil.<sup>25</sup>

Cass took steps to better the condition of the Michigan Indians in 1816 by asking Crawford to send a carpenter, wheelright, saddler, tailor, cooper, and an armourer to Detroit to make needed articles for the Indians. With the assistance of these artisans, they would have the benefit of farm implements, wooden buckets, wheels for their wagons and plows, gun repairs, and articles of clothing. The Wyandots had already profited from governmental assistance, and had built themselves farms and houses, and planted orchards.

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<sup>23</sup>Governor Cass to the Secretary of War, August 1, 1819, in Letters Rec'd., WD, Main Series, RG107, M221, roll 84, FRC, Chicago.

<sup>24</sup>Governor Cass to the Secretary of War, June 6, 1816, Ibid. roll 68, FRC, Chicago.

<sup>25</sup>Ibid.

Cass expressed the hope that they would soon be able to support themselves. If they were successful farmers, they would serve as a good example to other Michigan Indians.<sup>26</sup>

In 1816 Cass estimated that over six hundred Chippewas and Ottawas, nearly one thousand Wyandots, Senecas and Munsees, more than twelve hundred Potawatomes, and over eight hundred Indians of other tribes were dependent upon the Michigan Indian department. This estimate did not take into account the "immense number of individuals" who visited Detroit, Michilimackinac, Fort Dearborn, and Green Bay each year. To help support these Indians, he requested over one thousand rations a day, to be distributed among the agencies at Detroit, Michilimackinac, Green Bay, and Fort Wayne. He estimated that Detroit would need over twelve thousand dollars a year to support its Indian program, while each of the other posts would need nearly six thousand dollars. This money would be well spent, however, as it would result in security for the Michigan frontier, in the "melioration of the condition of the Indians and in their permanent attachment & friendship."<sup>27</sup>

While Crawford approved of Cass's efforts for the Michigan Indians, he warned him that government aid was not inexhaustible. The Secretary noted that expenses for the Indian Department would

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<sup>26</sup>Governor Cass to the Secretary of War, June 6, 1816, in Carter, Terr. Papers, X, 648-650.

<sup>27</sup>Cass to the Secretary of War, November 29, 1816, in Letters Received by the Office of the Secretary of War Relating to Indian Affairs, 1800-1823, Record Group 75, M271, roll 1, CHL. Hereafter Letters Received by the Office of the Secretary of War Relating to Indian Affairs will be cited as Letters Rec'd., WD, Ind. Aff.

once again exceed appropriations and advised Cass to exercise moderation in his accounts. He approved of Cass's employment of a blacksmith and a cooper at Detroit, but objected to hiring a tailor, whose skills would discourage industry among the Indian women. He pointed out that southern Indians had received only the services of blacksmiths and wheelrights, but were as advanced as the Michigan Indians. Besides, too much governmental assistance was not sound policy. Crawford was opposed to turning Indians into perpetual "beggars" through a continual program of government aid. "If we supply all their wants gratuitously," he told Cass, "there is but little probability that they will make the necessary exertions to help themselves."<sup>28</sup>

Cass also supported religious efforts by missionaries in Michigan to improve the conditions of the Indians. He lent his support to the Carey Mission among the Potawatomes, near present-day Niles, run by Reverend Isaac McCoy, who was backed by the Board of Managers of the Baptist Missionary Convention. Upon occasion, Cass employed McCoy as a subagent in various governmental matters dealing with the Potawatomes.<sup>29</sup> The governor also encouraged the work of Reverend Jacob Van Vechten, Secretary of the Board of the Northern Missionary Society, who was concerned with uplifting the Michigan tribes. "We owe it to ourselves as men, as politicians, and as Christians," he told Van Vechten in 1821, "that some decisive measures should be

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<sup>28</sup> Secretary of War to Governor Cass, July 2, 1816, in Letters Sent, WD, Ind. Aff., RG75, M15, roll 3, CHL.

<sup>29</sup> Woodford, Cass, 145.

adopted gradually and permanently to ameliorate the condition of this unfortunate race of men."<sup>30</sup>

Although he approved of religious efforts among the Indians, Cass was realistic about such operations and those in charge. He observed that some missionaries were afraid to "tell the worst part of the story" because the benevolent societies and individuals sponsoring them might withdraw their support. It was no easy task to change the precarious and erratic life of the hunter to that of the domesticated farmer. Cass knew from firsthand experience that permanent amelioration could not be expected from teaching the Indians abstract doctrines alone. "The great truths of Christianity must be taught them in conjunction with arts which are most necessary to their comfortable subsistence," he told Van Vechten.<sup>31</sup> Any improvement in their spiritual development had to be accompanied by a corresponding improvement in their physical condition. Cass decided that individual property for Indians was an important first step in any plan of improvement.<sup>32</sup>

White men in Michigan often exerted a negative influence on the Indians. Cass complained to Crawford in 1816 that contact with whites had subjected the Indians to "moral and physical evils, which threaten at no distant day to extirpate the small number that

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<sup>30</sup>Cass to Rev. Jacob Van Vechten, May 10, 1821, in Records of the Executive Office, 1810-1910, MSA. Hereafter this collection will be cited as Exec. Off. Records, 1810-1910, MSA.

<sup>31</sup>Ibid.

<sup>32</sup>Ibid.

remains."<sup>33</sup> Indian hunting grounds had been reduced because of the sale of land to whites. The diseases of civilization were particularly devastating to the Indians. In addition, Cass believed that the introduction of whiskey among the tribes had produced new violent confrontations between Indians and whites.<sup>34</sup>

Cass was particularly concerned about the harmful effects of whiskey. Under its influence the Indians frequently became the victims of unscrupulous traders. The governor wanted whiskey excluded from the Indian lands because he believed that this would lessen the likelihood of Indians being cheated by whites. While federal law prohibited the sale of liquor on Indian lands, there was no provision to keep Indians from buying spirits at the white settlements. In response to this situation, the territorial legislative board adopted an act as early as 1812 prohibiting the sale, barter, or disposal of any spiritous liquors to any Indian within Michigan at the risk of a fine of up to one hundred dollars.<sup>35</sup> In 1815 the legislative board adopted an act forbidding the sale or gift of any spiritous liquors to Indians unless sanctioned by the written permission of the superintendent of Indian affairs.<sup>36</sup>

While Cass was opposed in principle to the introduction of liquor among the Indians, he occasionally consented to its use when

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<sup>33</sup>Cass to the Secretary of War, June 6, 1816, in Letters Rec'd., WD, Main Series, RG107, M221, roll 68, FRC, Chicago.

<sup>34</sup>Ibid.

<sup>35</sup>Terr. Laws, I, 180-181.

<sup>36</sup>Ibid., 201-202.

it suited his purpose. He was concerned in 1818 that the Northwest Company was attempting to draw Indians from Michigan Territory to the shores of Lake Superior to control the fur trade in that section. This was to be accomplished in part by transporting a large supply of liquor to that area and distributing it freely to the Indians. He instructed William Puthuff at Michilimackinac to investigate the matter. If Puthuff discovered that the Northwest Company was using liquor to influence the Indians, he was authorized to use a "small quantity of spirits" to win the Indians back to the American trade at Michilimackinac. This was to be done under tightly regulated conditions, and only in response to a similar action by the Northwest Company. At the same time, Cass admitted that he was generally utterly opposed to the introduction of liquors into the Indian country. "Their effects are too obvious to admit of doubt," he told Puthuff, "and too deleterious to the morals and manners of the Indians to allow their use to them."<sup>37</sup>

Cass considered the regulation of the Indian trade an important element in protecting the Indians, but was not an enthusiastic supporter of the government's "factory" system, a program restricting trade to government agents or "factors" at trading posts. There had been a government Indian factory at Detroit from 1802 until 1805, when it was dismantled and moved to Fort Dearborn. An Indian factory operated on Mackinac Island after 1808 until the British captured

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<sup>37</sup>Cass to William Puthuff, July 4, 1818, in Carter, Terr. Papers, X, 778-779.



the island in 1812. It was not reopened after the war.<sup>38</sup> Cass told the Secretary of War in 1814 that "in our intercourse with the Indians we have adopted too much the ideas of trading speculation. Our trading factories, and our economy in presents have rendered us contemptible to them."<sup>39</sup> The American factories were often no match for foreign or private traders, and they frequently lowered the prestige of the American government in the eyes of the Indians.

Cass's opposition to the factory system was motivated in part by his admiration for John Jacob Astor and his American Fur Company. Cass was openly friendly with Astor and undoubtedly believed that his company would be useful in forestalling foreign trade and intervention in Michigan and would encourage the settlement and development of the territory. With Cass's help, Astor secured exemptions from the prohibitions against the use of foreigners in the fur trade, a practice that greatly increased his power and helped him to eliminate competitors. Although personally opposed to the use of liquor in the Indian trade, Cass instructed his agents to allow Astor's men to utilize spirits in their dealings with the Indians to counteract similar measures by the British. Already politically influential in Washington, Astor was aided on several occasions by Cass in securing the passage of legislation favorable to his company.<sup>40</sup> In spite of

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<sup>38</sup>Dunbar, Michigan, 192; Gilpin, The Territory of Michigan, 39. In 1822 the entire Indian factory system was abandoned.

<sup>39</sup>Cass to the Secretary of War, September 3, 1814, in Letters Rec'd., WD, Main Series, RG107, M221, roll 60, FRC, Chicago.

<sup>40</sup>Kenneth Wiggins Porter, John Jacob Astor, Business Man (2 vols.; Cambridge: Harvard University Press, 1931), II, 686-718. Hereafter cited as Porter, Astor.

this assistance, Cass told Calhoun in 1821 that Astor's firm enjoyed no privilege in Michigan that could not be enjoyed by any citizen of the United States. "If their means and their Capacity to exert them, give them advantages over other traders, embarked in the same pursuit," he said, "it furnishes no just cause of complaint to any one."<sup>41</sup>

When William Puthuff, Indian agent at Michilimackinac, came into conflict with the American Fur Company, Cass did not come to his defense and stood by while he was removed from his post. Puthuff zealously restricted the issuance of trading licenses to foreigners, a move that upset Astor. Puthuff told Cass in October of 1816 that it was a "most difficult task to counteract the secret machinations of private and deeply self interested mercenary Enemies . . . ."<sup>42</sup> Cass advised Puthuff to grant Astor's men the licenses they needed, while granting only a small number to other traders. In effect, the Michigan governor was merely following acting Secretary of War George Graham's instructions to afford Astor's agents "every facility in your power consistent with the laws and regulation."<sup>43</sup> Puthuff took Cass's advice, granted licenses more liberally to foreigners, and incurred the displeasure of other factors and Indian agents in the Great Lakes region. Meanwhile the American Fur Company accused him of obstructing

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<sup>41</sup>Cass to the Secretary of War, September 3, 1814, in Letters Rec'd., WD, Main Series, RG107, M221, roll 60, FRC, Chicago.

<sup>42</sup>William Puthuff to Governor Cass, October 29, 1816, in Carter, Terr. Papers, X, 668-669.

<sup>43</sup>George Graham to Governor Cass, May 4, 1817, quoted in Porter, Astor, II, 702.

their business operations, of giving preferential treatment to other traders, of illegally seizing company trade goods, and of dereliction of duty as Indian agent. Astor encouraged Washington officials to investigate Puthuff's activities, a move which eventually led to Puthuff's removal.<sup>44</sup> Cass did little to prevent Puthuff's removal. However, he did appoint him chief justice of the county court, judge of probate, commissioner, and auctioneer for the county of Michilimackinac in 1818.<sup>45</sup>

In spite of his favorable actions toward Astor's agents and his treatment of Puthuff, there is little evidence to support the charge that Cass was merely the tool of the American Fur Company.<sup>46</sup> Cass saw the need for competent American traders among the Indians, and favored Astor's agents over foreigners. He supported Astor's use of foreign boatmen and interpreters, not only because of his instructions from the War Department to do this, but also because competent American replacements could not be found. He believed

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<sup>44</sup>Porter, Astor, II, 703-707. George Boyd succeeded Puthuff as Indian agent at Michilimackinac.

<sup>45</sup>Executive Proceedings of Michigan Territory, July 1, 1818 to December 31, 1818, in Carter, Terr. Papers, X, 804.

<sup>46</sup>There have been charges that Cass received a bribe of \$35,000 for granting special privileges to Astor's agents. Kenneth Porter's examination of Astor's account books around 1930 revealed no such entry. Porter, Astor, II, 723-725. Willis Dunbar notes that "there is no solid evidence that Cass took a bribe from Astor. Even the newspaper accounts, if taken at face value, do not prove Cass accepted a bribe, but only that he took the money from Montreal to Michigan for Astor. To assume that Cass accepted a bribe from Astor is not consonant with the character of this great statesman . . . ." Dunbar, Michigan, 228.

that a total exclusion of foreigners from the Indian lands would be "very desirable," but realized that this could not take place until a "portion of our own Citizens can be found, trained by education & habit to this business. Any partial change in this system will be useless until then, and would only occasion difficulties at the several Agencies, without any corresponding advantage."<sup>47</sup>

Cass continued to call for an enlightened and realistic Indian policy by the federal government. He reminded acting Secretary of War George Graham in 1817 that the duties of the various superintendents of Indian affairs and of Indian agents were "badly defined" and needed clarification.<sup>48</sup> In 1820 he spoke out against a proposed Indian superintendency at St. Louis, particularly if its jurisdiction was to extend into Michigan. He believed that a territorial governor should retain control of Indian affairs in his own area.<sup>49</sup> He advocated a stricter enforcement of the trade and intercourse laws, while noting defects in their structure. New laws were needed to prevent Indians from trading their cattle to whites for whiskey and to prevent crimes by whites on Indian lands. Many whites had committed offenses against Indians, paid a small fee, and then simply returned to Indian lands to commit new offenses. Cass was convinced that friendly

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<sup>47</sup>Cass to Secretary of War John C. Calhoun, October 26, 1821, in Letters Rec'd., WD, Main Series, RG107, M221, roll 92, FRC, Chicago.

<sup>48</sup>Cass to the Acting Secretary of War, February 21, 1817, in Carter, Terr. Papers, X, 691-692.

<sup>49</sup>Cass to Charles Lanman, January 19, 1820, in Cass Papers, BHC. Lanman was probate judge and prosecuting attorney for Monroe County, Michigan.

relations between Indians and whites would be difficult unless the federal government took steps to correct these and other abuses.<sup>50</sup>

Friendly relations between Indians and whites in Michigan were threatened not only by poor American Indian policies but also by British machinations. Following the War of 1812 Cass regarded many Michigan Indians as "hollow and deceitful." Many tribes remained sympathetic to the British, who had successfully established a system for winning their loyalties. English agents and interpreters were to be found in many parts of Michigan. These agents had been in the habit of selecting certain influential chiefs for awards of from ten to twenty dollars per month each. Cass recommended that the United States government undertake a similar program to supplant British influence. This would help the United States win the loyalty of the Michigan Indians. "There are some," he told Armstrong in 1813, "who have exhibited traits of fidelity, which, I wish, were more prevalent among some of our own citizens."<sup>51</sup>

Cass believed that a respectable force of United States soldiers maintained at Detroit would be valuable both in preserving order and in discouraging British intrigues among the Michigan Indians. He recognized that northern Michigan and the upper peninsula were particularly vulnerable to British traders and agitators. He told the legislative board in 1814 that a considerable proportion of the northern and western Indians had openly or secretly adhered

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<sup>50</sup> Cass to Secretary of War, November 11, 1820, in Carter, Terr. Papers, XI, 69-71; Woodford, Cass, 142-145.

<sup>51</sup> Cass to Armstrong, December 4, 1813, in MPHC, XL, 544-546.

to the cause of the enemy and would continue to do so unless their communications with the British were broken. A sizeable force of professional soldiers from the United States Army would be an important step in reducing the British influence among the Indians.<sup>52</sup>

Upon occasion Cass asked the British to aid him in preventing Canadian Indians from committing depredations in Michigan. Indians from the Fort Malden area had been coming into Michigan in 1815 and had driven several of the residents at Hickory Island from their homes. He warned the British authorities at Malden that if they did not check this unlawful behavior, Indian troubles might "involve our respective countries in war."<sup>53</sup> He also expressed the hope that both sides could work together to restrain the Indians, and thus preserve peace.

While Cass was hopeful that the British would keep Canadian Indians out of Michigan, he reminded British officials that the jurisdiction of the United States and Great Britain within their territorial limits was exclusive. If the Indians residing under the protection of either country were injured, they must apply for redress to the government of the country in which they lived and could only gain compensation according to the laws of that country. If an Indian committed a crime in the United States, he would be subject to

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<sup>52</sup>Statement of Lewis Cass, December 1, 1814, in Executive Acts --Record of Acts & Proceedings of the Executive Department of Michigan, October, 1814-March, 1830, MSA, 5. Hereafter this collection will be cited as Mich. Exec. Acts, 1814-1830, MSA.

<sup>53</sup>Cass to the Commander at Malden, July 28, 1815, in Cass Correspondence Book, 1814-1820, Sec. of State Records, MSA.

American laws. Michigan would not permit British interference in such a case. If an outrage was committed in British territory, the United States would not interfere.<sup>54</sup>

Outrages by Michigan Indians in 1814 forced Cass to resort to military force. He reported to the Secretary of War that he had been engaged in operations with the militia against a party of Chippewa Indians who had been preying on the settlements, murdering the people and plundering their property. He added that "we have fortunately succeeded in killing some of them."<sup>55</sup> He noted that it was the practice of these and other Michigan Indians to drive the inhabitants from a particular settlement, leaving their fields and crops abandoned. The Indians then seized the crops, as well as available livestock, thus impoverishing the settlers and enabling the Indians to continue their hostilities. Cass urged Congress to provide blockhouses for the various settlements as a means of protection against the Indians.<sup>56</sup>

Cass expressed fears early in 1815 that Indian hostilities would again break out. He informed the War Department that the British had reduced much of the hereditary enmity between the Chippewa and the Sioux, and that they were attempting to direct these Indians against Michigan's frontiers. He believed that the Wyandots,

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<sup>54</sup>Ibid. Cass to Lieutenant-Colonel Reginald James, October 26, 1815,

<sup>55</sup>Cass to the Secretary of War, September 16, 1814, Ibid.

<sup>56</sup>Ibid. On Indian troubles in Michigan, see also Cass to the Secretary of War, September 15, 1814, in Letters Rec'd., WD, Ind. Aff., M271, roll 1, CHL.

Delawares, Senecas, and Shawnees would remain faithful to the United States, but that many Ottawas and Chippewas would be untrustworthy and possibly hostile. He suggested that a naval blockade around Michilimackinac and the northern parts of Michigan would reduce British influence through the denial of British supplies to the Michigan Indians. If this influence was not reduced, there would be new Indian attacks against the Michigan frontier.<sup>57</sup>

American practices and policies upset the Michigan Indians in 1815. Cass complained to Monroe that in his absence Indians who had come into Detroit with no hostile intentions were frequently arrested. More than ten different officers had been in command of the Detroit garrison in less than a year. During that time they had interfered with civilian Indian agents, occasionally imprisoned Indians without cause, and discouraged Indian visits to Detroit.<sup>58</sup> Other Indians were upset with the way in which their land was acquired by whites. They also complained to Cass that many Indian agents did not understand their problems and had no knowledge of their manners and customs.<sup>59</sup> Cass told Monroe that an appropriate officer should

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<sup>57</sup>Cass to the Secretary of War, February 17, 1815, in Carter, Terr. Papers, X, 507-512.

<sup>58</sup>Cass to Monroe, February 14, 1815, in Cass Papers, BHC. While Cass often deplored the actions of the Detroit garrison regarding Indians, he found it necessary to place a sentinel at the door of his quarters to keep out drunk and disorderly Indians who chose to call upon him at all hours of the night. "It is a literal fact," he told Mondroe, "that I have been compelled, more than twenty times to hide myself, to avoid their importunities." Cass to the Secretary of War, February 17, 1815, in Carter, Terr. Papers, X, 507-512.

<sup>59</sup>Cass to the Secretary of War, December 15, 1815, in Carter, Terr. Papers, X, 611-612.



be appointed to visit all the Michigan agencies to investigate the grievances of the Indians.<sup>60</sup>

The uncertain fate of settlers lost to Indians in the War of 1812 caused many whites to look unfavorably on the Michigan Indians. Settlers whose relatives had been lost or captured continued to hope for their return, and repeatedly asked Cass for assistance. The governor reported to Secretary Crawford in 1816 that every effort had been made to locate such prisoners and to secure their release. These efforts had proved fruitless, although many citizens continued to hold false hopes. Cass was convinced, however, that whites captured by Indians had been treated "with an unsparing hand," and the few prisoners who had survived had long since been brought to Detroit and released. He had even employed Indians and promised to reward them if they could locate any white persons still being held. This approach had not been successful.<sup>61</sup>

New Indian trouble broke out on the River Rouge in 1816. Settlers in that area complained to Congress that Indians had forcibly entered their homes, menaced and abused their families, destroyed and carried away furniture, and driven off over six hundred horses. A local church had been entered, despoiled of its ornaments, and the organ smashed. Many families were forced to flee inland, or to Detroit. These petitioners pointed out that in their flight to find safety from the Indians, they were forced to leave behind many

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<sup>60</sup>Ibid.

<sup>61</sup>Cass to the Secretary of War, February 2, 1816, Ibid., 620-621.

valuables, implements, buildings, orchards, and improvements. Many of these had been damaged or destroyed because they were not there to protect them.<sup>62</sup>

1819 was also a year of considerable Indian unrest in Michigan. Cass reported to Calhoun that a man living near the River Raisin had been shot and stabbed by Indians, two settlers had been murdered near the mouth of the Portage River, and a man had been shot in his home within seven miles of Detroit. Indian raids on the livestock of settlers were numerous. Cass reminded Calhoun that there were not more than eight thousand inhabitants in Michigan, and that they were not formed into compact settlements that supported each other. Instead they were thinly scattered along the principal streams and presented an exposed frontier to the Indians. Fortified posts seemed to have little effect on the Indians, who merely slipped away into the forests after attacking a remote farm or cabin. "I have already stated that this is an exposed and defenceless frontier," he told Calhoun; "it is the only part of the Union, which is in direct contact with the British and the Indians."<sup>63</sup>

The British continued to exert an important influence on the Indians in 1819. Large quantities of clothing, arms, and ammunition, as well as other goods, were distributed by the British at Malden to Indians living in American territory. The Indians often made the trip to Malden to receive such gifts. Cass complained to Calhoun

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<sup>62</sup>Petition to Congress by Inhabitants of the Territory, December 30, 1816, Ibid., 680-682.

<sup>63</sup>Cass to John C. Calhoun, May 27, 1819, in Cass Papers, BHC.

that on their return trip they would often assault Michigan settlers, steal their horses, kill their cattle and hogs, and keep the frontier in a continual state of alarm. Most of these assaults on Americans had been committed by Indians recently influenced by English presents and preachments. Cass lamented that before the Americans could assemble an adequate force to pursue such lawbreakers, they were beyond discovery.<sup>64</sup>

Cass feared that the British planned to revive Tecumseh's old plan of an Indian confederacy. Indians passing through Detroit spoke of belts passed among them large enough for many braves to sit upon. The governor had noticed that most Indians coming from Canada brought back a suit of clothes, powder, shot and ball, arms, kettles, and other useful articles.<sup>65</sup> Kiskankon, a principal chief of the Chippewa tribe, told Cass that when he had been invited to Canada, the Shawnee Prophet had told him that a great council would soon be held. The Prophet had also shown him boxes of pistols, swords, guns, and rifles to be distributed among the Indians. He had refused the Prophet's advances, however, and returned to Michigan.<sup>66</sup>

No Indian confederacy materialized, and by the end of 1819 Cass's fears concerning Indian unrest began to subside. Although the frontier was quiet, Cass was convinced that the British would continue to agitate the Indians and attempt to use them for their own purposes.

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<sup>64</sup>Cass to the Secretary of War, August 3, 1819, in Letters Rec'd., WD, Main Series, RG107, M221, Roll 84, FRC, Chicago.

<sup>65</sup>Ibid.

<sup>66</sup>Cass to the Secretary of War, November 21, 1819, Ibid.

He told Calhoun that until British interference among the Michigan Indians was finally ended, settlers would continue to live under the threat of Indian attack.<sup>67</sup>

Undoubtedly one of Cass's most important accomplishments as Michigan's superintendent of Indian affairs was the acquisition for the United States of several million acres of Indian land. He believed that public land sales in Michigan were important for the territory. In 1816, he told Josiah Meigs, Commissioner of the General Land Office in Washington, that public land sales in Michigan would turn the current of emigration toward the territory, strengthen Michigan's defenses by increasing its population, and help to erect a barrier between the British and the Indians. In these ways, public land sales would affect the growth and security of Michigan.<sup>68</sup>

Cass successfully completed the Treaty of Fort Meigs in September of 1817 with representatives from the Wyandot, Seneca, Delaware, Shawanese, Potawatomi, Ottawa, and Chippewa tribes.<sup>69</sup> The United States received a small cession of land in southern Michigan.<sup>70</sup> In return, the United States agreed to pay over ten thousand dollars

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<sup>67</sup>Cass to the Secretary of War, December 25, 1819, Ibid.

<sup>68</sup>Cass to Josiah Meigs, May 11, 1816, in Carter, Terr. Papers, X, 633-635.

<sup>69</sup>See Cass to Duncan McArthur, September 31, 1817, in Letters Rec'd., WD, Ind. Aff., RG75, M271, roll 2, CHL.

<sup>70</sup>Beginning at the southwest corner of the cession obtained in the Treaty of Detroit, this new cession involved an area extending forty-five miles up the 1807 boundary, westward to a line extended north from Ohio's western boundary, south along that line, and east to the 1807 boundary.

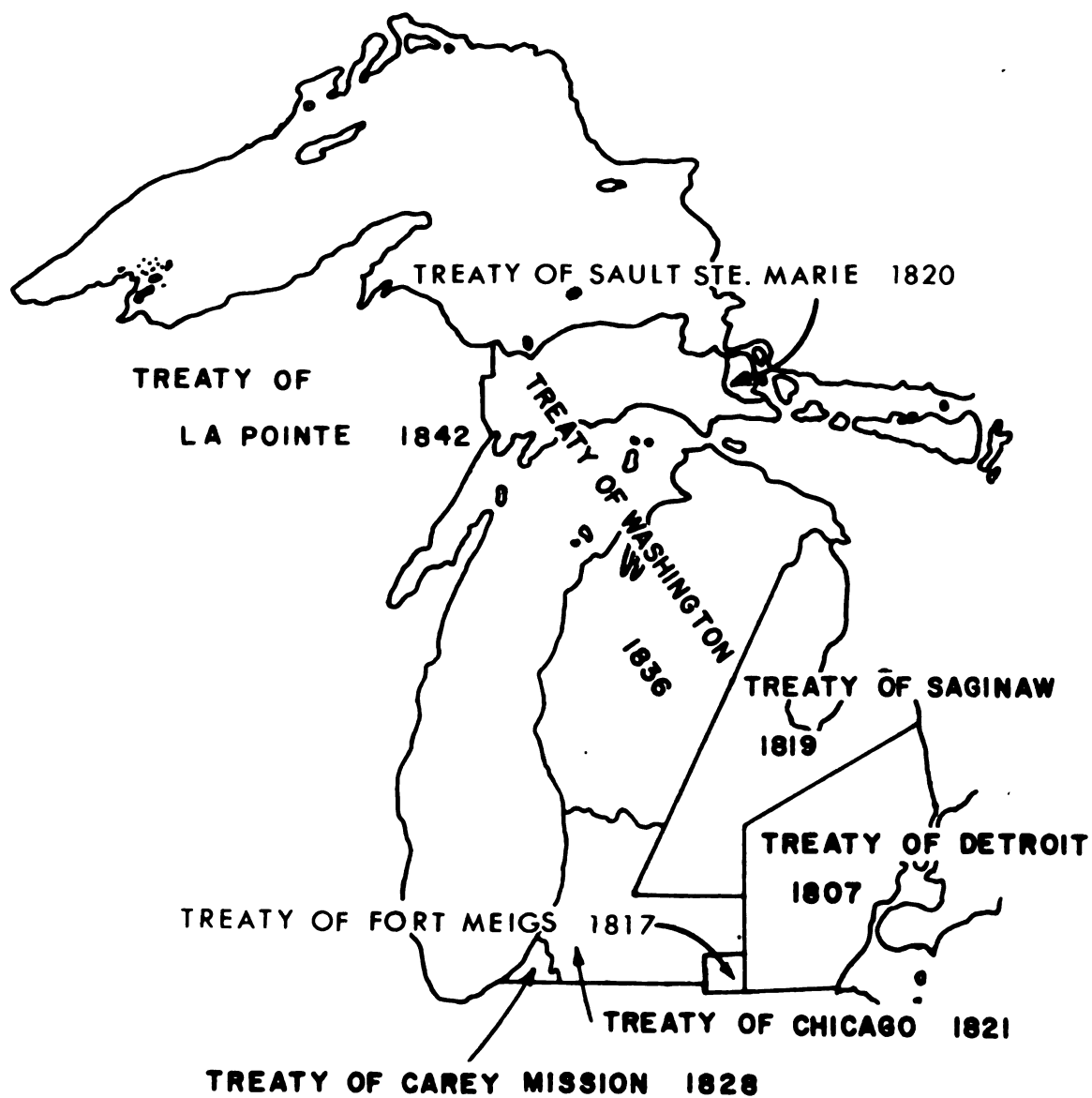


Figure 6. Indian Cessions

Source: Adapted from Richard Welch, County Evolution in Michigan (Lansing: Michigan Department of Education, 1972), 16.

in annuities, as well as other direct payments to the Indians for property destroyed during the War of 1812. The treaty provided for reservations not only for Indians but also for certain whites who had suffered at the hands of these tribes. The United States reserved the right to make roads and to establish taverns and ferries for the accommodation of travellers through any of the lands ceded by or reserved to the Indians.<sup>71</sup>

Early in 1819 Cass informed Calhoun that he believed the time was right to secure a land cession from the Chippewas in the Saginaw Bay area. The land in that region was extremely rich and would attract American settlement. The Chippewas had proved troublesome in the past, committing frequent depredations on Michigan establishments. Troubles between Indians and white settlers could be reduced by securing this land. In addition, Cass told Calhoun that the Chippewas would be further removed from British interference and intrigues.<sup>72</sup>

After receiving instructions from Washington to negotiate for Indian lands in the Saginaw Valley, Cass met with members of the Chippewa and Ottawa tribes in September of 1819 at the site of present-day Saginaw. Louis Campau, a local trader, had constructed a council house to accommodate the negotiators. Logs were placed in rows to provide seating, while a large platform of squared logs and a table were provided for Cass and his aides. The governor had sent

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<sup>71</sup>Kappler, Indian Treaties, 145-151.

<sup>72</sup>Cass to the Secretary of War, January 6, 1819, in Letters Rec'd., WD, Main Series, RG107, M221, roll 80, FRC, Chicago.

a schooner to the Saginaw River, loaded with blankets, trinkets, five barrels of rum, and three thousand dollars in silver to be employed in the treaty negotiations. The schooner also carried a company of soldiers from Detroit, dispatched to protect Cass and his party. Over a thousand Indians, mostly Chippewas, traveled to Saginaw for the meeting with the governor. Speeches, discussions, and festivities continued for nearly two weeks before the Indians finally agreed to cede their land.<sup>73</sup>

The Treaty of Saginaw was completed on September 24, 1819. The United States gained about six million acres of Indian land, located north and west of the cession provided for in the Treaty of Detroit.<sup>74</sup> In return, the United States agreed to pay the Indians an immediate three thousand dollars in cash and the promise of an annuity of one thousand dollars in silver. The treaty provided for a number of Indian reservations, permitted the Indians hunting rights on the ceded land as long as it remained public property, and granted the United States authority to build roads through reservations. The United States agreed to pay the Indians for any abandoned improvements to the land, and promised to provide a blacksmith, farming

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<sup>73</sup>Ephraim Williams, "The Treaty of Saginaw in the Year 1819," in MPHC, VII, 262-270.

<sup>74</sup>The boundary line for the Saginaw cession began at the western boundary of the 1807 tract, six miles below the base line, and ran westward for nearly sixty miles, then proceeded in a northeasterly direction to the source of the Thunder Bay River and down that river to Lake Huron. Hull's 1807 purchase formed the southern boundary of the Saginaw tract.

utensils, and cattle for Indian use.<sup>75</sup> After the treaty was completed, Cass ordered the five barrels of whiskey to be opened. Campau opened another ten of his own stock, and the Indians drank to excess, brandishing tomahawks and whooping in the process. Cass finally appealed to Campau to help restore order.<sup>76</sup>

Cass informed Calhoun of his efforts at Saginaw soon after the conclusion of the treaty. Even though the Chippewas had ceded a large part of their territory, the governor was concerned that the final survey of this new cession might include lands in the southeastern corner of Michigan belonging to the Grand River Indians. If that proved true, he was sure that their claims could be quieted. He reported that no Indian land had been set aside for the purposes of education, because the Chippewa could see no value in it.<sup>77</sup>

In concluding the Treaty of Saginaw, Cass had some concern for the welfare of the Indians involved. He was somewhat upset that the Chippewas had demanded so large a sum in cash and were anxious to dissipate their newly gained wealth in "childish and useless purchases." He refused to name a specific sum in relation to agricultural improvements for the Indians, but left the figure to the discretion of the President. "In taking this course," he told

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<sup>75</sup>Kappler, Indian Treaties, 185-187.

<sup>76</sup>Fred Dustin, "The Treaty of Saginaw," Michigan History, IV, 243-278. Campau had expected to be paid immediately for his services and supplies from the three thousand dollars in silver granted to the Indians. When the Indians received the entire sum, he had his revenge on Cass by temporarily turning the council into a drunken melee.

<sup>77</sup>Cass to the Secretary of War, September 30, 1819, in Carter, Terr. Papers, X, 863-866.



Calhoun, "I was influenced by the consideration, that the negotiator of an Indian treaty is not always the best judge of the value of the purchase or of the amount which should be paid for it."<sup>78</sup> He believed that it was not his duty to wring the lowest possible price from ignorant savages, even though this afforded financial savings to his government. He was convinced that the white man owed the Indian a "great moral debt," which could only be discharged by patient forbearance and genuine concern.<sup>79</sup>

When Illinois became a state in 1818, Michigan Territory was expanded by having attached to it the remaining lands in the Northwest Territory north of Illinois and west of Lake Michigan. In October of that year Cass extended Michigan civil authority to this new area.<sup>80</sup>

Cass was eager to explore the new acquisition. He told Calhoun that a tour along the southern shore of Lake Superior would provide the United States with important information concerning plant and animal life, mineral resources, facilities for water communication, and areas for settlement. He believed that such a trip would also be valuable in determining the sizes and strengths of the various

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<sup>78</sup>Ibid. For Cass's views concerning the dangers of giving the Indians too much money at one time, see Cass to Calhoun, June 19, 1818, in Letters Rec'd., WD, Ind. Aff., RG75, M271, roll 2, CHL.

<sup>79</sup>Ibid.

<sup>80</sup>Proclamation by Lewis Cass, October 26, 1818, in Mich. Exec. Acts, 1814-1830, MSA.

Indian tribes living in that region.<sup>81</sup> Calhoun agreed and approved the venture.

Cass began his expedition in May of 1820, setting out from Detroit with three large canoes. He was accompanied by forty-one men, including soldiers, Indian guides and interpreters, voyageurs, a physician, a reporter, and a private secretary. Henry Schoolcraft, a young geologist, also accompanied the expedition. In two weeks the party reached Michilimackinac, where twenty-three soldiers joined the expedition. Schoolcraft observed that Michilimackinac was an important trading center for the northern Indians, who exchanged their furs for knives, blankets, and other articles. After six days at Michilimackinac, Cass and his party headed for Sault Ste. Marie.<sup>82</sup>

At Sault Ste. Marie, Cass ran into difficulty with the Chippewas. In the Treaty of Greenville in 1795, they had agreed to cede a tract of land along the St. Mary's River. When Cass pointed this out to a group of Indians, Sassaba, a Chippewa chief, wearing the red coat of a British officer, angrily spoke against the Americans, kicked aside their presents, and left the council. Soon a party of Indians raised a British flag over his wigwam. This was too much for Cass. Accompanied only by an interpreter, he entered the Indian

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<sup>81</sup>Cass to John C. Calhoun, November 18, 1819, in Am. State Papers, Indian Affairs, II, 318-319.

<sup>82</sup>Henry Schoolcraft, Narrative Journal of Travels Through the Northwestern Regions of the United States Extending from Detroit through the Great Chain of American Lakes to the Sources of the Mississippi River in the Year 1820 (East Lansing: The Michigan State College Press, 1953), 88. Hereafter cited as Schoolcraft, Journal.

camp, pulled down the flag, and told Sassaba that no foreign flag would fly over American territory. "This intrepid conduct struck the Indians with astonishment," Schoolcraft observed, "and produced an effect,--which we were not at the moment sensible, was all that prevented an open rupture."<sup>83</sup> When tempers cooled, the chiefs sat down with Cass. After further negotiations, they signed the Treaty of Sault Ste. Marie, ceding some sixteen square miles near the rapids of the St. Mary's River. The Indians, however, retained fishing and camping rights in the area.<sup>84</sup> Two years later the Americans built Fort Brady on this cession.

Cass's expedition covered over four thousand miles before it finally returned to Detroit in September of 1820. His party followed the southern shore of Lake Superior westward to the St. Louis River, and then, after a portage, reached the Mississippi. He ascended it for several hundred miles in search of its source, but eventually turned downstream as the end of summer approached. At Prairie du Chien the expedition turned eastward along the Wisconsin River, portaged to the Fox, and soon arrived at Green Bay. Cass then proceeded along the western shore of Lake Michigan by canoe to Fort Dearborn, and then returned to Detroit on horseback.<sup>85</sup>

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<sup>83</sup>Ibid., 99.

<sup>84</sup>Kappler, Indian Treaties, 187-188. After Cass had left Michilimackinac for the rest of his tour, George Boyd, Puthuff's successor as Indian agent, signed a treaty on July 6 at Michilimackinac and L'Arbre Croche with the Chippewa and Ottawa ceding the St. Martin Islands to the United States. Kappler, Indian Treaties, 188-189.

<sup>85</sup>Woodford, Cass, 134-138; Dunbar, Michigan, 244.

Cass was favorably impressed by his contacts with the Indians on this western expedition. He found them friendly to the United States and peacefully disposed toward one another. He observed that Indian affinity for the United States was most evident when there was little interference by the British. He believed that if this interference could be prevented in the future, there was hope that the frontier would remain at peace.<sup>86</sup>

In August of 1821, Cass negotiated the Treaty of Chicago with representatives of the Chippewa, Ottawa, and Potawatomie nations, who assembled at Fort Dearborn. By this treaty, the United States gained that region in Michigan south of the Grand River, except for a small triangle to the extreme southwest, bounded on the east by the St. Joseph River.<sup>87</sup> In return, the Ottawas received an annuity of one thousand dollars for ten years, while the Potawatomies received five thousand dollars for twenty years. In addition, a blacksmith and a teacher of agriculture were to be provided for the benefits of these tribes. Certain Indian reservations were provided for in the treaty, with the United States retaining the usual rights of road construction through these lands.<sup>88</sup>

As superintendent of Indian affairs for Michigan, Cass

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<sup>86</sup>Cass to the Secretary of War, October 21, 1820, in Letters Rec'd., WD, Ind. Aff., RG75, M271, roll 3, CHL.

<sup>87</sup>Part of the land in the triangle west of the St. Joseph River became the site of the Carey Mission, run by Reverend Isaac McCoy. The remaining small segment was acquired by the United States in the Treaty of Chicago in 1833.

<sup>88</sup>Kappler, Indian Treaties, 198-201.

maintained peace between red men and white, and acquired millions of acres of Indian land for American settlement, while retaining a genuine concern for the welfare of the Indians. This concern was based in part on his belief that the white man owed a moral debt to the Indian. When the Winebago Indians went to war with the Chippewa and the Menominees in Wisconsin in the spring of 1821, he suggested to Calhoun that Indian agents be used as mediators to terminate the conflict. He believed that because of the social and moral degradation of the Indians, the whites were duty bound to uplift and to preserve the various tribes. "In fact we must think for them," he concluded.<sup>89</sup> He remained convinced that civilization was the best hope for the future of the Indian. He believed that if the red man could not grasp that lesson for himself, it remained the responsibility of the white man to teach him.

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<sup>89</sup>Cass to the Secretary of War, April 6, 1821, in Letters Rec'd., WD, Main Series, RG107, M221, roll 88, FRC, Chicago.

## CHAPTER VII

### THE LEGISLATIVE BOARD REBUILDS THE TERRITORY

Michigan emerged from the War of 1812 in a weakened and distressed condition. Early in 1814 President Madison informed Congress that at the recovery of Michigan Territory from the temporary possession of the enemy, the inhabitants were left in such a destitute condition that it was necessary to give them supplies from the public stores to insure their survival.<sup>1</sup> Woodward told Acting Secretary of War Monroe that "the desolation of this territory is beyond all conception."<sup>2</sup> Flour and meat were scarce, and more than half the population lacked any animals for domestic or agricultural purposes. The fencing for farms was almost entirely destroyed, and the damage to personal dwellings had been extensive. In some instances the inhabitants of the River Raisin had been forced to eat "chopp'd hay, boiled" for subsistence.<sup>3</sup>

General Duncan McArthur, the American commander at Detroit in 1814, was concerned about Michigan's defenseless and devastated

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<sup>1</sup>Annals of Congress, Thirteenth Congress, First Session, XXVI, 644.

<sup>2</sup>Woodward to the Acting Secretary of War, March 5, 1815, in Carter, Terr. Papers, X, 513-514.

<sup>3</sup>Ibid.

frontier. Detroit was short of supplies, and communications with Ohio were precarious. McArthur was also upset because white settlers were giving material support to the Indians. "These settlers, from choice, and others probably to save their scalps, feed, harbour, and communicate every information to them [the Indians] and through them to the British," he complained.<sup>4</sup> To retard future British influence, he suggested that settlers friendly to the United States be moved to the interior of Michigan, while those friendly to Britain be sent to the enemy. He even advocated laying waste to parts of Canada to erect a "desert" between that country and the United States.

William Woodbridge became territorial secretary in the fall of 1814. Born in Connecticut in 1780, he had gone to Ohio with his parents at an early age, returned to the East for an education, and then was admitted to the Ohio bar in 1806. Woodbridge served as a prosecuting attorney and as a member of the Ohio legislature before accepting a post in Michigan Territory. A personal friend of Cass, he was to provide strong leadership when the governor was absent from the territory.<sup>6</sup> General McArthur had warned Woodbridge that after a few months in Michigan, Ohio would look very good to him.<sup>7</sup> Undaunted,

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<sup>4</sup>Duncan McArthur to the Secretary of War, February 6, 1815, Ibid., 503-505.

<sup>5</sup>Ibid.

<sup>6</sup>Gilpin, The Territory of Michigan, 66; Dunbar, Michigan, 277. When Reuben Attwater failed to return to Michigan after the War of 1812, Cass recommended the appointment of Woodbridge.

<sup>7</sup>McArthur to William Woodbridge, December 21, 1814, in William Woodbridge Papers, BHC. Hereafter cited as Woodbridge Papers, BHC.

Woodbridge made the move to Detroit. He later informed his wife Julia that he was "extremely pleased" with the Michigan country.<sup>8</sup>

Michigan's governmental machinery was in disarray after the War of 1812. In 1817 Acting Governor Woodbridge issued a proclamation calling for all territorial officials to return either their original commissions or properly authenticated copies to the secretary of the territory. Many of Michigan's executive records had been lost or destroyed during the war, and Woodbridge had no accurate record of territorial officials.<sup>9</sup>

Woodbridge also found it necessary to ask Secretary of State John Quincy Adams for entire sets of the legislative acts of the various states, as the Michigan officers could only adopt laws from such states. In 1818 Michigan did not possess the entire code of any one state. Similarly, it had no copy of the laws of the United States. He told Adams that the British had destroyed books, records, and original papers, severely restricting territorial government. Woodbridge wanted copies of state and federal laws not only for the use of the governor and judges but also for concerned citizens who wished to examine them.<sup>10</sup>

Adams was unable to help Woodbridge. He informed him that his own department had failed to secure such sets for its own use,

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<sup>8</sup>Woodbridge to his wife Julia, January 23, 1815, Ibid.

<sup>9</sup>Proclamation of Acting Governor Woodbridge, February 14, 1817, in Mich. Exec. Acts, 1814-1830, MSA.

<sup>10</sup>Woodbridge to the Secretary of State, January 15, 1818, in Mich. Terr. Papers, I, 335-336, RG59, NA.



and that copies of the laws requested were not available. He also told Woodbridge that it was somewhat doubtful if there was any law authorizing an expenditure for such a purpose even if sets of the statutes could be found.<sup>11</sup>

In spite of initial governmental disorder, Michigan's territorial legislative board--Woodward, Witherell, Griffin, and Cass--managed to function both smoothly and efficiently after the War of 1812. While Woodward continued to play a dominant role in the board's activities, this period was not characterized by the bitter feuds of the previous administration. The leadership of both Cass and Woodbridge was instrumental in maintaining harmony among the territorial officials.

Woodbridge was evidently unimpressed with the high court judges. He labeled Woodward as a "wild Theorist," best fitted for "exhorting sunbeams from Cucumbers . . . oftentimes a malevolent maniac."<sup>12</sup> Griffin was "notoriously the willing Dupe of his Senior Judge [Woodward]."<sup>13</sup> Witherell he considered to be "opinionated and prejudiced and opposed to the English Origin of the Common Law."<sup>14</sup> About the only Michigan official Woodbridge really respected was Cass.

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<sup>11</sup>John Quincy Adams to Woodbridge, March 9, 1818, in Dom. Letters, SD, RG59, M40, roll 15, NA. In a letter to J. Q. Adams in August of 1818, Woodward acknowledged the reception of a package of the Laws of the United States. Woodward to the Secretary of State, August 22, 1818, in Carter, Terr. Papers, X, 780.

<sup>12</sup>Woodbridge to James Lanman, December 12, 1822, in Woodbridge Papers, BHC.

<sup>13</sup>Ibid.

<sup>14</sup>Ibid.

Secretary of the Treasury A. J. Dallas responded in a limited way to Michigan's distressed condition in 1815. He asked Cass to verify the extent of suffering on the River Raisin, and to submit his report to Washington. He empowered Cass to supply those in actual need with provisions and necessities as long as his total expenses did not exceed fifteen hundred dollars. He authorized Cass to draw upon the War Department for this sum, and asked him to submit reports as to how the money was spent.<sup>15</sup>

Two years later the War Department informed Cass that it would take action concerning Michigan claims for damage suffered in the War of 1812. The Secretary of War instructed Cass to compile claims arising before June 1, 1815, and to forward them to an auditor in Washington. These materials would be compared to lists compiled by the army, and just and deserving claims would be satisfied. At the end of every month Cass was to transfer any reported claims to Washington.<sup>16</sup>

The governor and judges realized that they would have to attract new settlers to Michigan Territory if that area was to grow and to prosper. To encourage new settlement, it was necessary to survey the public lands and to offer them for sale. In 1812 Congress had set aside six million acres of land in several western states and territories for military bounties. Two million acres were to be

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<sup>15</sup>A. J. Dallas to Lewis Cass, May 25, 1815, in Cass Correspondence Book, 1814-1820, Sec. of State Records, MSA.

<sup>16</sup>The Secretary of War to Lewis Cass, May 12, 1817, in Carter, Terr. Papers, X, 698-699.

located in Michigan.<sup>17</sup> Surveys for this land had been prevented by the War of 1812, but with the end of that conflict, Cass demanded that this land be placed on the market.

Surveyor-general Edward Tiffin experienced no small difficulty in 1815 in attempting to survey bounty lands in Michigan. He complained to Josiah Meigs, Commissioner of the General Land Office in Washington, that Indians continually drove his surveyors from the field and retarded their progress. The government would have to take steps to prevent these outrages by Indians if his men were to complete their assigned tasks. Tiffin estimated that considerable surveying could be completed before the coming of winter if the Indians caused no further trouble.<sup>18</sup>

Tiffin's surveyors also experienced other difficulties. Benjamin Hough complained about the thick underbrush and impassable swamps. He considered the land generally poor, and found his progress occasionally impeded by large lakes. He decided that the countryside was in "no ways inviting--it is true there is some good spots, but a large proportion is either useless swamps, or poor and barren."<sup>19</sup> Alexander Holmes was equally disenchanted with Michigan.

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<sup>17</sup>U. S. Stats., II, 728-730.

<sup>18</sup>Edward Tiffin to Josiah Meigs, June 12, 1815, in Letters Sent by the Surveyor General of the Territory Northwest of the River Ohio, Record Group 49, M477, roll 2, CHL. Hereafter Letters Sent by the Surveyor General of the Territory Northwest of the River Ohio will be cited as Letters Sent, SG, NW Terr.

<sup>19</sup>Benjamin Hough to Edward Tiffin, October 12, 1815, in Letters Received by the Surveyor General of the Territory Northwest of the River Ohio, Record Group 49, M479, Roll 5, CHL. Hereafter Letters Received by the Surveyor General of the Territory Northwest of the River Ohio will be cited as Letters Rec'd., SG, NW Terr.

"We have suffered almost every hardship," he said, "and encountered almost every difficulty that could be expected of mortals to endure, but amidst all have been blessed with good health."<sup>20</sup>

Problems with surveying in Michigan and the reported condition of the territory's southern lands caused Tiffin to recommend a transfer of Michigan's two million acres of bounty land to the Illinois Territory. Upon receiving Tiffin's report, Meigs informed the Secretary of War that the Illinois tract contained over nineteen million acres and was believed to be "good land."<sup>21</sup> Congress accepted Tiffin's report, and cancelled the Michigan bounty lands, transferring them to the Illinois country.<sup>22</sup>

Cass was upset by this action. "The quality of the land in this Territory, I have reason to believe, has been grossly misrepresented," he told Meigs.<sup>23</sup> Government surveyors had visited Michigan in the wettest part of the season, had seen only a small part of the country, and had stayed only a short time. Furthermore, Cass believed that the surveys should have started near Detroit and the lake shores. He was disappointed that Tiffin's men had surveyed lands distant from the larger streams and the settled areas, lands unattractive to new settlers.<sup>24</sup>

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<sup>20</sup>Alexander Holmes to Edward Tiffing, November 23, 1815, Ibid.

<sup>21</sup>Josiah Meigs to the Secretary of War, January 22, 1816, in Carter, Terr. Papers, X, 617.

<sup>22</sup>U. S. Stats., III, 332.

<sup>23</sup>Cass to Josiah Meigs, May 11, 1816, in Carter, Terr. Papers, X, 633-635.

<sup>24</sup>Cass to Josiah Meigs, May 11, 1816, Ibid., 635-636.

While Cass was wrestling with the problems of land surveys, he received a new setback in 1816 when the War Department informed him that it would no longer issue rations to Michigan inhabitants. Crawford told Cass that "things must now have returned to their regular channels," so that any who did not own property could at least find employment and obtain an easy and comfortable living. Therefore, rations were to be restricted in the future to United States troops and to any Indian visitor to Detroit.<sup>25</sup>

Cass was not convinced that Michigan had returned to normal in 1816. "This territory is weaker in itself, more liable to be attacked & with greater difficulty defended than any other section in the Union," he told Meigs.<sup>26</sup> Unless public lands were placed on the market in Michigan, the territory's population would not increase. Furthermore, settlers coming to Michigan and finding little public land offered for sale, were adopting the practice of settling illegally on the public lands. Cass believed that unless they could purchase their own lands, they would continue this practice.<sup>27</sup>

In a further attempt to convince Washington of the necessity of public land sales in Michigan, Cass revealed many of Michigan's weaknesses in 1816. He reminded Crawford that the territory's early economy had been founded on the fur trade, while agricultural pursuits had been badly neglected. Many settlers had no concept of

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<sup>25</sup>Secretary Crawford to Lewis Cass, May 7, 1816, Ibid., 633.

<sup>26</sup>Cass to Josiah Meigs, May 11, 1816, Ibid., 635-636.

<sup>27</sup>Ibid.

correct farming procedures. There were practically no spinning wheels or looms in the entire territory. Farmers often piled their manure upon the ice of the river in winter, that it "might be carried into the lake in the Spring." The wool of the sheep was often thrown away, and Cass doubted that even one pound of wool was manufactured by any person of Canadian descent, a group that composed four-fifths of the population of the territory. Since 1805 only a few settlers had learned how to make soap.<sup>28</sup>

Cass told Crawford that it should come as no surprise that many in Michigan remained unemployed and destitute, considering the backgrounds and poor work habits of most of the inhabitants. He pointed out that until a radical change took place in the manners and customs of the people, or until a migration of new settlers into the territory changed the character of the population, there would be a number of "indigent helpless people" in Michigan, whose wants would far exceed the means available for their support. He again implored Washington to market the public lands in Michigan, a measure that would encourage new population, strengthen the defenses of the territory, and teach the Canadians the American virtues of industry and enterprise.<sup>29</sup>

The federal government finally agreed to market the public lands in Michigan, partly as a result of the persistence of Cass. Meigs told the governor in July of 1816 that surveys would begin

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<sup>28</sup>Cass to Secretary of War Crawford, May 31, 1816, in Letters Rec'd., WD, Main Series, RG107, M221, roll 68, FRC, Chicago.

<sup>29</sup>Ibid.

again in Michigan and that as soon as they were completed, sales would begin at Detroit.<sup>30</sup> Cass was pleased with this report, and advised Meigs to survey those lands most attractive for new settlement. He also apologized for his spirited interest in the land question. "The interest, which I naturally feel for the prosperity of the Territory, and the tendency which the proposed measure would have to promote that prosperity," he said, "must be my apology for troubling you thus often upon the Subject."<sup>31</sup>

While federal surveyors prepared to resume the survey of Michigan public lands, Cass took steps to place the Ten Thousand Acre Tract near Detroit on the market. This land had been granted to Michigan by Congress in 1806. The governor hired Joseph Fletcher, one of Edward Tiffin's surveyors, to survey the area into one hundred and sixty and eighty acre plots. In September of 1816 this land was put up for sale at auction.<sup>32</sup>

This survey of the Ten Thousand Acre Tract, by ignoring Woodward's grand plan for the city of Detroit, caused new friction among the territorial officials. While Woodward was making a visit to Washington in 1817, Witherell convinced Cass that the original city plan was too fanciful and impractical. Woodward's total plan

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<sup>30</sup>Josiah Meigs to Governor Cass, July 16, 1816, in Carter, Terr. Papers, X, 659.

<sup>31</sup>Governor Cass to Josiah Meigs, October 4, 1816, Ibid. 666-667.

<sup>32</sup>Jenks, "Woodward," Michigan History, III, 538-539; Gilpin, The Territory of Michigan, 130.

was destroyed when streets were cut off to accommodate existing farms.<sup>33</sup> Back in Detroit, Woodward protested this action at a meeting of the legislative board in 1818. "By the present operations, confusion and irregularity," he said, "a permanent sacrifice of future and present interests; the convenience of succeeding and even of existing inhabitants, the rights of the people, the sanctity of the laws, are violated, prostrated, and trampled under foot by the demons of opposition, of discord and of prejudice."<sup>34</sup> In spite of his eloquent pleas, he saw his grand plan for Detroit go down to defeat.<sup>35</sup>

In March of 1818 President Monroe issued a proclamation opening public land sales in Michigan.<sup>36</sup> According to the Act of 1800, the minimum purchase was to be one hundred and sixty acres at a minimum cost of two dollars an acre. Persons buying on credit could pay one fourth down and the rest in four annual payments.<sup>37</sup> Public land sales in Michigan in 1818 amounted to over seventy thousand

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<sup>33</sup>George Catlin, "The Regime of the Governor and Judges of Michigan Territory," Michigan History, XV, 39-40. Hereafter cited as Catlin, "The Regime of the Governor and Judges," Michigan History, XV.

<sup>34</sup>Protest by Judge Woodward against the sale of certain lands in Detroit, June 1, 1818, in Woodward Papers, BHC. See also MPHC XII, 473-483.

<sup>35</sup>Dunbar notes that "in later years the abandonment of Woodward's plan was to cost Detroit millions of dollars spent in widening streets." Dunbar, Michigan, 197.

<sup>36</sup>Proclamation of Land Sales at Detroit, March 31, 1818, in Carter, Terr. Papers, X, 739-740.

<sup>37</sup>U. S. Stats., II, 73-78.



dollars.<sup>38</sup> By 1823 more than three million acres had been surveyed and offered for sale in Michigan, although only a little more than one hundred and twenty thousand had been sold.<sup>39</sup>

Michigan's early land sales were not entirely successful in encouraging individual settlement on small holdings. Transportation to Michigan remained difficult. Those settlers who did come often found surveyed lands far away from the settled areas. The auction system often attracted speculators with enough capital to bid up the price of land, squeezing out the small purchaser. While speculators were not a major problem in this early period, settlers still found it beyond their means to acquire one hundred and sixty acre tracts. John Biddle, the register of the land office at Detroit informed Commissioner John McLean of the General Land Office in 1822 that "the settlers in this territory are generally persons who buy the smaller divisions of the public lands and as the fractions in question are all above one hundred & sixty acres entire they are virtually out of market."<sup>40</sup> In 1820 Congress provided for the sale of the public lands in eighty-acre tracts and reduced the minimum price per acre

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<sup>38</sup>Am. State Papers, Public Lands, VIII, 423.

<sup>39</sup>Ibid., IV, 27. See also Dallas Lee Jones, "The Survey and Sale of the Public Land in Michigan, 1815-1862" (unpublished M.A. thesis, Cornell University, 1952), 9-23; 75-83; 129-131. Hereafter cited as Jones, "Public Land in Michigan."

<sup>40</sup>John Biddle to John McLean, November 13, 1822, in Carter, Terr. Papers, XI, 294. McLean, formerly a justice of the Supreme Court of Ohio, succeeded Josiah Meigs as commissioner when the latter died in September of 1822. McLean served as commissioner for only nine months, accepting an appointment as Postmaster General. He was succeeded by George Graham. Malcolm Rohrbough, The Land Office Business (New York: Oxford University Press, 1968), 158-159.

to a dollar and a quarter. While credit was eliminated from the land code, some credit was extended for land purchased previously to 1820.<sup>41</sup> In spite of these changes in the land laws, land sales in Michigan remained slow.

A boundary dispute with Ohio discouraged settlement south of Detroit in this period. In 1802 the Ohio Constitutional Convention had established Ohio's northern boundary to include the mouth of the Maumee River. In 1805, however, when Michigan became a territory, Congress provided that its southern boundary would be a line drawn due east from the southerly extreme of Lake Michigan, as provided by the Northwest Ordinance. This line disregarded the provision of the Ohio constitution, and established a line several miles further south of the Ohio line. In January of 1818 the territorial officials addressed a lengthy memorial to Congress in defense of the Michigan line. They pointed out that it was relatively unimportant to Ohio whether or not its boundary would, or would not, be extended seven miles further north. On the other hand, the matter did concern Michigan Territory, which was small in extent and weak in population.<sup>42</sup> Congress failed to act on the matter, and the debate

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<sup>41</sup>U. S. Stats., III, 566-567; Rohrbough, The Land Office Business, 141-143.

<sup>42</sup>Memorial to Congress by the Governor and Judges, January 3, 1818, in Carter, Terr. Papers, X, 747-754. The area in dispute contained less than five hundred square miles and was about eight miles wide on the east and five miles wide on the west. The correspondence between William Woodbridge and Governor Ethan Brown of Ohio in 1820 on the dispute in this early period is in Mich. Exec. Acts, 1814-1830, MSA.

between the two parties continued to rage until Michigan became a state.

Financial problems were a concern of the governor and judges after the War of 1812. Michigan continued to be an expensive place to live, even though the territory was in a devastated condition. Woodbridge told his wife Julia in 1815 that he had been unable to purchase any comfortable home in Detroit for less than five thousand dollars. He noted that when the war with Britain had ended, "the news was received with joyous acclamation, and most unfortunately too it was followed by an immediate rise in real property."<sup>43</sup>

A continuing problem in Michigan was a shortage of specie, which forced many territorial residents to resort to barter. Since there was no bank in Michigan, money had to be brought from the East at considerable risk. Petitioners to the governor and judges complained that gold, silver, and paper were being carried away from the territory by "foreign speculators of all descriptions," and that it was difficult to transact business. They lamented that the territory was in a deplorable financial condition. Unless something was done for the relief of the people, they believed that many would "fall prey to the iron grasp of their unrelenting creditors."<sup>44</sup> Still other memorialists from Detroit called for the erection of a

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<sup>43</sup>Woodbridge to his wife Julia, February 17, 1815, in Woodbridge Papers, BHC.

<sup>44</sup>Petition to the Governor and Judges, March 3, 1820, in Petitions and Recommendations, Civil Affairs, Secretary of State Records, 1820-1821, MSA. Hereafter cited as Petitions and Recommendations, 1820-1821, MSA.

territorial bank to help prevent the flood of foreign and unchartered paper in circulation.<sup>45</sup>

In December of 1817 the legislative board made provision for the incorporation of the Bank of Michigan. This bank was established at Detroit with an initial capitalization of one hundred thousand dollars, to be divided into one thousand shares of one hundred dollars each. One tenth of the amount of each share was to be paid immediately to the bank directors in specie, with the balance being made in installments. This act named the first directors--Stephen Mack, Abraham Edwards, Solomon Sibley, Henry Hunt, Philip Lecuyer, John Williams, and William Brown--but provided for future directors to be elected annually.<sup>46</sup> Williams became the first president and James McCloskey the cashier of the bank.<sup>47</sup>

This act also established rules for the operation of the bank. The bank was required to produce a statement of its affairs to the legislative board upon request, and the territory reserved the right to subscribe any number of shares in the bank up to five hundred. The institution was prohibited from trading in goods and merchandise, and could receive such goods only as security for debts. If bills of credit or obligation were not paid in the legal coin of the United

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<sup>45</sup>Petition from Detroit Citizens, May 5, 1817, in Petitions and Recommendations, Undated to 1819, MSA.

<sup>46</sup>Terr. Laws, I, 438-447.

<sup>47</sup>Gilpin, The Territory of Michigan, 102.

States when they were due or demanded, the bank was to be dissolved.<sup>48</sup>

In a further effort to bring financial stability to Michigan, the legislative board adopted an act in September of 1819 providing for a supervisor of territorial taxes. This officer was to make out separate assessment roles for each county except Michilimackinac on which all persons subject to taxation would be listed. These roles would then be turned over to the treasurer, who would make out his warrants for each county and deliver them to the sheriff. This new law placed a tax of twenty dollars on each merchant and trader in Detroit; ten dollars on every Detroit tavernkeeper; five dollars on all other tavernkeepers; and six dollars on all auctioneers. Ferry operators in Detroit were required to pay eight dollars; all others in the territory were assessed four dollars.<sup>49</sup>

Michigan residents frequently called upon the governor and judges to adopt legislation to correct existing evils in the territory. A Michigan grand jury in 1815 complained of many social problems. There were too many taverns in Detroit, the Sabbath was not observed, and a law was needed to "suppress immorality." Roads were poor, and the destitute wandered about the city without relief. Animals were slaughtered near Detroit, and their carcasses were often thrown into the river. Stray animals trampled crops and churned up

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<sup>48</sup>Terr. Laws, I, 438-447. In November of 1815, the legislative board adopted a law making anyone subscribing to or becoming a member or a proprietor of an unincorporated bank liable to a penalty of one thousand dollars. Terr. Laws, I, 139.

<sup>49</sup>Ibid., 427-431.

the already impassable city streets. Finally, Detroit was still without an adequate jail.<sup>50</sup>

The legislative board tried to deal with growing citizen complaints. An effort was made to regulate gambling, a common occurrence in Michigan. An act adopted in 1819 declared that any bonds, bills, or securities obtained by gambling were to be declared void. Anyone who had gambled away his mortgage or securities was to be considered "dead," and his holdings were to go to his next of kin. If a man had lost money at gambling, he could by suit recover from the winner up to treble the amount lost. Professional gamblers were required to post bonds with the local authorities guaranteeing their good behavior.<sup>51</sup> A person placing a bet on a horse risked a hundred dollar fine.<sup>52</sup>

Tavern owners were the object of new legislation in 1819. A tavern owner could not even obtain a license unless the county decided that his particular establishment was necessary to accommodate travellers. These establishments were required to have at least two spare beds for guests, and there were to be accommodations and feed for the animals of guests. Billiards, cards, dice, or other games of chance were forbidden in taverns; drunkenness, quarreling, fighting, and revelling were similarly prohibited.<sup>53</sup>

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<sup>50</sup>Presentment of the Grand Jury of Michigan, September 26, 1815, in Mich. Exec. Acts, 1805-1820, MSA.

<sup>51</sup>Terr. Laws, I, 412-417.

<sup>52</sup>Ibid., 417-419.

<sup>53</sup>Ibid., 407-412.

The legislative board attempted to deal with drunk and disorderly persons by adopting measures permitting authorities to whip them or to turn them over to a local constable to be hired out at forced labor for up to three months.<sup>54</sup> The Detroit Gazette reported the fate of a drunken vagabond in late 1821. When his services were put up for sale in the Market House at Detroit, some of the passengers from the steamboat Walk-in-the-Water talked a black boathand into buying the man's contract for ten days. The Gazette stated that many Detroit citizens had derived great benefits from this law, and had no desire to part with it. It had had the effect of "sending from the territory very many drunkards and vagabonds that thronged into it from Canada, Ohio, and the state of New York."<sup>55</sup>

The territorial officials even made special provisions for enforcing the observance of the Sabbath in Michigan, "considering that in every community, some portion of time ought to be set apart for relaxation from worldly labors and employments, and devoted to the social worship of Almighty God . . . ."<sup>56</sup> Business pursuits, general manual labor, sports, plays, and secular public assemblies were all forbidden, and anyone caught disturbing a religious assembly was liable for a fine of up to forty dollars. Parents were liable for the misdeeds of their children. This act also stated that on the Sabbath no person could serve or execute, or

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<sup>54</sup>Ibid., 588-589.

<sup>55</sup>Detroit Gazette, November 23, 1821.

<sup>56</sup>Terr. Laws, I, 643-645.

cause to be served or executed, any writ, process, warrant, order, judgment, or decree, except in cases of crimes or misdemeanors.<sup>57</sup>

These laws concerning strict moral behavior reflected the eastern backgrounds of the judges, and were not generally popular in Michigan. In a frontier community like Detroit, gambling, drinking, and brawling were all accepted as routine occurrences by the populace. Many citizens found it difficult to change the habits of a lifetime, even though the governor and judges attempted to do this by law. Judge Woodward in particular was often impatient with territorial residents who failed to act like civilized easterners and who could not appreciate his plans for improving conditions in Michigan. His biographer notes that the "slow pace of territorial advancement discouraged him; he had a tendency to sulk when his vision was not immediately shared by others."<sup>58</sup>

Woodward hoped to improve conditions in Michigan by laying the foundation for an education system for the territory. As early as 1806 he had submitted a resolution to the legislative board calling for the establishment of one or more seminaries of learning in the territory. He believed that this measure would eventually improve the standard of living for many territorial residents because they would learn new methods of agriculture, business, and industry. Eventually, Woodward devised a plan for an educational system in Michigan, with a university at the center, to be followed by

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<sup>57</sup>Ibid.

<sup>58</sup>Woodford, Woodward, 74.



subordinate colleges, schools, academies, libraries, museums, and other educational institutions.<sup>59</sup>

In August of 1817 the legislative board established the "Catholepistemiad" or University of Michigania, primarily because of the insistence of Woodward. George Catlin observes that "here was a golden opportunity for Judge Woodward to bring to the surface the most polysyllabic words in his astonishing vocabulary and, like a turtle when it lays its eggs, having once started on this route he seemed unable to stop his raid on the dictionaries."<sup>60</sup> The Catholepistemiad was to contain thirteen "didaxiim" or university departments, presided over by an equal number of "didactors" or professors, who would conduct classes in such fields as "anthropoglossica" (literature), "Oeconomica" (agriculture), and "Ennoeica" (intellectual sciences). Professors were to be appointed and commissioned by the governor, and supported by a fifteen percent increase in public taxes, by public lotteries, and by various land grants.<sup>61</sup>

Woodward's plan for a new university was not popular in Michigan. Territorial inhabitants petitioning the governor and judges for relief from the ravages of the War of 1812 could see little use

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<sup>59</sup>C. M. Burton, "Woodward," in MPHC, XXIX, 658-659.

<sup>60</sup>Catlin, The Story of Detroit, 223.

<sup>61</sup>Terr. Laws, II, 104-106. John Monteith, a Presbyterian minister, was appointed president, and Gabriel Richard vice-president. Monteith received twenty-five dollars a year, and Richard eighteen dollars and seventy-five cents. Detroit citizens raised over three thousand dollars in private contributions for the new institution. For the contribution list, see the Detroit Gazette for October 10, 1817. See also E. B. Isbell, "The Catholepistemiad of Michigania," Michigan Alumnus Quarterly Review, XLIII, 590-602.

for such a grandiose scheme. Cass is said to have referred to the proposed institution as the "Cathole-what's its name."<sup>62</sup> While it is true that Woodward's contrived and unfortunate language describing the new university offended and mystified many territorial residents, his basic educational plan was both sound and ahead of its time. It set forth principles commonly accepted in education today--state support of education from elementary to university level, taxation for educational support, low tuition fees for higher education, and non-sectarian control.<sup>63</sup>

In 1821 the legislative board abolished the Catholepistemiad and established the University of Michigan. The new law named twenty-one trustees to direct and control the university; they included the governor, John Biddle, Gabriel Richard, Solomon Sibley, Austin Wing, and William Woodbridge. These trustees were to control the township of land granted by Congress for educational purposes in 1804, as well as three sections of land ceded by the Indians in the Treaty of Fort Meigs, also for educational purposes. None of these sections of land had as yet been selected. Trustees were authorized to establish necessary schools and colleges if they could find the funds for such projects. Individuals were not to be prevented from either attending or administering the university because of their religious convictions.<sup>64</sup> While this new act attempted to improve education in

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<sup>62</sup>Dunbar, Michigan, 281.

<sup>63</sup>Woodford, Woodward, 162-164; Catlin, The Story of Detroit, 225.

<sup>64</sup>Terr. Laws, I, 879-882.

Michigan, there was no real university until Michigan became a state.

Although Michigan remained an isolated frontier in 1819, Detroit was developing into a bustling little community. The Detroit Gazette reported that over a thousand whites and seventy free Negroes lived in the city. Detroit contained one hundred and forty-two houses and one hundred and thirty-one stores, mechanic shops, public buildings, and houses of business. Professional people included two Catholic clergymen, one Protestant minister, twelve attorneys, and three physicians and surgeons. There were eighteen blacksmiths, sixty carpenters and joiners, five wheelwrights, twelve shoemakers, three printers, and one gunsmith. Culturally, Detroit boasted a Bible Society, a Moral and Humane Society, a Mechanics' Society, an Agricultural Society, and a lyceum. In 1819 the city exported nearly seventy thousand dollars worth of goods, while importing materials worth over fifteen thousand dollars.<sup>65</sup>

The legislative board adopted new legislation in 1819 to regulate goods and materials offered for sale in the territory. An inspector and his deputies were empowered to examine beef, pork, flour, butter, and lard to determine its fitness for sale. Barrelled fish were to be well salted and pickled and free from rust. Boards, timber, or planks for use in boats or rafts were to be inspected, measured, and marked.<sup>66</sup> Spiritous beverages were also subject to

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<sup>65</sup>Detroit Gazette, January 29, 1819.

<sup>66</sup>Terr. Laws, II, 156-160.

inspection. Anyone adulterating spirits or liquors with "any poisonous or unhealthy drug or substance" was guilty of a misdemeanor and could be fined five hundred dollars and receive four years in jail.<sup>67</sup>

The governor and judges frequently relied on local officials to supervise trade and commerce within the territory. An act adopted in 1820 empowered county clerks to inspect weights and measures and to award treble damages to those cheated by persons using faulty standards.<sup>68</sup> Inspectors were appointed in 1822 to determine whether leather offered for sale was "well-tanned, dressed, dried, and fit for market," and whether saddles, bridles, and harnesses were of suitable quality.<sup>69</sup>

The legislative board also made provision for supervising the medical profession. While there were a number of doctors available in the territory, few of these had studied at medical school, the majority having learned their skill as apprentices to an established doctor. Many were "part-time physicians" and spent most of their time engaged in farming or in business. In many cases, their remedies were no better than those concocted by the settler and his wife.<sup>70</sup>

In 1819 the legislative board created a medical society to supervise physicians and surgeons. Similar societies were also

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<sup>67</sup>Ibid., 163-164.

<sup>68</sup>Ibid., 171-173.

<sup>69</sup>Ibid., I, 252-254.

<sup>70</sup>R. C. Buley, "Pioneer Health and Medical Practices in the Old Northwest Prior to 1840," Mississippi Valley Historical Review, XX, 497-520.

encouraged at the county level. Members of medical societies were exempt from militia duty in time of peace, and from serving on juries. These societies were to examine students desiring to enter the medical profession, and to present them with diplomas upon satisfactory completion of a course of study. Students unable to qualify at the county level retained the right to appeal to the territorial society. No one was allowed to practice medicine without a suitable diploma. No one from another state was to be prevented from practicing medicine in the territory provided he was in possession of a diploma or license from a recognized medical society. Medical societies were authorized to assess their members up to three dollars each for funds to obtain medical apparatus and to construct libraries for their members.<sup>71</sup>

Lawyers were also regulated by law. Any young man desiring to practice in Michigan was required to be examined and admitted to the profession by any two judges of the Territorial Supreme Court. A potential lawyer must be of "good character" and a citizen of the United States. The Supreme Court retained the power to suspend any attorney from practice for misconduct. Attorneys were expected to reside in the territory. If clients were forced to pay costs or damages in court because of a lawyer's absence, the lawyer was liable for those costs.<sup>72</sup>

The governor and judges adopted a series of acts in 1818

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<sup>71</sup>Terr. Laws, I, 431-438.

<sup>72</sup>Ibid., 681-683. For a role of the attorneys admitted to practice before the Territorial Supreme Court between 1814 and 1824, see Blume, Transactions, III, 17-24.

respecting wills, estates, and the disposition of property of deceased persons. According to an act passed in July of that year, a copy of a will filed in Michigan in a court of probate, where the original had been allowed in a court outside the territory, was to have as much force as the original. If a will was challenged, a probate judge was instructed to provide a period of thirty days in which witnesses could appear both for and against it. After hearing such testimony, the court would make its ruling.<sup>73</sup> The legislative board also adopted an act allowing children to share equally in an estate not otherwise disposed of by will; if there were no children, the next of kin were to share equally. If an estate was too meager to pay funeral expenses, the widow was still to be allowed her personal possessions and a suitable amount for subsistence, to be determined by the judge. Guardians were to be appointed by a judge for minors or persons incapacitated or incompetent who stood to inherit an estate.<sup>74</sup>

Occasionally, the territorial officials took time off from their official responsibilities to mix socially with the Michigan community. There were picnics, horseraces, banquets, balls, and assemblies to attend, as well as weddings, funerals, political meetings, and church gatherings. Cass enjoyed dancing and was a welcome guest at Detroit parties. Woodford notes that because his official position made it "politic that he dance with each lady present,"

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<sup>73</sup>Terr. Laws, I, 354-356.

<sup>74</sup>Ibid., 356-366.

Cass occasionally complained that he was "unable to get home until late."<sup>75</sup> Woodbridge wrote to his wife Julia that he had attended a "beef stake party" on the River Rouge, together with thirty ladies and gentlemen. He noted that the inhabitants of Detroit played cards at all their parties and that the officers gambled a great deal. During the winter there was usually at least one party a week, with sleighing a popular pastime.<sup>76</sup>

In 1819 the legislative board adopted legislation regarding divorce in the territory. This new law provided that a marriage could be dissolved if adultery was proved in a court of law, but that such dissolution was not to affect the legitimacy of the children. Under the act a complainant, after obtaining a divorce, could marry again, as though the defendant were dead. On the other hand, a defendant who had been convicted of adultery could not remarry before the death of the complainant. A husband who was a complainant in a divorce case could, if successful in his suit, possess the wife's estate as if he were not divorced. A wife convicted of adultery lost her share in her husband's estate upon his death. Husbands found guilty of adultery could be ordered to pay support for the wife and children.<sup>77</sup>

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<sup>75</sup>Woodford, Cass, 167.

<sup>76</sup>Woodbridge to his wife Julia, February 17, 1815, in Woodbridge Papers, BHC.

<sup>77</sup>Terr. Laws, I, 494-499. Buley notes that in the Old Northwest, "the importance of matrimony was impressed upon the minds of girls; there was no niche for the unmarried woman in a society in which a woman was comparatively useless except as wife and housekeeper. Failure to get married was more than a personal disappointment; it was more or less an economic calamity." R. C. Buley, The Old Northwest, Pioneer Period, 1815-1840 (2 vols.; Bloomington: Indiana University Press, 1962), I, 332. Hereafter cited as Buley, The Old Northwest.

The legislative board also made provision for mothers of illegitimate children. Any unmarried woman bearing an illegitimate child could bring suit against the accused father before a justice of the peace. Both the complainant and the accused could confront each other in the presence of the justice, and if the alleged father agreed to pay for the maintenance of the child, he was to be discharged. If the man in question failed to acknowledge paternity, he was to be bound over to the county court for jury trial. The mother of the illegitimate child was to be admitted as a competent witness, provided she had not been convicted of any crime which by law would disqualify her. If the defendant was found to be the legal father, he was compelled to pay support according to the ruling of the judge, or face a jail sentence.<sup>78</sup>

Transportation was a continuing problem for the territorial officials. In 1814 General Duncan McArthur had complained to Monroe that communications between Ohio and Michigan were primitive. Rivers, creeks, and swamps made travel by teams and carriages extremely hazardous. It was both difficult and expensive to bring supplies to Detroit from Ohio because of the rugged terrain.<sup>79</sup> Four years later, Oliver and Alpheus Williams led a party of Detroiters northward towards Saginaw along Indian trails. After traveling three or four days, the party returned to Detroit and told of their exploits. Oliver's son, Ephriam, later noted that "their report electrified the staid, quiet

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<sup>78</sup>Terr. Laws, I, 640-643.

<sup>79</sup>Duncan McArthur to the Secretary of War, December 10, 1814, in Carter, Terr. Papers, X, 497-498.



inhabitants of Detroit, among whom the belief was general that the interior of Michigan was a vast impenetrable and uninhabitable wilderness and morass."<sup>80</sup>

New settlers were often discouraged from coming to Michigan because of the difficulty in reaching the territory. The Detroit Gazette reported in 1818 that "the greatest obstacle to emigration to this territory is the difficulty of access; by land it is certainly, at present, difficult, but the lake navigation presents a mode of travelling generally cheaper and more expeditious than by good roads."<sup>81</sup> The Black Swamp, south of Detroit, was virtually impassable in rainy weather and was a major hazard to travelers journeying from Ohio to Detroit by land. Immigration continued to bypass Michigan during this period, focusing instead on the new land in Ohio, Indiana, and Illinois.<sup>82</sup>

Cass recognized the serious need for improvements in transportation, particularly because improved communications with Ohio would increase Michigan's intercourse with the rest of the United States and strengthen the defenses of the territory. Concerned about the isolating influence of the Black Swamp, he called for a military road through the area. He was convinced that such a road could be built only with financial help from Washington. This road would also

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<sup>80</sup>"Personal Reminiscences of Ephriam S. Williams," in MPHC, VIII, 233-259.

<sup>81</sup>Detroit Gazette, May 22, 1818.

<sup>82</sup>Dunbar, Michigan, 245; Gilpin, The Territory of Michigan, 136-137.

help to strengthen a territory whose weakened condition was "calculated to invite rather than to repel attack." Transportation to the territory by water was uncertain and for many important purposes, inconvenient. By land it remained difficult, tedious, and expensive. Cass believed that Michigan's future security and her potential for growth and development would only be realized when the territory had gained adequate connections with the rest of the United States.<sup>83</sup>

With some federal assistance assured, the legislative board authorized several road projects after 1816. That year troops from the Detroit garrison began to build a road between Toledo and Detroit. In the fall of 1818 General Alexander Macomb informed Calhoun that nearly seventy miles of a "truly magnificent road" had been completed. Macomb was convinced that the new road would not only strengthen Michigan's defenses, but also increase the value of her public lands by making them more accessible to new settlers.<sup>84</sup> In 1816 the legislative board also launched a project to construct a road northward from Detroit, but the work proceeded slowly and by 1822 it had reached only as far as Pontiac.<sup>85</sup> In 1822 the territorial officials appropriated two hundred dollars to build a road from Pontiac to

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<sup>83</sup>Mich. Exec. Acts, 1814-1830, MSA. Concerning Michigan's defenseless position, see Cass to Josiah Meigs, May 11, 1816, in Carter, Terr. Papers, X, 633-635.

<sup>84</sup>Alexander Macomb to the Secretary of War, November 2, 1818, in Carter, Terr. Papers, X, 785.

<sup>85</sup>Catlin, "Michigan's Early Military Roads," Michigan History, XIII, 196-207; Dunbar, Michigan, 247.

help to strengthen a territory whose weakened condition was "calculated to invite rather than to repel attack." Transportation to the territory by water was uncertain and for many important purposes, inconvenient. By land it remained difficult, tedious, and expensive. Cass believed that Michigan's future security and her potential for growth and development would only be realized when the territory had gained adequate connections with the rest of the United States.<sup>83</sup>

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<sup>85</sup>Catlin, "Michigan's Early Military Roads," Michigan History, XIII, 196-207; Dunbar, Michigan, 247.

Saginaw.<sup>86</sup> Seven years later Congress finally provided the funds to complete its construction.

In an effort to improve transportation by road, the legislative board granted county commissioners the power to open, repair, alter, or vacate all roads and highways in their respective counties. Commissioners could make arrangements for the erection of needed bridges, and secure funds from the county treasury for workmen if the nearest hamlet was not large enough to supply its own workers. Males over twenty-one could be assessed up to twenty days a year for service on the roads.<sup>87</sup>

Under this legislation twelve residents in a particular county could petition the county commissioner for a new road. The county commissioner would then appoint three disinterested residents as "viewers." These viewers were instructed to look at the proposed route for a new road to determine if it was necessary. If they submitted a favorable report, the commissioner could then instruct the territorial surveyor or one of his deputies to mark out the proposed road. Road supervisors were authorized to cut timber and to dig ditches on lands adjacent to the highway on either side while the road was being built.<sup>88</sup>

The legislative board also sought better transportation by authorizing several toll bridges in the Detroit area. Solomon Sibley,

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<sup>86</sup>Terr. Laws, I, 265-266.

<sup>87</sup>Ibid., 449-461.

<sup>88</sup>Ibid.

Henry Hunt, and Benjamin Woodworth were permitted to build toll bridges over the River Rouge and the River Ecorces, leading from Detroit to the Miami Rapids. The bridges were to be at least sixteen feet wide, with a strong railing on each side.<sup>89</sup> Gabriel Godfroy was authorized to build a toll bridge over the River Huron on the road from Detroit to the Miami Rapids. He was allowed to charge twelve cents for a man and horse, three cents for every cow, twenty-five cents for a cart or carriage drawn by one horse or ox, and fifty cents for a carriage drawn by two horses. Mail carriers, public expresses, United States troops, and all vehicles and persons in the service of the territory were to be permitted free use of the bridge. After twenty-five years the bridge and its equipment were to revert to the territory.<sup>90</sup>

Michigan's communications with the outside world were improved in 1818 with the advent of the Walk-in-the-Water, the first steamboat on the Great Lakes. Over three-hundred tons, and rigged with sails to supplement steam power, the ship plowed the waters between Buffalo and Detroit in a little over forty hours. The French marveled at this display of Yankee ingenuity, while many Indians believed it was pulled through the water by a giant sturgeon. Cabin fare between Buffalo and Detroit was eighteen dollars, while steerage was available for seven. While the ship had a carrying capacity of nearly one hundred passengers, she seldom carried more than

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<sup>89</sup>Ibid., 290-294.

<sup>90</sup>Ibid., 295-298.

half that number. In 1821 the ship was wrecked in a storm, but her machinery was salvaged and placed in the Superior, which also traveled the Great Lakes. These ships made passage to Michigan both faster and more comfortable.<sup>91</sup>

The governor and judges realized that if they hoped to attract new settlement, they would have to maintain peace in the territory. They continued to rely on the territorial militia as an important instrument of defense and took steps to improve its effectiveness. Following the War of 1812, Cass discovered that no regular record had been kept concerning militia commissions in Michigan, and that these commissions had often been issued under "peculiar circumstances." To remedy the confusion concerning these commissions, and to ascertain exactly who held rank in the militia, he decided to revoke all commissions issued previous to July of 1818.<sup>92</sup>

In 1820 the legislative board adopted rules regarding the militia. While priests, ministers, physicians, and schoolmasters were exempted from militia duty, other free, white males between eighteen and forty-five were liable for service, and were expected to arm themselves with a musket, ammunition, and bayonet. Officers were required to have a sword, a pair of pistols, and sufficient ammunition. Volunteer companies without at least thirty privates were to be disbanded. Companies were to rendezvous on the first Mondays of June

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<sup>91</sup>Dunbar, Michigan, 245; Catlin, The Story of Detroit, 232-248. See also Joe L. Norris, "The Walk-in-the-Water." Detroit Historical Society Bulletin, XIX, 4-11.

<sup>92</sup>Mich. Exec. Acts, 1814-1830, MSA.

and September for the purpose of "training, disciplining and improving in martial exercise." The commissioned and non-commissioned officers and the musicians of each regiment and battalion were to meet two days in every year for the purpose of training.<sup>93</sup>

The authorities expected militiamen to take their training seriously, and provided penalties for those who failed to do so. Militiamen were instructed to appear at drills with all their equipment. If a soldier forgot his weapon, he forfeited one dollar; if he forgot his horse, he lost two dollars. From sunrise to sunset on the days of formal drill, the militia was considered as "under arms," and subject to military law and control. Militiamen who bought liquor from bystanders witnessing military drill were to be fined. Militiamen were also subject to fines and discipline for behavior unbecoming a soldier.<sup>94</sup>

The territorial officers experienced some difficulty in supplying arms and ammunition to the militia. Cass told Calhoun that many militia officers had asked him to approach the public for the loan of their arms to equip the militia. After the surrender of Detroit to the enemy in 1812, the British had seized all the public and private arms in the country. These weapons had never been

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<sup>93</sup>Terr. Laws, I, 542-559.

<sup>94</sup>Ibid. Petitioners to the governor and judges complained that an act preventing the sale of liquor to soldiers was unfair as well as unconstitutional. They claimed that no such statute could be found in the laws of any other state. In spite of this protest, the act remained in force. Petition to the governor and judges, March 29, 1820, in *Petitions and Recommendations, 1820-1821*, MSA.

replaced and the militia was poorly armed.<sup>95</sup>

The federal government eventually responded to Michigan's request for arms. Decius Wadsworth, a member of the Ordnance Department in Washington, wrote Calhoun in 1820 that a deposit of two thousand stands of arms with accouterments, flints, and two hundred thousand musket cartridges would be made at the arsenal at Detroit within the next year. Wadsworth believed that these supplies would adequately supply Michigan's militia with weapons. He also promised to send some artillery to Detroit, but this was not to be distributed to the militia.<sup>96</sup>

Occasionally, Michigan residents called upon the governor and judges for protection from territorial soldiers and militiamen! In a petition to Acting Governor Woodbridge in 1817, James May complained that soldiers from Fort Shelby outside of Detroit were stealing poultry, pigs, and sheep, as well as taking small articles of clothing and other valuables. Bands of from six to ten soldiers had been wandering up and down the settlements, armed with guns, swords, and bludgeons trying to force open the doors of houses and outhouses. The problem was compounded by the fact that many of these soldiers claimed to have passes allowing them out at all hours of the night.<sup>97</sup>

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<sup>95</sup>Cass to Secretary of War Calhoun, June 12, 1819, in Letters Rec'd., Main Series, RG 107, M221, roll 8, FRC, Chicago.

<sup>96</sup>Decius Wadsworth to Secretary of War J. C. Calhoun, February 25, 1820, in Carter, Terr. Papers, X, 836.

<sup>97</sup>Petition to William Woodbridge from James May, April 18, 1817, in Woodbridge Papers, BHC. Michigan residents were also upset over wandering bands of soldiers because smallpox had been reported among the soldiers of Detroit.



Although Cass later warned the commander at Detroit to exercise greater vigilance in controlling his men, relations between citizens and soldiers remained strained.

As late as 1820 residents near Detroit and the River Raisin were still seeking compensation from Congress for the destruction of their property by American soldiers during the War of 1812. While defending Michigan in 1812, soldiers had taken over private dwellings and barns for barracks and stables and had cut down trees and picket fences for fuel. They had stripped orchards of their fruit and had seized the crops in the fields for food for themselves and their animals.<sup>98</sup> While the governor and judges were sympathetic to the plight of these citizens, they were unable to influence Congress, and their petition was denied.<sup>99</sup>

Cass attempted to aid Michigan residents not only by pleading their case in Washington, but also by involving them in the government of the territory. He was a sincere believer in the democratic process and encouraged the citizenry to assume a greater responsibility in directing their own affairs. One of his biographers notes that he "never considered himself as the master of the people, but rather as their servant . . . . Self-government was second nature to him, and instead of fastening his new authority more tightly

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<sup>98</sup>Petition to Congress by Terr. Inhabitants, February 7, 1820, in Carter, Terr. Papers, XI, 7-11.

<sup>99</sup>In rejecting the petition, Congress decided that there was not enough evidence to support the claims of the petitioners. Annals of Congress, Sixteenth Congress, First Session, XXXV, 466-467.

about him, he deliberately 'diminished his own powers.'"<sup>100</sup>

Cass encouraged citizen participation in government by erecting new counties as fast as settlement permitted, and by appointing officials to administer local affairs. Wayne County was reduced to its present size in 1815, and in 1817 Monroe County was established. Macomb, Michilimackinac, Brown, and Crawford counties all come into being in 1818. Oakland County was erected in 1819, and St. Clair in 1820. Lapeer, Sanilac, Saginaw, Shiawassee, Washtenaw, and Lenawee counties were all laid out in 1822, but were not organized until after 1824.<sup>101</sup> The Detroit Gazette said in 1822 that Michigan's prosperity would increase in proportion to the rapidity of its settlements. "We know of no measure," the Gazette stated, "at the present moment, which would, in a greater degree, hasten the settlement of the country than the laying out of the new counties."<sup>102</sup>

The governor and judges also encouraged citizen awareness and participation in government by publishing the territorial statutes. No provision for this had been made before 1820, primarily because of the cost involved. In 1815 the legislative board complained to President Monroe that Michigan citizens were governed by laws existing primarily in manuscripts and that the majority of the population

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<sup>100</sup>Woodford, Cass, 149.

<sup>101</sup>Campbell, The Political History of Michigan, 382, 383, 388-389, 407; Gilpin, The Territory of Michigan, 100, 102-104. See also William Hathaway, "County Organization in Michigan," Michigan History, II, 573-629.

<sup>102</sup>Detroit Gazette, September 13, 1822.



Brown County, as set off and organized, was to lie to the south of the headwaters of the rivers that flow into Lake Superior.

Figure 7. Michigan Counties, 1818

Source: Richard Welch, County Evolution in Michigan (Lansing: Michigan Department of Education, 1972), 21.



Figure 8. Michigan Counties, 1822

Source: Richard Welch, County Evolution in Michigan (Lansing: Michigan Department of Education, 1972), 22.

had no knowledge of them.<sup>103</sup> In 1820 Congress appropriated \$1,250 for the publication of the territorial laws, and the legislative board began a process of compilation and revision.<sup>104</sup> In 1822 the board provided for the publishing of over two hundred and fifty copies of the territorial acts in force.<sup>105</sup> While these first efforts were far from satisfactory, they were a step in the right direction.

From the close of the War of 1812 to the coming of a representative assembly in Michigan in 1823, the governor and judges performed valuable legislative and executive services to the territory. Through their efforts many Michigan residents were able to recover from the ravages of the War of 1812. The legislative board passed important laws promoting internal improvements, education, and the growth of commerce, as well as regulating goods and services within the territory. Chiefly through the efforts of Cass, Michigan's public lands were finally placed on the market as an important incentive to new settlement. Equally important, the Michigan frontier remained at peace in this period, primarily because of the diligence of the territorial officials. When Michigan's new representative assembly finally convened in 1824 to assume the legislative responsibilities

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<sup>103</sup>Memorial to President Monroe from the Governor and Judges, December 22, 1815, in Cass Correspondence Book, 1814-1820, Sec. of State Records, MSA.

<sup>104</sup>Campbell, The Political History of Michigan, 405.

<sup>105</sup>Terr. Laws, II, 180.

of the governor and judges, it also inherited a sound legislative foundation upon which to build.

## CHAPTER VIII

### THE ADMINISTRATION OF JUSTICE--1814-1823

After the War of 1812 the governor and judges faced the task of rebuilding and maintaining a system of law and order for Michigan Territory. As the supreme court judges had refused to exercise their offices under the British, it was necessary to reconvene the high court and to continue its important work. During this period the governor and judges adopted needed legislation broadening the Michigan court system, clarifying and enlarging the criminal code, and protecting the rights of those accused of crimes in the territory.

Crime was no stranger to Michigan, even though the territory contained fewer than nine thousand people by 1820. Unprincipled whites illegally sold liquor to Indians, while Indians occasionally raided white settlements in search of livestock. In Detroit there were reports of robbery, counterfeiting, assault, and murder. In 1818 the Detroit Gazette complained that a gang of criminals was passing counterfeit bills and "plundering the inhabitants during the silent watches of the night."<sup>1</sup> Detroit citizens were upset over drunken and abusive strangers, unruly soldiers, gambling dens, and "those infamous and disorderly houses, which, to the prejudice of every good interest still continue to disgrace our town."<sup>2</sup>

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<sup>1</sup>Detroit Gazette, May 29, 1818.

<sup>2</sup>Ibid.

In an effort to control crime in Michigan, the governor and judges took steps to enlarge the territorial court system. In 1815 the legislative board adopted an act establishing county courts.<sup>3</sup> This new court was to be composed of one chief and two associate justices, any one of whom was a quorum. The county court was to have original and exclusive jurisdiction in all civil cases not within the jurisdiction of the justice of the peace but involving less than one thousand dollars. All civil matters could be appealed to the Supreme Court.<sup>4</sup>

The governor and judges also established a probate court for each county by an act adopted in 1818. An "able and learned" person in each county was to be appointed judge of the probate court. All sheriffs, deputies, or constables were required to serve and execute legal warrants and summons directed to them by any probate judge.<sup>5</sup> A later act allowed probate judges to approve guardians that had been chosen by minors of fourteen years of age, and to appoint guardians

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<sup>3</sup>At the time this act was passed, there was only the county of Wayne, but provision was made for the adoption of an act fixing the time for holding a county court for any new county that might be created.

<sup>4</sup>Terr. Laws, I, 184-186. This act also stated that a person could appeal to a county court from a justice of the peace within twenty days. For officers of the early county courts, see Farmer, History of Detroit, 192.

<sup>5</sup>Terr. Laws, I, 341-344.



for those under that age. If a minor over fourteen years refused or neglected to choose a guardian, the probate judge could do it for him. Probate judges could also make provision for guardians for idiots, lunatics, or other incapable persons.<sup>6</sup>

In addition to enlarging the court system, the legislative board also adopted a new act for the punishment of crimes in 1816. This new act contained sixty-eight sections, twenty more than the act of 1808. Murder was still punishable by death by hanging. One of the most striking changes in this new legislation was section sixty-one, which stated that "if any offender sentenced to imprisonment at hard labor, for manslaughter, sodomy, rape, arson, burglary, robbery, or forgery, shall be convicted of a second offence of the like nature, such offender shall suffer death."<sup>7</sup> In 1808 the maximum penalty for rape was life imprisonment, while that for forgery was three years imprisonment. The governor and judges evidently believed that the repetition of these specific crimes would be prevented if the penalty was severe enough. Whipping as a punishment appears only once in this act. Section fifty-nine provided that the court or justices could impose on any "negro, indian, or mulatto slave," convicted of a noncapital offense, "instead of the punishment by this

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<sup>6</sup>Ibid., 375-380.

<sup>7</sup>Ibid., 109-135.

act prescribed, such corporal punishment, not extending to life or limb, as such Court or Justices, in their discretion, shall direct."<sup>8</sup> The court was not allowed to substitute whipping for another punishment, however, if the offender was white.

There are some interesting changes in punishment in 1816 from those adopted in 1808. The penalty for manslaughter was reduced from ten years to three years maximum for a first offense. The penalty for rape was changed from life imprisonment to a maximum of fifteen years. The penalty for burglary was lowered from twelve years to ten years. Two crimes, robbery and forgery, received an increased punishment, possibly because of an increase in the number of such offenses. The penalty for robbery increased from ten to fifteen years, while that for forgery was increased from three to ten years. The punishment for adultery was changed from a five hundred dollar fine to a one hundred dollar fine and six months in jail.<sup>9</sup>

This criminal act of 1816 also contained a number of new offenses not previously mentioned in the act of 1808. Anyone convicted of polygamy could be fined or imprisoned for up to ten years. Women pregnant with bastard children could be fined one hundred dollars and imprisoned for four months. Apprentices or servants attempting to steal from or defraud their mistresses or masters could

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<sup>8</sup>Ibid.

<sup>9</sup>Ibid. Bond notes that in the Old Northwest, "crime was inevitable in a newly settled section, and robbery was perhaps the most common offense, as was to be expected where settlement was so scattered." Bond, The Old Northwest, 498.

be fined one hundred dollars, or receive two years imprisonment. Officials falsifying, stealing, or destroying records of the judicial system which affected the outcome of a case could be fined \$7,000 and receive seven years in jail. Kidnapping carried a penalty of a thousand dollar fine or five years in jail.<sup>10</sup>

Territorial residents greeted this new criminal act with mixed emotions. Some considered it too severe, while others felt that it did not go far enough. One group of petitioners complained to the governor and judges that imprisonment for debt could not be justified by principles of "religion, morality, or reason." On the frontier the blameless wife and the innocent child would be made to suffer with the unfortunate husband. The continuance of this law would leave poor Michigan residents at the mercy of "implacable creditors" who would degrade and distress their debtors "almost to the level of malefactors."<sup>11</sup>

Many Michigan residents found the legislative board's system for the punishment of crime unworkable because there were no suitable facilities for confining prisoners at hard labor. The territory was still without an adequate jail. Petitioners complained to Cass in 1818 that prisoners could neither be maintained nor controlled in present facilities. They asked the governor and judges to substitute

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<sup>10</sup>Terr. Laws, I, 109-135.

<sup>11</sup>Petition to the Governor and Judges, March 21, 1822, in Petitions and Recommendations, 1822, Sec. of State Records, MSA. Hereafter cited as Petitions and Recommendations, 1822, MSA.

corporal punishment for all crimes not capital and called for up to thirty-nine lashes, as well as confinement to the pillory or stocks, in proportion to the seriousness of the offense.<sup>12</sup> Residents at Michilimackinac reported that the criminal laws of the territory could not be enforced because there was no suitable jail.<sup>13</sup> While Detroit had a jail of sorts, its facilities were deplorable. The Detroit Gazette reported in 1817 that "criminals of every description and debtors, male and female, are promiscuously huddled together, and confined in a small space, whereby the air is rendered very unwholesome and dangerous to the health of the prisoners."<sup>14</sup> The inmates easily obtained liquor, and engaged in gambling and card playing and other "unwholesome pursuits."

In response to growing complaints about the treatment of prisoners, the legislative board adopted an act in 1817 allowing those imprisoned for debt "the privilege of the bounds, which are or may be laid off and assigned by metes and bounds, around or adjoining each county jail, by the judges of the county courts."<sup>15</sup> These bounds

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<sup>12</sup>Petition to Governor Cass, July, 1818, in Petitions and Recommendations, Undated to 1819, MSA.

<sup>13</sup>Petition to the Governor and Judges, 1816, in Mich. Exec. Acts, 1805-1820, MSA.

<sup>14</sup>Detroit Gazette, July 25, 1817. From 1813 to 1819 the jail at Detroit was first an old stone building, then an old wooden structure, and then a two-story blockhouse. A jail was finally completed in 1819 at a cost of nearly \$5,000. See Farmer, History of Detroit, 215, and Catlin, The Story of Detroit, 261-263, on early Detroit jails.

<sup>15</sup>Terr. Laws, II, 89-90.

were not to extend in any direction from a jail more than five hundred yards, and no prisoner was to pass over these limits. No prisoner was entitled to the privilege of the bounds until he had posted bond for double the sum described by his offense.<sup>16</sup>

A new act for regulating prisons was adopted in 1819. The commissioners of the respective counties were to erect jails in each county when necessary and were to keep them in good repair. As there was still no territorial prison, prisoners in Michigan continued to be confined in local and county jails. If there was no suitable jail in the county where a crime was committed, a prisoner could be placed in the jail of another county, to be supported by the treasury of the county wherein he committed the offense. Sheriffs were to keep an accurate record of all prisoners committed to their care, which was to include the prisoner's name, place of residence, time of commitment, for what cause, and by what authority. This record was also to include the date of a prisoner's departure from jail, whether legally or by jail break. At the openings of the Supreme Court and the county courts, the sheriff was to return a list of all prisoners within his custody. All warrants, writs and instructions by which prisoners were committed or freed were to be regularly filed.<sup>17</sup>

This act of 1819 also specified procedures to be followed in Michigan prisons. Debtors were to be kept separate from criminals in

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<sup>16</sup>Ibid.

<sup>17</sup>Ibid., I, 469-476.

the county jails, and prisoners were not to be allowed to use spiritous liquors except in cases of sickness. Persons sentenced to solitary confinement were to be fed only bread and water. The sheriff was to furnish the tools and materials for any convict sentenced to hard labor, with the county treasury paying for such materials. Convicts working outside the jail were to be confined with a ball and chain. The sheriff was required to keep an account of the articles produced by convicts and also a record of the sale of such articles. Convicts who behaved in an unruly manner could be kept on bread and water and in solitary confinement. Literate convicts who requested a Bible were to be furnished with one.<sup>18</sup>

Legislation was adopted in 1819 to protect the rights of those accused of crimes in the territory. This act instructed officers of the law to surrender prisoners to the Supreme Court when they were served with a writ of habeas corpus, and those refusing to comply faced a fine of two hundred and fifty dollars and the loss of their offices. Prisoners freed by writs of habeas corpus were not to be imprisoned again for the same offense. No person was to be removed from the county in which he committed a crime, except by legal process, and no Michigan citizen was to be sent out of the territory for an offense committed in Michigan. Anyone falsely imprisoned could recover up to treble costs and damages, which were not to be less than five hundred dollars.<sup>19</sup>

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<sup>18</sup>Ibid.

<sup>19</sup>Ibid., 422-426.

General proceedings in criminal cases for the several courts were defined in an enactment of 1820. In part this legislation was designed to protect those persons accused of criminal offenses. It provided that in cases not capital a justice of the peace could set bail for those accused of crimes until the county court convened. The Supreme Court was empowered, however, to set bail for anyone accused of a crime, capital or otherwise. Any person standing mute and refusing to plead was to be regarded as having pleaded not guilty. A person charged with a crime punishable by death could challenge up to thirty-five prospective jurors. The defense could compel witnesses to appear on behalf of the defendant, and counsel was to be assigned to prisoners who could not afford their own. Anyone indicted for a capital crime was to have a copy of the indictment and a list of the jury that would try him.<sup>20</sup> It is evident that while the governor and judges desired to establish stiff penalties to discourage crime in Michigan, they were equally concerned with insuring justice to the accused.

A law concerning time limitations for the prosecution of crimes and misdemeanors was adopted in 1820. Any prosecutions for crimes and misdemeanors (except theft, robbery, burglary, forgery, arson, and murder) were to be commenced and prosecuted within three years. Suits and complaints for theft, robbery, burglary, and forgery were to be commenced and prosecuted within six years. With the exception

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<sup>20</sup>Ibid., 604-625.

of arson and murder, for which there was no time limit, any crimes or misdemeanors not commenced or prosecuted within six years were to be "void and of no effect." Actions for slander were limited to two years. Such limitations, however, did not refer to persons already imprisoned or out of the territory and thus unavailable for such prosecution.<sup>21</sup>

In 1820 Michigan received a new criminal code. Congress had appropriated over twelve hundred dollars for the publication of the existing Michigan laws; the legislative board accordingly compiled and revised their legislation to put it in the best possible form. They made several important changes in the act of 1816 and increased its length from sixty-eight to seventy-three sections. Noticeably absent from this new criminal code was the provision for the death penalty for such crimes as sodomy, manslaughter, rape, burglary, arson, robbery, or forgery. Murder remained the only crime punishable by death. The only direct mention of second offenses concerned a criminal sentenced to hard labor who had escaped. If he was captured and convicted, he could be sentenced to additional confinement at hard labor, not exceeding the term for which he was first sentenced.<sup>22</sup>

There were some other interesting changes in the punishment for crimes. The penalty for rape dropped from fifteen years to a three hundred dollar fine or two years imprisonment. The punishment

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<sup>21</sup>Ibid., 625-631.

<sup>22</sup>Ibid., 561-588.



for burglary was reduced from ten to five years. Apprentices or servants stealing from or defrauding their mistresses or masters could now be punished by a fifty dollar fine and six months in jail instead of a one hundred dollar fine or two years in jail. The penalty for forgery changed from ten years imprisonment to a three hundred dollar fine and two years imprisonment. In each of these last three offenses, however, the law also provided that a prisoner could receive up to "thirty nine lashes on the bare back." While the 1816 act contained only one penalty of corporal punishment and provided the death penalty for eight offenses, the 1820 act contained eight crimes punishable by whipping, with the death penalty reserved exclusively for murder. It is evident that the legislative board found corporal punishment a more satisfactory answer than jail terms or fines when dealing with certain crimes, particularly in light of the poor prison facilities in Michigan.<sup>23</sup>

The criminal code of 1820 contained a number of new offenses not included in the act of 1816. Anyone convicted of blasphemy--cursing, denying or reproaching Jesus Christ, the Holy Ghost, God, the Christian Religion or the Bible--could be fined one hundred

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<sup>23</sup>Ibid. The public whipping post stood at the old market on Woodward Avenue, and was shaped like a "T" and was five feet high. Farmer, History of Detroit, 191. Campbell notes that "it was not creditable to the Territory that public whipping was allowed to be inflicted on Indians and negroes convicted of various offences, and by the order of a single justice, on disorderly persons, and those convicted of small offences." Campbell, Political History of Michigan, 405. The Supreme Court records make little mention of whipping as a punishment, however, and its use was not common.

dollars or sentenced to a year in jail. For conspiracy to indict falsely another person, the penalty was a five hundred dollar fine and two years imprisonment. For sending a threatening letter to extort or harm another, the punishment was a three-hundred-dollar fine and one year in jail. Anyone who obstructed creeks or rivers to prevent the passing of fish could be fined up to five dollars, and have his net destroyed.<sup>24</sup>

The new criminal code was rather long and involved considering Michigan's frontier condition in 1820. Detroit had few cases involving extortion, embezzlement, and the bribing of officials; court cases there and elsewhere in the territory frequently concerned petty larcenies and simple assaults. The governor and judges were looking to the future; they believed that a comprehensive criminal code was necessary for the growth and development of Michigan.

One of the first cases to come before the Supreme Court when it convened in 1814 after a two year recess was a continuation of the suit brought by Joel Thomas against James McPherson. Thomas had originally filed in 1811, seeking the recovery of damages from McPherson. Solomon Sibley, McPherson's lawyer, pointed out that while his client's case had been pending, Michigan had been occupied by the British and the Supreme Court inactive. Furthermore, Sibley argued, when Henry Procter had placed the territory under martial law, he had suspended and abrogated the civil and criminal laws of Michigan.

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<sup>24</sup>Terr. Laws, I, 561-588.

Thus, the suit brought by Thomas against his client was also abrogated and suspended.<sup>25</sup> The question confronting the court was important in that it would determine the status of all cases still pending that had originated before the War of 1812. In October the court ruled in favor of the defendant, declaring all cases originating before the War of 1812 to be in abatement.<sup>26</sup>

The Transactions of the Supreme Court of Michigan Territory reveal that between 1814 and 1823 the high court handled nearly six hundred cases involving civil suits and criminal cases. Most of the cases were civil in character; crimes of violence were rare. The county courts and the justices of the peace aided the Supreme Court by handling many small civil suits and misdemeanors.

Nearly half of all the cases to come before the Supreme Court in this period were civil cases involving a breach of contract or assumpsit. An important and revealing case was the property dispute between John Roby and Alexis Luc Reaume. This case dragged on for several years, and demonstrated Woodward's firm control of the court and his determination to interpret the law in his own fashion.

The case resulting from a dispute between Roby and Reaume first came before the Supreme Court in September of 1816. Reaume had

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<sup>25</sup>Plea of Joel Thomas, September 29, 1814, in Blume, Transactions, II, 330-332.

<sup>26</sup>"Supreme Court Transactions," I, 420. Blume notes that "after the war [of 1812] no action was taken in any of the other cases which were pending in the Supreme Court before the War." Blume, Transactions, I, 222.

given Roby a promissory note for over two hundred dollars in 1814, with a promise to pay it off in several months. The following year, the two men entered into another agreement by which Roby would sell and deliver to Reaume all the goods and merchandise he had on hand in his store in Detroit. Reaume agreed to pay for most of these goods in certificates to be verified by the commander at Detroit, and for the rest in cash. When Roby failed to receive payment for his goods, he took Reaume to the Supreme Court.<sup>27</sup> Reaume's case came to trial in 1819. A jury decided in Roby's favor and Woodward ordered Reaume to repay Roby over two thousand dollars in damages.<sup>28</sup>

William Woodbridge, Reaume's lawyer, immediately petitioned for a new trial. Woodbridge claimed that he had not been able to defend Reaume properly because Roby's lawyer had given Woodbridge one bill of particulars, only to file a new one at a later date. Because of this action, Woodbridge had not been adequately prepared for the first trial. He also noted that the court had told the jury that it was "fair and reasonable" to presume that Roby had presented his certificates to the commander at Detroit, and that they had been unacceptable. "The inference itself was not only unwarranted," he

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<sup>27</sup>Blume, Transactions, III, 537-546.

<sup>28</sup>"Supreme Court Transactions," II, 689-690.

complained, "but it was also incompetent for the court to direct them what the inference should be. It was a matter solely for the consideration of the jury."<sup>29</sup>

Woodbridge also sought a mistrial on the grounds that the jury in his client's case was not a legally constituted jury. According to a Michigan statute adopted from a Virginia law, the Supreme Court was to issue a venire or writ to a sheriff, ordering him to summon prospective jurors.<sup>30</sup> A jury would then be selected from this group. In this case, however, the jury had been assembled by the verbal order of the court to the sheriff. Woodbridge accused Woodward of putting his own personal interpretation on the Michigan statute, which changed the original meaning of the law.

Woodward spoke for the court in denying Woodbridge's motion for a new trial. The Supreme Court had been unmoved by the defendant's arguments in the original trial, and had seen little evidence to warrant a mistrial. Woodward dismissed as absurd the charge that the court had interfered with the jury, and pointed out that the evidence presented had proved that any certificates offered by Reaume in payment of his debt had not been acceptable. The chief justice maintained that the jury in this case had been empaneled both within the letter and the

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<sup>29</sup>"Reports of Cases Argued and Determined in the Supreme Court of the Territory of Michigan, James Duane Doty, Detroit, 1819," ms. journal in the Law Library of the University of Michigan, Ann Arbor, 38-42. Hereafter cited as "Doty's Reports." Doty served as the clerk of the Michigan Supreme Court from 1819 to 1820.

<sup>30</sup>A law was adopted in February of 1820 in Michigan requiring the issue of venires. Terr. Laws, I, 491.

meaning of the original statute, and that it was both regular and legal.<sup>31</sup> He stated that there had been no surprise on the part of the defendant respecting the introduction of evidence, as all the evidence in the case had been available to both parties. He labeled Woodbridge's objections as "technical and frivolous," and ruled that judgment be entered for the plaintiff.<sup>32</sup>

The Supreme Court heard nearly one hundred cases in this period concerning civil matters other than assumpsit suits. Leading the list were cases involving debt and tax penalties, followed by mortgage disputes. There were also a few cases concerned with divorce, libel, and slander.

One important case involving both slander and divorce affected one of Michigan's most prominent citizens, Father Gabriel Richard. In 1817 Francois Labadie, a Frenchman who had settled in Detroit, accused Richard of destroying his good name and brought suit before the Supreme Court, asking damages of five thousand dollars.<sup>33</sup>

The confrontation between Labadie and Richard was triggered by an earlier divorce proceeding before the same court. Labadie had accused his wife Apolline of adultery and of bearing illegitimate

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<sup>31</sup>Doty wrote that the Michigan act was not a copy of the Virginia statute, and that the Virginia law required that "different juries shall be summoned on different days of each Term--the Law of Michigan authorises the summoning of but one set of Jurors for each term." "Doty's Report," 45.

<sup>32</sup>"Supreme Court Transactions," III, 41.

<sup>33</sup>Complaint of Francis Labadie, September, 1818, in Blume, Transactions, III, 598-601.

children, and had sued for divorce.<sup>34</sup> In 1816 Woodward granted Labadie his divorce.<sup>35</sup> Labadie subsequently married an attractive widow named Marie Ann Griffard. Richard refused to recognize Labadie's divorce and openly criticized and berated his parishoner in the presence of his neighbors and friends. The angry priest labeled Labadie a "shameful sinner," accused him of adultery and polygamy, and called his actions "concubinage and open lewdness."<sup>36</sup>

Richard did not stop at simple threats in making life miserable for Labadie. He obtained from his Bishop an edict excommunicating Labadie. Furthermore, the Detroit priest urged the French in that city to refrain from trading with Labadie. His mercantile business soon felt the effect of Richard's interference, and he found that he was unable to obtain the necessary field hands to harvest the crops on his farm. In 1817 Labadie brought suit against Richard.<sup>37</sup>

The case dragged on for several years, probably because of Woodward's friendship for Richard and his desire to give him every opportunity for defense. The chief justice even sought the advice of eastern luminaries, including Daniel Webster, Edward Livingston,

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<sup>34</sup>Bill of Complaint by Francis Labadie, November 4, 1816, Ibid., 551-552.

<sup>35</sup>"Supreme Court Transactions," II, 512.

<sup>36</sup>Complaint of Francis Labadie, September, 1818, in Blume, Transactions, III, 598-601.

<sup>37</sup>Ibid.

and Henry Clay, who concurred with Woodward's opinion that there were many cases in which words were spoken before Ecclesiastical Jurisdictions, or in the exercise of ecclesiastical discipline, which could not be made the subject of a suit for slander, although they might be actionable if spoken maliciously for some other purpose.<sup>38</sup>

In spite of Woodward's efforts, the dispute was settled in favor of Labadie in 1821. Richard was ordered to pay over eleven hundred dollars in damages.<sup>39</sup> His lawyers immediately appealed the decision.

Woodward again spoke out for Richard when the appeal was heard by the Supreme Court in 1823. Recognizing that Richard had, indeed, accused Labadie of concubinage and adultery, the chief justice pointed out that the action constituted an exchange between a clergyman and his parishoner. As such, it fell outside the scope of the civil law. He declared that Richard had accused Labadie of an act of adultery which was not considered a crime according to civil law. It remained a church matter, as Richard's words to Labadie had an "evident relation to the discipline and doctrines of his profession." Woodward urged the court to support Richard's appeal. He did succeed in gaining Richard a postponement in the case, as the chief justice and Witherell could come to no agreement and the case remained deadlocked.<sup>40</sup>

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<sup>38</sup>Woodford and Hyma, Gabriel Richard, 121.

<sup>39</sup>"Supreme Court Transactions," III, 240. Richard had been advised by his attorneys that the case would be dropped if he would shift the blame for the excommunication of Labadie to his Bishop and plead that he had only been acting under the orders of his superior. Richard refused, recognizing that the principle concerning the privilege of a clergyman to admonish his parishoner was involved. Woodford and Hyma, Gabriel Richard, 121.

<sup>40</sup>Opinion of Judge Woodward, October 7, 1823, in Blume, Transactions, III, 598-601.



The verdict against Richard was finally confirmed in 1824, after Woodward had left the territory. While he was preparing to return to Washington to resume his duties as territorial representative, Richard was taken to jail by Detroit Sheriff Austin Wing and forced to remain there for three weeks. After Detroit citizens had posted bond, the rebellious priest was ordered to remain within the limits of Wayne County. This posed a new problem, as Richard was expected in Washington for the next session of Congress. Detroit officials finally allowed Richard to attend to his duties in Washington, but limited him to the boundaries of Wayne County when he returned to Michigan in 1825.<sup>41</sup>

Michigan's most important robbery in this period was never solved. Richard Smyth, Collector of Internal Taxes had accumulated over five thousand dollars in 1818. As there was no Michigan bank at this time, he kept the money in a desk in a bedroom of his Detroit home. One April night someone sawed a hole through the side of Smyth's house, removed the back of the desk, and departed with the money. Unfortunately for Smyth, a paper containing the numbers and description of the bills was tied up in the bundle of notes that were taken. He offered a three hundred dollar reward and appealed to Congress to

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<sup>41</sup>Woodford and Hyma, Gabriel Richard, 122-124. Woodford and Hyma note that "except for the few months he [Richard] was in Washington in 1824-25, he was never again allowed to pass the bounds of Wayne County." Woodford and Hyma, Gabriel Richard, 124.

assume his loss.<sup>42</sup> Congress finally did aid Smyth, but the stolen money was never recovered.<sup>43</sup>

In dealing with cases of burglary and larceny, the Supreme Court occasionally found the same people appearing before it again and again for the same offense. Henry Hudson was indicted seven times for larceny between 1814 and 1823, but was never punished. In 1815 he was accused of stealing six bars of iron from Richard Smyth, but was freed by the high court.<sup>44</sup> In 1817 he was convicted by the Wayne County Court of feloniously buying and receiving seven barrels of salt, and sentenced to three years at hard labor, together with a three hundred dollar fine. Hudson sued for a new trial, and when that failed, sought to arrest the sentence by claiming that an error had been committed by the county court. He charged that the indictment against him was uncertain and unclear, and that improper

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<sup>42</sup>Petition to Congress by Richard Smyth, February 5, 1819, in Carter, Terr. Papers, X, 811-812; Detroit Gazette, May 1, 1818. Smyth claimed that he took all possible precautions in protecting the money and that he would be financially ruined if Congress did not come to his aid.

<sup>43</sup>In May of 1820 Smyth was credited with the amount lost. U. S. Stats., VI, 253.

<sup>44</sup>"Supreme Court Transactions," II, 500. Between 1805 and 1812 Hudson was indicted five times--three times for larceny, once for assault, and once for allegedly keeping a disorderly house. He was not convicted of any of these offenses, but was required to post bond on several occasions. See Blume, Transactions, I, cases 6, 97, 196, 252, and 258 for Hudson's activities in this early period.

procedure was used in selecting his jury. The Supreme Court considered the proceedings in Hudson's case, agreed that an error had been committed, and set him free.<sup>45</sup>

While the Supreme Court's treatment of Hudson reveals a genuine concern for the rights of the accused in Michigan, its decision to free him was not popular in some quarters of Detroit. A writer for the Detroit Gazette in 1817 reported that since 1803 Hudson had been present many times in Michigan courts on charges including assault and battery, larceny, and disturbing the peace, but "in some way or other" had always managed to escape punishment. While admitting that the Michigan judges were all "honorable men," this writer wondered if the same "quibbles that have wrested him [Hudson] from Justice . . . would produce the same results in future trials?"<sup>46</sup> There is no evidence that the Supreme Court afforded Hudson any special treatment. In 1824 he was still unpunished.

During this period nine men were indicted for murder. Seven of these men, who were white, were acquitted, primarily because of insufficient evidence to secure a conviction. Two other men, both Indians, were also indicted for murder. Both were convicted and executed.

Kewabiskim, a Menomini, was accused of murdering a white trader named Charles Ulrich at Green Bay in 1820. His attorney, George

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<sup>45</sup>"Supreme Court Transactions," II, 547.

<sup>46</sup>Detroit Gazette, October 10, 1817.

O'Keffee, introduced a motion to set aside the indictment, claiming that his client should have been tried in Brown County, site of the alleged attack. O'Keffee also stated that the indictment failed to specify the time of the attack and had not been signed by the clerk of the court.<sup>47</sup> The Supreme Court rejected O'Keffee's motion pointing out that its jurisdiction involved the entire Michigan Territory. In 1821 a Detroit jury found Kewabiskim guilty of murder.<sup>48</sup>

Ketaukah, a Chippewa, was indicted in 1821 for the murder of an army surgeon, Dr. William Madison, who had been traveling from Fort Howard to Fort Dearborn. James Doty and Benjamin Witherell, defense attorneys, maintained that as the crime occurred in Indian territory, the United States did not have jurisdiction. Solomon Sibley, prosecuting for the Territory, denied this, pointing out that as the Indian lands were within the limits of the United States, the government retained jurisdiction.<sup>49</sup> Sibley was correct in his interpretation of the law. An 1817 federal act provided that if an Indian or other person committed a crime in Indian Country which would be punishable in areas under the jurisdiction of the United States, he was to suffer the same punishment as if the crime had

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<sup>47</sup>Motion for arrest of Judgment by George O'Keffee, in Blume, Transactions, III, 633-635.

<sup>48</sup>"Supreme Court Transactions," III, 244. In addition to prescribing death by hanging, the Supreme Court asked the Great Spirit to "purify, pardon and receive" the soul of Kewabiskim.

<sup>49</sup>Detroit Gazette, October 19, 1821.

been committed in those areas.<sup>50</sup> The Supreme Court supported Sibley's position and claimed jurisdiction in the case. Ketaukah was convicted.<sup>51</sup>

Woodward was careful to see that both Kewabiskim and Ketaukah obtained justice when they came before the Supreme Court. As neither could speak English, he assigned them interpreters to advise them of their legal rights and to assist them in the trial. Woodward refused to have the prisoners appear before the court in chains, and he instructed their attorneys to counsel them not to admit to anything. "Instruct the prisoner that whatever passes between him and the counsel shall not injure him," he told Ketaukah's interpreter; "he is to tell them only what he chooses--and if he does, the court will not allow him to be harmed on that account."<sup>52</sup>

Kewabiskim and Ketaukah were executed together in late 1821. Both Indians had prepared themselves for their fate, and had put aside any presents given to them, such as pipes and tobacco, as a gift to the Great Spirit. They had fashioned a drum by pulling a piece of leather over their water container, and both performed the death dance in their cell. They painted the figures of men, horses, and reptiles on the wall of their cell with red paint. They also painted a gallows with two Indians hanging by the neck. On the day

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<sup>50</sup>U. S. Stats., III, 383.

<sup>51</sup>Detroit Gazette, October 19, 1821.

<sup>52</sup>Blume, Transactions, III, 485-496.

of their execution they were first taken to the Protestant church to listen to a sermon. They were then taken to the gallows on Market Street where a large crowd had gathered to witness the execution. A regiment of the territorial militia was under arms for the occasion, as well as a guard of United States troops. The two Indians, after shaking hands with several people including the marshal, asked the pardon of the crowd through their interpreter.<sup>53</sup> "They then shook hands and gazed for a few minutes on the assemblage and the heavens," wrote a reporter for the Detroit Gazette, "when their caps were drawn over their faces, and they were launched into eternity."<sup>54</sup>

There were some people in Detroit who disapproved of the Supreme Court's decision to execute the two Indians. Critics charged that the tribes lived over nine hundred miles from Detroit, and that their punishment would have no effect on the morals of their kinsmen.<sup>55</sup> Furthermore, there was some doubt that the thought of hanging had frightened the two condemned Indians. One Detroit citizen had pointed out the gallows to them several days before their execution. "Instead of exciting in them those painful sensations which would have been felt by almost any civilized being," he later wrote, "they pointed to it, looked at me, and laughed."<sup>56</sup> Still other citizens feared that the

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<sup>53</sup>Farmer, History of Detroit, 180; Catlin, The Story of Detroit, 262-263.

<sup>54</sup>Detroit Gazette, December 28, 1821.

<sup>55</sup>Ibid.

<sup>56</sup>Ibid.

execution of these two would spark new Indian unrest in the territory. The executions, however, had no noticeable effect on the Michigan tribes.

Occasionally both Cass and the Michigan Supreme Court became involved in criminal cases affecting the British across the Detroit River. The death of a Kickapoo Indian near the Detroit River in 1815 produced a clash between the British and the Americans, and raised the question of criminal jurisdiction between the two parties. Colonel Reginald James, the British commander at Malden, informed Cass that the Indian had been "murdered under the most aggravated circumstances" by a group of American soldiers.<sup>57</sup> Cass immediately notified James that if any crime had been committed by Americans, it had taken place in United States territory and would be punished by her laws.<sup>58</sup> After investigating the matter, the Michigan governor discovered that the Indian had been killed on the American bank of the Detroit River. Furthermore, he had not been killed by soldiers but by an American settler acting in self-defense. "The Indian was killed within the Territorial jurisdiction of the United States," Cass told James, "and a British officer has consequently no right to require nor ought an

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<sup>57</sup>Lieutenant Colonel James to Governor Cass, October 5, 1815, in MPHC, XVI, 313. James told Cass that he would hold an inquest and rather ominously reminded him that "this murder has been committed on the body of an unoffending Indian and my pointing out the custom of savages to you in the present instance would be needless." James to Cass, October 5, 1815, in MPHC, XVI, 313.

<sup>58</sup>Governor Cass to Lieutenant Colonel James, October 5, 1815, Ibid., 313-314.

American officer to give any explanation upon the subject."<sup>59</sup> James, however, refused to let the matter end there. He turned the inquest over to Canadian civil magistrates who offered a reward of \$500 for the murderer of the Indian.<sup>60</sup>

Cass considered this latest action by the British as an infringement of territorial sovereignty. He reminded James that the jurisdiction of the United States and of Great Britain within their territorial limits was exclusive. If the Indians residing under the protection of either were injured, they were to apply for redress to the government of the country within which they lived.<sup>61</sup> To counter the British reward, Cass issued a proclamation warning citizens to be alert for British incursions into the territory and to repel by force anyone trying to remove a person from their soil.<sup>62</sup> This action upset the British. Anthony St. John Baker, the British charge d'affaires in Washington told Secretary of State James Monroe that "it is greatly to be regretted that this proclamation, which is couched in language neither temperate nor pacific, should have been issued."<sup>63</sup> Cass stood firm. The British reward was never collected.

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<sup>59</sup>Governor Cass to Lieutenant Colonel James, October 7, 1815, Ibid., 314.

<sup>60</sup>Woodford, Cass, 101; Gilpin, The Territory of Michigan, 114.

<sup>61</sup>Governor Cass to Lieutenant Colonel James, October 26, 1815, in MPHC, XVI, 363-364.

<sup>62</sup>Proclamation by Governor Cass, October 7, 1815, in Mich. Exec. Acts, 1814-1830, MSA.

<sup>63</sup>Anthony Baker to James Monroe, January 10, 1816, in MPHC, XVI, 423-424.



A new incident soon increased the tension between the British and the Americans. In 1815 several British crew members of the Confiance jumped ship while it was anchored in the St. Clair River, took two of the schooner's boats, and escaped with a large quantity of British goods. Lieutenant Alexander Vidal, one of the ship's officers, followed them with an armed detail to Grosse Pointe, where he recovered some of the goods and apprehended one of the deserters, Thomas Rymer, who was drunk. Vidal placed Rymer in a boat offshore and continued his search. This aroused the anger of the Americans who charged Vidal with removing a man from American soil by force. When Vidal refused to hand over his prisoner to local militia officers, he was arrested.<sup>64</sup>

The British protested Vidal's arrest by Michigan authorities. Commodore Sir Edward Owen, commanding the British naval forces on the Great Lakes, sent a note to Detroit asking for Vidal's immediate release. He informed Cass that no offense against the laws of the United States had been intended or in fact committed. Therefore, it seemed unnecessary to let the matter go any farther. If he or Cass was forced to bring the matter to the attention of their respective governments, it would "keep alive those irritable feelings which it is so desirable shall be forgotten."<sup>65</sup>

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<sup>64</sup>Materials relating to the Vidal case can be found in MPHC, XVI, 238-239, 241, 247, 257, 267, 277, 304, 350, 383, 386-387; XXXVI, 321-328; Blume, Transactions, III, 56-59, 522-526.

<sup>65</sup>E.W.C.R. Owen to Governor Cass, September 6, 1815, in MPHC, XXXVI, 321-322.

Cass defended American actions in the arrest of Vidal. He reminded Owen that there were no treaty stipulations between the United States and Great Britain for the restoration of persons deserting from the service of one country and seeking refuge in the territory of the other. According to the principles of international law, no British officer had the right to enter United States territory and forcibly to apprehend any person, regardless of the crime or circumstances. For his actions, Vidal was accountable to the civil authorities of Michigan Territory.<sup>66</sup>

Vidal's fate was eventually decided by the Michigan Supreme Court. After deliberating less than an hour, a jury composed of six Americans and six aliens found him guilty of "riotously and wantonly" leading an armed party to seek deserters, of illegally searching an American house, and of disturbing the peace.<sup>67</sup> He was acquitted of taking Rymer forcibly from land. The Supreme Court ordered Vidal to pay over six hundred dollars in fines.<sup>68</sup> In December of 1815 James

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<sup>66</sup>Governor Cass to Commodore Owen, October 16, 1815, Ibid., XVI, 239-240.

<sup>67</sup>Lieutenant Vidal to Commodore Owen, October 16, 1815, Ibid., 350-351. Vidal told Owen that "The termination of this business causes me much regret, as I had reason from the aversion I manifested at breeding anything like a disturbance to expect a very different treatment." Vidal to Owen, October 16, 1815, in MPHC, XVI, 350-351. Woodford notes that after his trial, Vidal was "so angry that when he scratched his signature at the bottom of this letter, he misspelled his name, signing it 'Vindall.'" Woodford, Cass, 106.

<sup>68</sup>"Supreme Court Transactions," II, 488.

Monroe, apparently feeling that justice had been served, asked Cass to remit Vidal's fine. He was too late. The fine had already been paid.<sup>69</sup>

By his actions in the Vidal affair, Cass took a firm stand regarding the inviolability of American sovereignty. He had earlier made that point to Lieutenant Colonel James, and he repeated it to Commodore Owen. His firmness and determination were recognized by the British. "I regret the Governor [Cass] did not think it right to meet me cordially in the wish to give this affair a turn which might be satisfactory to both," Owen told Anthony Baker in Washington, "but preferred a method of proceeding which whilst it serves to cherish individual animosity, can answer no good public purpose."<sup>70</sup>

The Supreme Court was involved in a case between a British subject and an American in 1818. Thomas, Earl of Selkirk, was a prominent Canadian businessman who engaged in the fur trade in the Red River district of what is now Manitoba. An American named James Grant entered Selkirk's territory in 1818 and proceeded to set up his own trap lines. At Selkirk's insistence, British authorities arrested Grant in Canada, seized his goods worth over \$10,000, and transported him to Montreal where he was imprisoned. Released that same year, Grant returned to Detroit where he swore out a warrant

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<sup>69</sup>Lewis Cass to James Monroe, February 2, 1816, in MPHC, XXXVI, 338-339.

<sup>70</sup>Commodore Owen to Anthony Baker, November 6, 1815, Ibid., 386-387.

for Selkirk's arrest, claiming that he had been falsely arrested within the boundaries of the United States. Selkirk was arrested in Detroit in September when he arrived to transact some business. He promptly posted \$30,000 in sureties and returned to Canada.<sup>71</sup>

The Supreme Court was confronted with two questions in the Selkirk case--whether his arrest on Sunday was legal, and whether the court was competent to discharge him on motion. Concerning the first question, Woodward, speaking for the court, decided that the Sunday arrest was not legal, and cited historical precedents from the Bible, the actions of Emperor Constantine, Pope Gregory IX, and the rulers of England to prove his point. As to the second question, he admitted that there had been some instances in British law where the defendant, although arrested illegally, had been retained for trial. He believed, however, that such proceedings in a free country where the laws were presumed to govern were extremely dangerous, and would place the individual and arbitrary decisions of men above the law.<sup>72</sup> The court decided that Selkirk should be discharged because he had been illegally arrested.<sup>73</sup>

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<sup>71</sup>Materials relating to the Selkirk case can be found in MPHC, XII, 483-505; XXXVI, 346-349; Blume, Transactions, III, 91-92; Detroit Gazette, June 15, 1821; June 22, 1821, July 20, 1821; August 24, 1821; July 11, 1824. Selkirk had planted a colony of Highlanders in Canada to raise sheep, but his project was a failure. He then turned to the fur trade to recover his fortune.

<sup>72</sup>Opinion of Judge Woodward in the Selkirk Case, MPHC, XII, 485-505.

<sup>73</sup>"Supreme Court Transactions," II, 616.

The Selkirk case renewed Woodward's interest in the American acquisition of Canada. After discharging Selkirk, the justice confided that he actually believed that the trespass might have taken place on the Canadian side of the border. It was time for such geographical uncertainties to be settled for good. "I entertain the idea that it is the duty of the American administration to make a serious effort to obtain the whole of the British possessions on this continent, by negotiation," he wrote to Secretary of State John Quincy Adams in 1818.<sup>74</sup> The chief justice had made the same plea to Washington four years earlier. He told Secretary of State James Monroe that a peace with England without obtaining Canada would be regrettable, and that it could be obtained "only by arms, not by negotiations."<sup>75</sup> He believed that if the United States was to remain strong and future friction with Britain was to be averted, then Canada must become American.

Michigan's Supreme Court handled two cases of treason between 1814 and 1823, both related to the War of 1812. Louis Campeau was indicted for joining the British Army under General Procter in

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<sup>74</sup>Woodward to J. Q. Adams, December 5, 1818, in MPHC, XXXVI, 346-347. Going beyond Canada, Woodward also noted that "the present era is, certainly, not unfavorable for a complete absorption of all foreign claims on our continent." Woodward to J. Q. Adams, December 5, 1818, in MPHC, XXXVI, 346-347.

<sup>75</sup>Woodward to President James Monroe, March 7, 1814, in Woodward Papers, BHC.

the District of Erie and waging war on the United States.<sup>76</sup> Ignace Morasse, from the District of Huron, was accused of contracting with John McGregor, a British subject, to furnish masts, spars, and timber for the British Navy, to be used during the war.<sup>77</sup> Both Campeau and Morasse were acquitted, and were ordered discharged.

The Supreme Court did not conduct its affairs in this period without experiencing some criticism from territorial residents. A common complaint was that the Supreme Court justices were often absent from the territory and the business of the court suspended. The grand jury of Wayne County complained in 1817 that although the high court judges were paid to reside in the territory, their repeated absences were "very injurious to the best interests of the good people of this territory."<sup>78</sup>

Although Witherell, Griffin, and Woodward in particular were occasionally absent from the territory, the work of the court need not have suffered as long as one of them remained in Michigan. Any one of the three judges was authorized to hold court by himself.<sup>79</sup>

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<sup>76</sup>Indictment of Louis Campeau, October 17, 1814, Case A-31, Box 20, Michigan Territorial Court Records, Bentley Library, Ann Arbor. Hereafter this collection will be cited as Mich. Terr. Court Records, Ann Arbor.

<sup>77</sup>Indictment of Ignace Morasse, October 17, 1814, Case 511, Box 9, Ibid.

<sup>78</sup>Detroit Gazette, July 25, 1812.

<sup>79</sup>See Terr. Laws, I, 9-16 for the act authorizing the establishing of a Supreme Court in Michigan, and outlining the duties, powers, and responsibilities of the justices.

Part of Michigan's judicial difficulties resulted from the reluctance of Witherell and Griffin to hold court by themselves.<sup>80</sup> Luckily for Michigan, Woodward had no qualms about holding sessions in the absence of his two colleagues. If he had not presided when the others were not present, there would have been long periods when the court could not have functioned.

A second frequent complaint concerning the Supreme Court was the tremendous distance and difficult travel involved in attending its sessions. Petitioners from Wayne, Macomb, and St. Clair Counties complained to Congress in 1822 that the Michigan high court compelled witnesses, suitors, and jurors to come to Detroit from remote parts of the territory for unimportant reasons at "an enormous and ruinous expense" and kept them in long and useless attendance.<sup>81</sup> Memorialists at Michilimackinac had similar complaints. Many of these people were engaged in the mercantile business, a trade that required constant attention. As Michilimackinac was over three hundred miles from Detroit, and communications were difficult in summer and practically impossible in winter, attendance at court was an evident hardship. These petitioners requested a Congressional act erecting a separate

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<sup>80</sup>For the views of Griffin and Witherell concerning a single justice holding court, see John Griffin to A. B. Woodward, July 25, 1816, in Woodward Papers, BHC, and "Doty's Reports," 85-86.

<sup>81</sup>Petition to Congress by the Inhabitants of Wayne, Macomb, & St. Clair Counties, February 19, 1822, in Carter, Terr. Papers, XI, 227-230.

judicial district for the counties of Crawford, Brown, and Michilimackinac, with its own judge whose authority and jurisdiction would not be subject to the Michigan Supreme Court.<sup>82</sup>

Congress responded to the need for an additional judge in Michigan by creating the judicial district of Michilimackinac, Brown, and Crawford Counties in 1823. James Duane Doty was appointed to hold a district court in that region, having all the ordinary jurisdiction of the county and the Supreme Court, but subject to the Supreme Court on a writ of error. This court was to have full criminal powers and jurisdiction over all transactions and offenses concerning commercial or other dealings with the Indians.<sup>83</sup> Doty had come to Michigan in 1818, been admitted to the bar, served as clerk of the Supreme Court, been a member of the Cass Expedition, and had been postmaster at Prairie du Chien before assuming his new office. It was chiefly through his efforts in Washington that Congress created the new judgeship.<sup>84</sup> Doty had little affection for either Woodward or Griffin. In 1822 he told his friend, Henry Schoolcraft, that "the good work has commenced here. Woodward & Griffin are likely to have

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<sup>82</sup>Petition to Congress by the Inhabitants of Michilimackinac, July 24, 1821, Ibid., 140-142.

<sup>83</sup>U. S. Stats., III, 722-723. For Doty's commission, see Carter, Terr. Papers, XI, 344-345.

<sup>84</sup>Campbell, Political History of Michigan, 408; Gilpin, The Territory of Michigan, 104-105.



something happen to them. . . .A petition will probably be presented to Congress praying for a repeal of the Ordinance under which they hold their offices. This is a modest way of turning a man out of office."<sup>85</sup>

A third complaint concerning the Supreme Court was that its sessions were often conducted at inconvenient times and under improper conditions. Residents of Wayne County complained to Congress in 1822 that the Supreme Court held its sessions at night for nearly four months and failed to provide adequate seating for either suitors or officers of the court.<sup>86</sup> Other Detroit citizens noted that "during the night-sittings suppers of meat and bottles of whiskey were brought into court, and a noisy and merry banquet partaken at the bar by some while others were addressing the court in solemn argument."<sup>87</sup> Still other inhabitants complained that the judges occasionally adjourned a judicial session to adopt legislation, and then reconvened as the Supreme Court.

The Supreme Court was occasionally conducted in an unconventional manner that reflected the frontier community in which it operated. Woodford notes that "the prevailing atmosphere when court

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<sup>85</sup>James Doty to Henry Schoolcraft, October 25, 1822, in Carter, Terr. Papers, XI, 270-271.

<sup>86</sup>Report of a Committee of Inhabitants of Wayne County, 1822, Ibid., 324-328.

<sup>87</sup>Memorial of Michigan Citizens to Congress, January 3, 1823, in Woodward Papers, BHC.

was in session was one of easy-going 'republican' informality."<sup>88</sup>

While some visitors to the court may have been surprised at the casual procedure, it is doubtful that this conduct hampered the administration of justice. Jonathan Kearsley, the receiver of public monies at the land office in Detroit visited the Supreme Court during one of its sessions. Meat, bread, and some spirits were placed upon the sheriff's desk, but Kearsley did not observe the judges partake. He later reported that he "saw no want of decorum in the judges . . . ."89 He also noted that the late hour of the court on that occasion was due to the "number of counsel engaged on either side or the great length of their several and repeated arguments . . . ."90

Proceedings in the Supreme Court were also hampered by the large number of cases confronting the judges and the fact that they also served the territory in other equally important capacities. In 1816 Woodbridge informed Peter Hitchcock, president of the Ohio Senate, that at their last session the Michigan judges "did not do one half the business which was before them."<sup>91</sup> In 1819 a Congressional Judiciary Committee investigated the Michigan high court and recommended that it hold more than one session a year. This report also noted,

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<sup>88</sup>Woodford, Woodward, 94.

<sup>89</sup>Statement of Jonathan Kearsley, December 26, 1823, in Woodward Papers, BHC.

<sup>90</sup>Ibid.

<sup>91</sup>Woodbridge to Peter Hitchcock, January 1, 1816, in Michigan Papers, Clements Library, Ann Arbor.

however, that the Michigan judges served as the territorial legislature, as commissioners for the erection of public buildings, and as members of the land board. The committee concluded that "without attending to other business they cannot live decently for much less than double their present small salaries."<sup>92</sup>

While some Michigan residents may have objected to the suspension of the court proceedings while the judges adopted needed legislation, the judges were acting with propriety. Occasionally the Supreme Court would reach an impasse because an issue would arise for which there was no suitable Michigan law. Without leaving their seats, the judges would resolve themselves into legislators and adopt an act to clarify the issue. Court would then reconvene and the judges would continue with their business. Although the exercise of legislative and judicial powers by the same officers may have offended some in Michigan, it was necessary for the judges to do this in the absence of a legislative assembly.

Throughout this period Woodward continued to exert the dominant influence on the court, and wrote the majority of its opinions. As chief justice he was both reviled and admired. "I think Woodward grows worse and worse," Cass told Woodbridge in 1820; "he is as unprincipled a man as I ever knew."<sup>93</sup> A writer in the Detroit Gazette found Woodward to be a "sound and erudite scholar," who was

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<sup>92</sup>Detroit Gazette, November 17, 1817.

<sup>93</sup>Cass to Woodbridge, January 9, 1820, in Woodbridge Papers, BHC.

both profound and original in his views.<sup>94</sup> Much of the court's success in this period can be attributed to Woodward, chiefly from his willingness to hold sessions alone and to render forceful and impartial decisions. "Judge Woodward is an eccentric man," Woodbridge told his wife, "but possessed of singular & extensive acquirements."<sup>95</sup>

Witherell continued to do his share of the court's work and was an able and popular justice. Solomon Sibley labeled him a "revolutionary character and an honest man."<sup>96</sup> In his own way, Witherell could be as eccentric as Woodward. While presiding during a particular warm session in 1821, he rose in the middle of a court case, marched out of the courtroom, and proceeded to a wharf at the river's edge. He sat down, dangled his feet over the water, and amused himself for more than an hour throwing sticks and pebbles at the fish. After refreshing himself in this manner, he got up, returned to the courtroom, and continued the trial as if nothing had happened. During this time the other members of the court had not stirred from their places. "I learned that with all

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<sup>94</sup>Detroit Gazette, December 29, 1820.

<sup>95</sup>Woodbridge to his wife Julia, February 8, 1815, in Woodbridge Papers, BHC.

<sup>96</sup>Solomon Sibley to Joseph Anderson, November 3, 1823, in Sibley Papers, BHC.

his eccentricities he failed not of securing the confidence of the people, both of the bar and the suitors," wrote General William Ellis, who witnessed the episode.<sup>97</sup>

Griffin was not an important member of the Supreme Court during this period. He frequently followed the lead of Woodward and left no record of a written opinion while on the bench. He continually complained of ill health while in Michigan, and asked without success to be transferred to a more pleasant climate. William Jenks observes that Griffin's "birth and breeding made him averse to the rough pioneer methods and habits of the new country of Michigan, and he lacked the mental force either to adapt himself to his surroundings or change them for the better."<sup>98</sup> Woodbridge told his wife that Griffin was a "good scholar--but for law or for mind I imagine but indifferent."<sup>99</sup> Griffin was never very happy in Michigan, and his selection as a Supreme Court justice was unfortunate.

From 1814 to 1823 the territorial officers successfully rebuilt and maintained a system of law and order for Michigan. They

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<sup>97</sup>"General Ellis's Recollections," June, 1821, in Collections of the State Historical Society of Wisconsin (31 vols.; Madison: Wisconsin Historical Society, 1903-1931), VII, 212. Hereafter this collection will be cited as Wis. Hist. Coll. Cass appointed Ellis inspector of provisions for the District of Green Bay in 1827. In 1828 he was appointed a deputy surveyor of government lands by Edward Tiffin.

<sup>98</sup>Jenks, "Griffin," Michigan History, XIV, 221-225.

<sup>99</sup>Woodbridge to his wife Julia, February 8, 1815, in Woodbridge Papers, BHC.

accomplished this both through their roles as members of the legislative board and as justices of the Supreme Court. Blume observes that the work of the court was "conducted in a careful and orderly manner according to the orthodox procedure of the time. The opinions of Judge Woodward reveal a knowledge of law and procedure that was both extensive and penetrating."<sup>100</sup> Through their role as legislators, they adopted important statutes safeguarding the rights and the freedom of Michigan citizens. Through their service as members of the Supreme Court they maintained justice in the land.

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<sup>100</sup>Blume, Transactions, I, liv.

## CHAPTER IX

### THE END OF THE BEGINNING

In 1823 Michigan finally entered the second stage of territorial development. From 1814 to 1823 the governor and judges encouraged Michigan residents to take a more active role in directing their own affairs. During this period many territorial inhabitants petitioned Congress for a change in their form of government. Both groups played an important part in bringing to an end the exclusive rule of the governor and judges.

According to the Ordinance of 1787, a territory would enter a second stage of government as soon as it had five thousand free adult males. An assembly was to be elected, with one member for each five hundred free male inhabitants. Electors were to own fifty acres of land, reside in the district, and be a United States citizen; or own fifty acres of land and reside in the district for two years. Representatives were required to own two hundred acres of land, be United States citizens, and reside in the district; or own two hundred acres of land and reside in the district for three years. An upper house or council, of five members, was to be selected by Congress, from ten persons nominated by the representatives. The governor, the legislative council, and the assembly were to constitute the territorial legislature. During this second stage of government,

the territory could also elect a nonvoting delegate to Congress. When the territory had sixty thousand free inhabitants, it was to become a state "on an equal footing with the original states in all respects whatever."<sup>1</sup>

Cass was a strong supporter of democratic rule and favored a second stage of government for Michigan because it would mean a popularly elected legislature and a territorial delegate to Congress. "The people of the [Michigan] Country have no voice in the administration of the Government," he told Secretary of War Crawford in 1816.<sup>2</sup> The next year Cass apologized to Congressman Henry Baldwin of Pennsylvania for "troubling you on subjects connected with the interests of this territory, as we have no representative in Congress."<sup>3</sup> Cass realized that both an elected assembly and a Congressional delegate were important elements in the future growth and development of Michigan.

Woodward also favored citizen participation in the government of Michigan Territory. He headed a petition to Congress that called for a change in the Michigan government. He wanted two houses,

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<sup>1</sup>U. S. Stats., I, 51.

<sup>2</sup>Cass to Secretary of War Crawford, May 31, 1816, in Carter, Terr. Papers, X, 642-645.

<sup>3</sup>Lewis Cass to Henry Baldwin, December 5, 1817, in MPHC, XXXVI, 398-401. On this occasion Cass was concerned with the Michigan-Ohio boundary controversy.



elected annually, to make the laws instead of the executive and the three judges. The first house would consist of five representatives, and the second of three councillors, with the executive having a qualified veto on their acts. The chief justice also asked for a territorial delegate to Congress, to be elected by the people.<sup>4</sup>

Detroit residents asked President Monroe for a second stage of territorial government when he visited Michigan in 1817. After he had been escorted to Detroit from the River Ecorse by a multitude of Michigan citizens and treated to a fireworks display, he listened to an oration by Charles Larned, a Detroit attorney. After describing Michigan's rich soil, favorable climate, and increasing commerce, Larned pointed out that Americans would not be tempted to a land where they did not share in the governing process. He told Monroe that a second grade of government for Michigan would be "productive of immediate and beneficial results to our territory."<sup>5</sup>

Monroe later responded to requests for a change in the territorial government. He admitted that Michigan was an exposed frontier but added that she remained under the "watchful eye" of the national government. In the future, under conditions that were "just and

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<sup>4</sup>Petition to Congress by Michigan Citizens, Undated, *Ibid.*, XII, 544-545. In addition to Woodward, James Henry, Solomon Sibley, George Hoffman, and James May subscribed to this petition.

<sup>5</sup>Detroit Gazette, August 16, 1817.

reasonable," she would become a member of the Union, with all the rights of the original states. In the meantime Washington would keep a close check on the fortunes of Michigan Territory.<sup>6</sup>

Some residents were not content to wait for changes in their territorial government. The grand jury of Wayne County told Cass in 1817 that a representative assembly would be "more consistent with the people's habits of self-government, and more congenial to their ideas of freedom."<sup>7</sup> A writer in the Detroit Gazette calling himself "Cincinnatus" told territorial inhabitants that same year that they had suffered enough under their present form of government and that a second grade of government was necessary.<sup>8</sup>

Other inhabitants urged a change in government because they considered the concentration of power in the governor and judges a despotism. One writer in the Detroit Gazette calling himself "Rousseau" claimed that "perhaps in no community under heaven can there be found among its public functionaries, three personages with feelings and interests more distinct from the people, than the judges as they are called of the Supreme Court."<sup>9</sup> In a later message

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<sup>6</sup>Speech of James Monroe, August, 1817, Ibid.

<sup>7</sup>Petition by the Grand Jury of Detroit to the Governor and Judges, January 11, 1817, in Petitions and Recommendations, Undated to 1819, MSA.

<sup>8</sup>Detroit Gazette, November 21, 1817.

<sup>9</sup>Ibid., December 5, 1817.

he warned that the concentration of the legislative and judicial powers in the same body was despotism.<sup>10</sup> Other writers, principally English or American in background, took an equally dim view of the conduct of the judges.

Some citizens, however, took issue with the charge that their territorial officers had acted with impropriety. One writer calling himself an "Anti-Demagogue," posed several questions to the critics of the government. First, had the legislative board adopted any laws injurious to the people of Michigan? Secondly, could it be proved that they had failed to amend or revise any law that the citizens upon request had demanded? Finally, what laws could be passed under a representative assembly to benefit the people of the territory that could not be adopted by the present legislative board? This writer concluded that critics of the government had partaken "too much of the random ebullitions of petty partizans, who have long distracted and disturbed the tranquility of communities to deserve notice."<sup>11</sup>

It is interesting to note that prior to 1818 there were very few petitions to the governor and judges from those of French backgrounds in Michigan requesting a change in the territorial government. Most of the petitions originated from citizens of English or American

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<sup>10</sup>Ibid.

<sup>11</sup>Ibid.

backgrounds, who lived mainly in Detroit. After 1818, most of the petitions to the governor and judges from those of French extraction were in support of the administration of the territorial officials.

After receiving petitions from 145 citizens calling for a representative assembly, Cass issued a proclamation in 1818 for an election to determine whether Michigan should have an elected general assembly and a non-voting delegate to Congress. He said that this election could be held "whenever satisfactory evidence shall be given to the Governor thereof, that such is the wish of a majority of the freeholders, notwithstanding there may be therein five thousand free male inhabitants of the age of twenty one years and upwards."<sup>12</sup> Even though Michigan did not have five thousand free adult males, Cass felt justified in holding the election because the act establishing Indiana Territory had dropped this requirement for entering a second stage of territorial government.<sup>13</sup> There is little evidence that a "majority of the freeholders" in Michigan requested a second stage of government. Nevertheless Cass made preparations for the election. Voting was to be done by ballot at designated polling places. Poll books were to be kept, listing the names of each freeholder voting. Poll books and ballots were

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<sup>12</sup>Proclamation by Lewis Cass, January 5, 1818, in Carter, Terr. Papers, X, 769-771; Mich. Exec. Acts, 1814-1830, MSA.

<sup>13</sup>U. S. Stats., II, 108.

to be sealed after the completion of voting, and transmitted to the office of the secretary of the territory within ten days of the completion of the election.<sup>14</sup>

Cass was disappointed when the people of Michigan rejected his plans for a second stage of government in the territory. He had overlooked the fact that most of the people voting were French habitants unfamiliar with self-government and accustomed to being ruled by others. In a sense they were voting for Cass by rejecting a representative assembly. They admired his leadership and had faith in his abilities. They had no reason to believe that life would be better with a change in government. W. L. G. Smith observes that in rejecting Cass's plan, they paid "a most flattering compliment to the competency and faithfulness of their governor."<sup>15</sup> Michigan residents also voted against the plan because they feared a change in their government would mean new taxes, a financial burden they had no wish to accept.<sup>16</sup>

Even though a plan for a second stage of government for Michigan had been defeated, some residents continued to petition Congress for a territorial representative. Memorialists from Macomb

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<sup>14</sup>Proclamation by Lewis Cass, January 5, 1818, in Carter, Terr. Papers, X, 769-771; Mich. Exec. Acts, 1814-1830, MSA.

<sup>15</sup>W. L. G. Smith, The Life and Times of Lewis Cass (New York: Darby & Jackson, 1856), 113. Hereafter cited as Smith, Cass.

<sup>16</sup>Gilpin, The Territory of Michigan, 74; Woodford, Cass, 153.

County in 1818 pointed out that even though the territory had been ravaged by the British in the War of 1812, the people of Michigan had remained loyal to the United States. This steadfastness should be rewarded by a representative in Washington "upon an equal footing and with the same privileges as the delegates of other Territories have enjoyed."<sup>17</sup> Congress answered this petition in 1819 by authorizing the election of a Michigan delegate to Congress. Free, white males over the age of twenty-one who had resided in the territory a year and paid county or territorial taxes were eligible to vote.<sup>18</sup>

The governor and judges provided for the election of a territorial delegate by an act adopted in March of 1819. The election was to be held on the first Thursday in September at every county seat, and was to be supervised by the judges, commissioners, and sheriffs of each county. Voting was to be completed before the end of October. Anyone attempting to interfere with the election faced a fine of one thousand dollars.<sup>19</sup>

Woodward had high hopes of becoming Michigan's first territorial delegate to Congress. He told a Detroit audience in 1819 that the opportunity to represent the territory in Washington would be "too high an honor to be relinquished from any light considerations,

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<sup>17</sup>Memorial to Congress by Inhabitants of Macomb County, November 7, 1818, in Carter, Terr. Papers, X, 786-787.

<sup>18</sup>U. S. Stats., III, 482-483.

<sup>19</sup>Terr. Laws, II, 149-154.

or whatever nature they may be."<sup>20</sup> If elected, he promised to resign as a justice of the Supreme Court. Woodward's supporters in Wayne County decided that the only objection to the chief justice was that he was a man of "too conspicuous talents," and that if he was sent to Washington, he might reach beyond the wishes of his constituents by an "overflow of his extensive knowledge, or from an exercise of his superior mental faculties."<sup>21</sup>

Many Michigan residents refused to take an interest in the election. Some reasoned that Michigan's delegate would be unimportant as he would have no vote in Congress. Others simply found it too much trouble to become involved in the democratic process. In April of 1819 the Detroit Gazette lamented that the general apathy among Michigan inhabitants concerning matters of a public nature would prevent a proper consideration of the importance of the election of a territorial delegate to Congress.<sup>22</sup>

Woodbridge became Michigan's first delegate to Congress, with the aid and support of Cass.<sup>23</sup> He was already secretary of

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<sup>20</sup>Public Address of A. B. Woodward, July 22, 1819, in Woodward Papers, BHC.

<sup>21</sup>Address to the Electors of the Territory of Michigan, MPHC, XII, 580-582.

<sup>22</sup>Detroit Gazette, April 9, 1819.

<sup>23</sup>Woodford notes that Woodbridge's followers circulated voting lists among the Frenchmen claiming that they were really pledges of support for his campaign. "Backed by these pledges," Woodford observes, "they declared the secretary was as good as elected. Transparent as this trick was, it worked." Woodford, Woodward, 168.

the Territory and collector of the port of Detroit. When it became apparent that he intended to hold these three offices simultaneously, Woodward objected. Earlier he had warned Detroit citizens that if Woodbridge refused to give up his other offices, the public had a right to know and to pass judgment on whether or not one person should be allowed to hold so many positions.<sup>24</sup> Cass immediately came to Woodbridge's defense. "A careful examination of the Constitution and acts of Congress," he wrote to President Monroe, "irresistably leads to the conclusion, that there is nothing in the tenure of these offices legally incompatible with the station and duties of a Delegate."<sup>25</sup>

Woodbridge's tenure in office was brief and unimportant. In Washington he urged the House to consider Michigan's claims for war damage, while advocating improvements to the Territory in the way of better roads and improved communications with Ohio. He also restated Michigan's case in her boundary dispute with Ohio. Six months after his election, however, he had had enough of Washington. He decided that he preferred his territorial duties to those in Congress, and believed that Michigan needed a representative who would devote his full attention to the territory's needs. This would be impossible

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<sup>24</sup>Address to the Electors of the Territory of Michigan, MPHC, XII, 529-533.

<sup>25</sup>Governor Cass to the President, September 11, 1819, in Carter, Terr. Papers, X, 859-860.



for him if he was to remain collector and secretary.<sup>26</sup> He announced his resignation as delegate and asked Cass to make preparations for holding a new election.<sup>27</sup>

Woodward was unsuccessful in his next two attempts to be elected territorial delegate. In 1820 he lost to Solomon Sibley, who had the support of Cass's followers, by only seven votes. Woodward challenged the voting results from Michilimackinac, claiming that they should be voided because the election was supervised by only three inspectors instead of five as required by law. Woodbridge and Attorney General Charles Larned admitted that the election at Michilimackinac had been improperly conducted, but decided to let it stand, lest "the rights of a whole community shall be sacrificed."<sup>28</sup> Woodward decided to run again at the regular election in 1821. "Griffin has not been at the legislative board this month, but Woodward has taken his place for the purpose of electioneering for himself against next year," Sibley wrote to his friend, Andrew Whitney in 1820; "every movement he makes has a bearing & Reference to the next Election, and many undertake to prophesy that he 'must' succeed."<sup>29</sup>

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<sup>26</sup>Gilpin, The Territory of Michigan, 79; Catlin, The Story of Detroit, 268; C. M. Burton, "Woodward," MPHC, XXIX, 660.

<sup>27</sup>Woodbridge to Cass, May 10, 1820, in Carter, Terr. Papers, X, 859-860.

<sup>28</sup>Woodford, Woodward, 169. Secretary Woodbridge and Attorney General Charles Larned reported that 527 votes had been recorded in the counties of Wayne, Monroe, Michilimackinac, and Oakland. See Carter, Terr. Papers, XI, 82-91.

<sup>29</sup>Solomon Sibley to Andrew Whitney, November 4, 1820, in Sibley Papers, BHC.

This time Sibley defeated Woodward by nearly two hundred votes.<sup>30</sup> He was to serve as territorial delegate until 1823, when he was succeeded by Gabriel Richard.

Even though Michigan had gained a territorial representative, critics of the rule of the governor and judges continued to demand an elected representative assembly. By now the criticisms had become familiar to the territorial officers. The Wayne County Grand Jury complained that laws had been adopted and signed by individual members of the legislative board when that body had not been called into session. This group decided that "nothing but a legislature constituted by the people can be a radical cure for the evils complained of."<sup>31</sup> Memorialists from Wayne, Monroe, and Oakland counties were upset that the judges possessed both legislative and judicial powers, and were "empowered by the Ordinance to hold a court, and to determine cases arising under the very laws which they themselves have enacted!"<sup>32</sup> Inhabitants of Wayne County maintained that the Supreme Court continued to act with impropriety, engaging in actions

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<sup>30</sup>1,096 votes were counted in this election. Sibley received 514, while Woodward had 308. The only other candidate with many votes was James McCloskey, with 268. Carter, Terr. Papers, XI, 189-205.

<sup>31</sup>Presentment of the Wayne County Grand Jury, January 7, 1820, Ibid., 329-330.

<sup>32</sup>Memorial to Congress by Inhabitants of Wayne, Monroe, and Oakland Counties, November 1, 1822, Ibid., 271-277.

that were "producing great irregularities in the business of the court and tending to bring into derision and contempt, the highest Judicial Tribunal in the Country."<sup>33</sup>

The abuse suffered by members of the legislative board in this period can be explained in part by the political atmosphere at Detroit. "I have scarcely heard since I have been here, any one person speak well of another," Woodbridge wrote to Cass in 1815; " . . . there is certainly much slander afloat in this country."<sup>34</sup> Anonymous writers frequently criticized the conduct of the judges through the pages of the Detroit Gazette, which refused space to Woodward and Griffin to defend themselves from the attacks. C. M. Burton observes that "probably few papers in America have been permitted to upbraid and chastise the judiciary in a more virulent manner than was employed by the [Detroit] Gazette in the cases of these judges."<sup>35</sup>

New demands for a change in Michigan's territorial government produced new memorials in defense of the governor and judges

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<sup>33</sup>Report of a Committee of Inhabitants of Wayne County, November, 1822, Ibid., 324-328.

<sup>34</sup>Woodbridge to Lewis Cass, March 7, 1815, Woodbridge Papers, BHC.

<sup>35</sup>C. M. Burton, "Woodward," MPHC, XXIX, 638-665. In 1820 the Detroit Gazette observed that many writers, "too anxious to appear in print to give themselves time to examine the offspring of their phrenetic inspiration, hasten to the poor publisher, who, perhaps too much occupied to give them a due examination, sends them forth to his readers with all their faults." Detroit Gazette, December 29, 1820.

and the status quo. A petition to Congress signed by citizens principally of French descent asked that body to "protect us, a population of nine thousand inhabitants, from being precipitated prematurely, into a system of government, which it is neither our interest, nor our inclination, for the present, to enter into."<sup>36</sup> These petitioners also observed that the legislative board had manifested a great willingness to please the people by adopting any law that was thought expedient, or by repealing or altering other laws when it was necessary.<sup>37</sup> Memorialists from Wayne County informed Congress that it was a matter of regret to a majority of Michigan's citizens that a group of inhabitants residing principally in Detroit had "manifested an absolute determination, to precipitate us prematurely, into a system of Government, which would operate very prejudicially, both to the interests of the United States, as well as those of the people of this Territory . . . ."<sup>38</sup>

It is evident that before the coming of a representative assembly in 1823, many Michigan citizens were not demanding a second stage of territorial government because of abuse suffered under the rule of the governor and judges. Indeed, many residents were fearful of the changes that might result from an elected assembly. Cass was

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<sup>36</sup>Memorial to Congress by Inhabitants of the Territory, November 11, 1822, in Carter, Terr. Papers, XI, 278-291.

<sup>37</sup>Ibid.

<sup>38</sup>Memorial to Congress by Inhabitants of Wayne County, January 2, 1823, Ibid., 320-322.

aware of this fear. "A general opinion prevails that it is not advisable to attempt any change," he wrote to Sibley in Washington in 1821; " . . . there is little doubt, but the French part of our population would oppose any alteration, which might be suggested. It is my decided conviction, that it is better not to agitate the subject again and at present."<sup>39</sup>

Many of the memorials to Congress between 1814 and 1823 reveal dissatisfaction, not with the rule of the governor and judges, but with the provisions of the Ordinance of 1787 regarding territorial government. Citizens from Wayne, Monroe, and Oakland counties told Congress that they believed that "were the subject of forming a territorial government, now to arise for the first time, before the legislature of the union, a system, in which so many contradictory powers are absurdly blended would not be applied to any portion of American people."<sup>40</sup> A group of Detroit citizens headed by John Lieb and James McCloskey asked Congress to change the existing governmental structure in Michigan, to assure a separation of legislative and judicial powers. This group wanted a legislative body consisting of nine representatives to be elected annually from the several counties, and a senate composed of five councilors. Each county should then be allowed the right to tax its inhabitants for the support of its own representatives.<sup>41</sup>

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<sup>39</sup>Cass to Solomon Sibley, January 20, 1821, in Sibley Papers, BHC.

<sup>40</sup>Memorial to Congress by Inhabitants of Wayne, Monroe, and Oakland counties, November 1, 1822, in Carter, Terr. Papers, XI, 271-277.

<sup>41</sup>Detroit Gazette, March 22, 1822.

The Detroit Gazette also voiced its disapproval of the territorial system as established by the Ordinance of 1787. Michigan, like other territories, had been erected in a "hasty and inconsiderate manner." The Ordinance was a compact and did not seek the consent of the people of the territory. "It requires no argument to show the erroneous and anti-republican nature of such a doctrine," the Gazette reported in 1823, "and that it comports neither with the known principles of the federal government, nor its interests, nor the welfare of the people upon whom it operates . . . ." <sup>42</sup>

Congress ended the rule of the governor and judges in 1823 by passing an act that provided for a legislative council for Michigan. Qualified electors were to select eighteen persons from the territory, nine of whom the President and Senate would appoint to form the new legislative council. This new council, acting with the governor, would enact Michigan's laws. The governor was granted a veto power over the legislative council and any act passed by the new council was subject to the approval of Congress. Three territorial judges were to be appointed to four-year terms beginning in 1824, instead of having indefinite tenure, and were to be restricted to judicial functions. The legislative council was authorized to submit the question of a general assembly to the people at any time. <sup>43</sup> Technically, this 1823 act did not put Michigan into a second stage of territorial government,

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<sup>42</sup>Ibid., January 24, 1823.

<sup>43</sup>U. S. Stats., III, 769-770.

but is usually considered as having done so. No action was taken during the territorial period to provide a general assembly for Michigan according to the provisions of the Northwest Ordinance, and Michigan had a unicameral legislature until it became a state.<sup>44</sup>

Witherell, Sibley, and John Hunt were appointed the new Supreme Court justices for Michigan in 1824. Witherell had been a popular figure in Michigan. Citizens of St. Clair County told Secretary of State John Quincy Adams that Witherell possessed "all the qualifications which constitute a learned & upright Judge, such he has proved himself in Michigan."<sup>45</sup> As territorial delegate, Sibley had proved himself one of the most capable men in Michigan. Hunt had moved to Michigan from Massachusetts in 1818 and had become the law partner of Charles Larned. His selection as judge was undoubtedly due to the influence of his friends, Woodbridge and Judge Doty.<sup>46</sup>

There was little support among Michigan citizens for Griffin's re-appointment as a judge. Members of the Michigan Bar told Secretary Adams that Griffin had "uniformly exhibited an imbecility of character

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<sup>44</sup>Dunbar, Michigan, 275-276; Gilpin, The Territory of Michigan, 84.

<sup>45</sup>Territorial Officers of St. Clair County to the Secretary of State, November 23, 1823, in Carter, Terr. Papers, XI, 421.

<sup>46</sup>Campbell, Political History of Michigan, 411; Dunbar, Michigan, 279; Burton, History of Wayne County, I, 559-563.

which has rendered him worse than useless as a Judge."<sup>47</sup> Plagued with ill-health, Griffin had no desire to remain in Michigan. In December of 1823 he informed President Monroe that he had no wish to be re-appointed.<sup>48</sup>

Woodward's chances for re-appointment were destroyed by a campaign to discredit him. "It is with much concern that I understand a combination is formed at this place [Detroit] to prevent your re-appointment as a Judge of the Supreme Court of the Territory," James May wrote to Woodward early in 1824.<sup>48</sup> Friends of Woodbridge and Doty accused Woodward of collaborating with the enemy during the War of 1812, of showing favoritism while sitting as chief justice of the Supreme Court, and of being "destitute of honor, probity and respect for established law."<sup>50</sup> One of the most serious charges was that Woodward was drunk while holding court. When a mild epidemic of typhus fever in Detroit in 1823 caused him to become ill, his doctor prescribed liberal draughts of "aether, wine, brandy, spirits, opium and mercury."<sup>51</sup> Too weak to walk to court,

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<sup>47</sup>Members of the Michigan Bar to the Secretary of State, December 16, 1823, in Carter, Terr. Papers, XI, 434-435.

<sup>48</sup>Judge Griffin to Monroe, December 30, 1823, Ibid., 444.

<sup>49</sup>James May to A. B. Woodward, January 21, 1824, in Woodward Papers, BHC.

<sup>50</sup>Memorial to the Senate by James McCloskey and Others, January 6, 1824, in Carter, Terr. Papers, XI, 493-495.

<sup>51</sup>Woodford, Woodward, 177. See also the affidavits of Robert Abbott and Philu Judd regarding this matter in Carter, Terr. Papers, XI, 524-525.



he had to be assisted to the bench, where he publicly took his medicine. Critics immediately informed the President that their chief justice was making a drunken spectacle of himself.<sup>52</sup> This was too much for Monroe, who removed Woodward's name from the list of candidates.

There is little evidence to support the charges against Woodward. "I have been officially connected with him [Woodward] in the transaction of public business almost ten years," Cass wrote to Gabriel Richard in Washington in 1824; "during that time I have never seen him intoxicated, nor have I in fact ever observed the slightest appearance of intemperance."<sup>53</sup> Detroit attorney Alexander Fraser found Woodward's talents "superior to what generally falls to the lot of man and his legal acquirements . . . to be such as would adorn the Bench of any Country."<sup>54</sup> Other memorials in defense of Woodward arrived in Washington too late to influence Monroe's decision. When he learned that he had been misled, he appointed Woodward to a vacancy in the Federal court for the middle district of the Territory of Florida.<sup>55</sup>

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<sup>52</sup>Jenks, "Woodward," Michigan History, IX, 515-546; Dunbar, Michigan, 279; Woodford, Cass, 151-152.

<sup>53</sup>Governor Cass to Rev. Gabriel Richard, February 16, 1824, in Carter, Terr. Papers, XI, 520-521.

<sup>54</sup>Affidavit of Alexander D. Fraser, February 17, 1824, in Woodward Papers, BHC.

<sup>55</sup>Jenks, "Woodward," Michigan History, IX, 515-546; Burton, History of Wayne County, I, 560.

In 1823 Michigan was still a frontier area with a population of slightly more than nine thousand, centered at Detroit, Michilimackinac, and along the River Raisin, and scattered throughout the southeastern corner of the Lower Peninsula. Fourteen counties had been laid out, although six of these would not be organized for several years. Over seventy miles of road had been completed between Toledo and Detroit, while another finished road stretched northward from Detroit to Pontiac. There was also a regular stage route between Detroit and Mt. Clemens. There were several private schools in Detroit, including a primary school, all supported by the contributions of townspeople. The first school supported by public taxation would come in 1827. Detroit also boasted a classical academy with over a hundred students by 1822. The academy was maintained by contributions and the payment of tuition by the parents of the students. There were nearly four hundred homes and places of business in Detroit.<sup>56</sup>

The rule of the governor and judges from 1805 to 1823 was beneficial and important to Michigan Territory. During this period the legislative board adopted laws necessary to promote the growth and development of the territory and to protect the freedom of its citizens. Sitting as the Supreme Court, the judges maintained law and order and administered justice to Michigan inhabitants. Two

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<sup>56</sup>C. N. Burton, The City of Detroit ( 5 vols.; Detroit: The S. J. Clarke Co., 1922), I, 673-677, 729-730; Detroit Gazette, January 29, 1819; Dunbar, Michigan, 265, 280-282; Farmer, History of Detroit, 372-373, 715-716, 720, 769-770.

successive governors worked diligently to guide and direct a frontier community of heterogeneous elements and were generally successful, despite a disastrous war with England that devastated the territory. Both were instrumental in improving relations with the Indians. While a vocal minority of citizens criticized the efforts of their officials, the majority were pleased with their leadership and actually resisted their efforts to involve the citizenry in self-government. In 1819 Woodward told Detroiters that Michigan citizens had a "redeeming spirit, which only requires to be awakened to a correct view of their public rights, in order to produce those results which will, at once, fortify their liberties and advance their happiness."<sup>57</sup> By 1823 the governor and judges had successfully awakened that spirit, and had advanced a frontier community to the point where it could begin to manage its own affairs.

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<sup>57</sup>Address to the Electors of the Territory of Michigan, August 30, 1819, in MPHC, XII, 529-533.

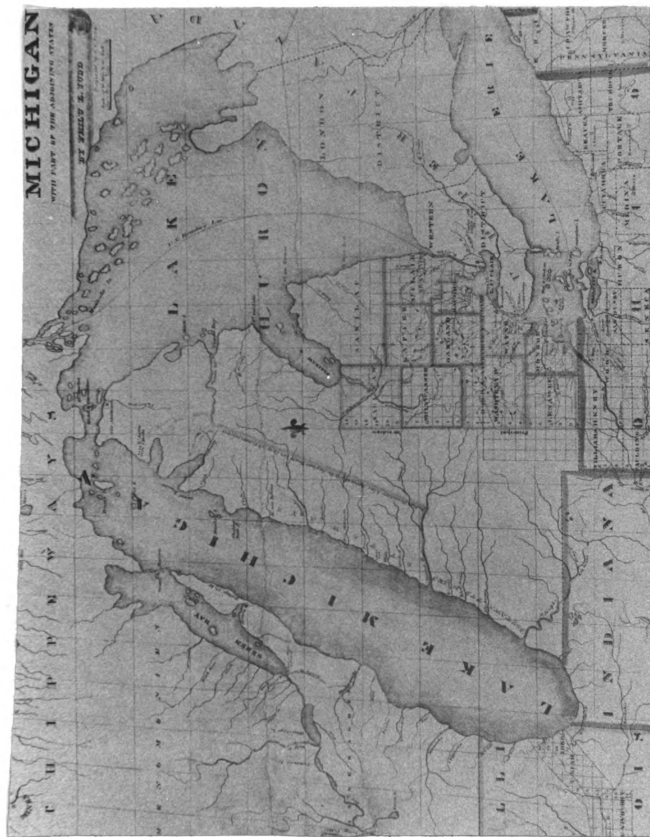


Figure 9. Philip Judd Map of Michigan, 1824



BIBLIOGRAPHICAL ESSAY

## BIBLIOGRAPHICAL ESSAY

Any understanding of the founding and administration of Michigan Territory must begin with a knowledge of the French and English regimes which preceded it. Louise P. Kellogg's French Regime in Wisconsin and the Northwest (Madison: 1925) is a useful work with which to begin concerning the French influence in the Northwest. C. M. Burton, "Detroit Rulers--French Commandants in this Region from 1701-1760," MPHC, XXXIV, 303-340; Catherine F. Babbitt, "Jesuit Influences in the Development of Michigan," Michigan History, XI, 570-580; and D. L. Crossman, "Early French Occupation of Michigan," MPHC, XIV, 651-668 give brief accounts of the French influence in Michigan. Documents on the French occupation of the Northwest can be found in Theodore C. Pease and Raymond C. Werner, eds., The French Foundations, 1680-1693 (Springfield, Ill., 1934).

Materials relating to the British occupation of what is now Michigan can be found in "Copies of Papers on File in the Dominion Archives at Ottawa, Canada, Pertaining to the Years, 1788-1799," MPHC, XII, 1-315, and "Copies of Papers on File in the Dominion Archives at Ottawa, Canada, Pertaining to Michigan, as Found in the Colonial Office Records," MPHC, XXIV, 1-699. These collections include official British correspondence regarding the Northwest and materials relating to the Indians in that area. An important

collection is The John Askin Papers, 2 vols. (Detroit: 1931), edited by Milo Milton Quaife. Askin, a prominent British merchant in Detroit, became an influential member of Detroit society when Michigan Territory was established. Narratives giving a picture of Detroit and Michigan before 1805 include "Journal of Captain Henry Hamilton from August 6, 1778, to June 16, 1779, on his Expedition from Detroit to Vincennes," MPHC, IX; Joseph Moore, "Journal of a tour to Detroit in order to attend a Treaty, proposed to be held with the Indians at Sandusky," MPHC, XVII; and Isaac Weld, Jr., Travels Through the States of North America and the Provinces of Upper and Lower Canada During the Years 1795, 1796, and 1797, 2 vols. (London: 1807).

Several secondary works deal with Michigan under the British. Louise P. Kellogg, The British Regime in Wisconsin and the Old Northwest (Madison: 1935), and Jack M. Sosin, Whitehall and the Wilderness: The Middle West in British Colonial Policy, 1760-1775 (Lincoln, Nebraska: 1961) are two good general treatments of British western policies. Two very useful works dealing with the British in Michigan are William Riddel, Michigan Under British Rule: Law and the Law Courts, 1760-1796 (Lansing: 1926), and Nelson Russell, The British Regime in Michigan and the Old Northwest, 1760-1796 (Northfield, Minnesota: 1939). Riddel's work is particularly important for an understanding of the complexity of British civil and criminal codes used in Michigan before 1805.

A discussion of Pontiac's rebellion can be found in Francis Parkman, The Conspiracy of Pontiac, 2 vols. (Boston: 1851), and Howard Peckham, Pontiac and the Indian Uprising (Princeton, New



Jersey: 1947). Parkman contends that the rebellion was a well-organized conspiracy, while Peckham argues that it was not a carefully planned operation under the direction of Pontiac. Myles M. Platt, "Detroit under Siege, 1763," Michigan History, XL, is a description of Pontiac's activities at that post.

The beginnings of American occupation in Michigan are treated in F. Clever Bold, Detroit's First American Decade, 1769-1805 (Ann Arbor: 1948), an important work which demonstrates the difficulty many Americans had adjusting to the French and British cultures already firmly established in Michigan. Of lesser value are George N. Fuller, Economic and Social Beginnings of Michigan (Lansing: 1916), and Carter Goodrich, The First Michigan Frontier (Ann Arbor: 1940). Bela Hubbard, "The Early Colonization of Detroit," MPHC, I, 347-368 discusses the impact of earlier cultures on Americans, particularly the French. George Catlin, "Early Settlement in Eastern Michigan," Michigan History, XXVI, 319-345 describes the importance of the fur trade in the development of Detroit and eastern Michigan. Wade Millis, "When Michigan Was Born," Michigan History, XVIII, 208-224, is rather superficial, but does have useful information on the origins of the Michigan-Ohio boundary controversy.

The Public Statutes at large of the United States of America contain the provisions of the Ordinance of 1787, and the acts erecting the Indiana and Michigan Territories. William Jenks, "The Creation of the Territory of Michigan," Michigan History, II, 270-288 is a useful article describing the Congressional debate regarding the

erection of Michigan Territory. There is no recent history of the Ordinance of 1787. Jay A. Barrett, Evolution of the Ordinance of 1787 (New York: 1901) is out of date.

There are several key collections necessary to understand the legislative and administrative efforts of the governor and judges. "The Michigan Territorial Papers," 4 vols., found in the General Records of the Department of State at the National Archives have useful material on petitions, recommendations, and correspondence affecting the territorial officials. The Laws of the Territory of Michigan, 4 vols. (Lansing: 1871-1884) contain both the acts as adopted by the governor and judges and information on appropriations and a record of the states from which a particular act was adopted. Clarence Carter, ed., The Territorial Papers of the United States: Michigan Territory, X-XI (Washington: 1942-1943) contain valuable correspondence between territorial officials and their superiors in Washington regarding legislation, military affairs, and relations with the Indians, as well as petitions to Congress from territorial inhabitants. The Michigan Pioneer and Historical Collections, 40 vols. (Lansing: 1877-1929) has a wealth of information on all aspects of territorial development. The Collections of the State Historical Society of Wisconsin, 31 vols. (Madison: 1903-1931) are also useful.

There are important collections in the National Archives relative to legislation and administration by territorial officials. The General Records of the Department of State, Record Group 59, were very useful, particularly The Domestic Letters of the Department of State, 1784-1906, microfilm publication number M40. Two valuable

collections included in the Records of the Office of the Secretary of War, Record Group 107, are Letters Received by the Secretary of War, Main Series, 1801-1870, M221, and Miscellaneous Letters Sent by the Office of the Secretary of War, 1800-1809, M370. There are important documents in the Records of the Bureau of Land Management, Record Group 49, particularly the Letters Sent by the Surveyor General of the Territory Northwest of the River Ohio, M477, and Letters Received by the Surveyor General of the Territory Northwest of the River Ohio, M479. As the State and War Departments had the primary responsibility for overseeing the administration of American territories in this early period, their records are crucial to any study of Michigan Territory.

There is a valuable collection of materials relating to the administration of Michigan Territory at the State Archives in Lansing, a collection that has been ignored by many writers dealing with this period of Michigan history. Pertinent to the legislative efforts of the territorial officials is the "Journal of the Transactions of the Governor and Judges of the Territory of Michigan in their Legislative Capacity, 1805-1815," which deals with the actions of the legislative board in adopting acts for the territory. Equally important are the "Michigan Executive Acts, 1805-1820," and "Michigan Executive Acts, 1814-1830," which include proclamations by the governor, correspondence by the territorial officials, and reports and proceedings of the governor and judges in their legislative and administrative capacities. There is also a series of petitions to the governor and

judges which include "Petitions and Recommendations, Undated to 1819;" "Petitions and Recommendations, 1820-1821;" and "Petitions and Recommendations, 1822." These are important in evaluating citizen response to the rule of the governor and judges and shed valuable light on conditions in the territory in this period. Also useful is the "Cass Correspondence Book, 1814-1820," which includes materials on legislation, military affairs, and relations with the Indians.

There is a small but worthwhile collection of Michigan Papers relating to this period at the Clements Library at the University of Michigan in Ann Arbor. This collection has some very useful items relating to the administration of Governor Cass.

Printed sources extremely useful in investigating the legislative and administrative efforts of the governor and judges include American State Papers, Public Lands, I, IV, and VII, and American State Papers, Miscellaneous, I, which provide information on land sales in Michigan and the difficulty in settling conflicting land claims. The Michigan Pioneer and Historical Collections contain many valuable documents relating to early territorial development: Charles Moore, ed., "The Beginnings of Territorial Government in Michigan: Manuscripts in the Department of State, Washington, D.C.," MPHC, XXXI, 510-612; "Territorial Records, 1803-1815 from the Woodbridge and John R. Williams Papers in the Burton Library," MPHC, XXXVII, 17-31, 38-131; "Woodbridge Papers," MPHC, XXXII, 524-573; "Territorial Records from 1805-1823," MPHC, 100-467; and "Documents Relating to Detroit and Vicinity, 1805-1813," MPHC, XL. John R.

Williams was the first elected mayor of Detroit and the adjutant general of the territorial militia. M. Agnes Burton, ed., Proceedings of the Land Board of Detroit (Detroit: 1915) is an important source of information concerning the distribution of land to Michigan residents after the fire of 1805.

Secondary accounts dealing with the legislative and administrative activities of the territorial officials include George Catlin, "The Reign of the Governor and Judges of Michigan Territory," Michigan History, XXVIII, 572-583, a superficial and critical treatment, and Alec Gilpin, The Territory of Michigan, 1805-1837 (East Lansing: 1970), which lacks detail and is at times awkwardly organized.

Attracting new settlement to Michigan was an early problem of the governor and judges. Several secondary accounts are useful in examining governmental land policies. Malcolm J. Rohrbough, The Land Office Business: The Settlement and Administration of American Public Lands, 1789-1837 (New York: 1968) is a scholarly work. Other significant works on the public domain include Payson J. Treat, The National Land System, 1785-1820 (New York: 1910); Roy M. Robbins, Our Landed Heritage: The Public Domain, 1776-1936 (Lincoln, Nebraska: 1962), and Benjamin H. Hibbard, A History of the Public Land Policies (Madison: 1965 reprint). Dallas Lee Jones, "The Survey and Sale of the Public Land in Michigan, 1815-1862," (unpublished M.A. thesis, Cornell University, 1952), is also worthwhile.

Other secondary accounts deal with county organization in Michigan and problems of settlement. William Hathaway, "County Organization in Michigan," Michigan History, II, 573-629 demonstrates how

county organization kept pace with actual settlement. George N. Fuller, "Settlement of Southern Michigan, 1805-1837," Michigan History, XIX, 179-214 discusses the organization of individual counties and the groups who settled them. Two articles dealing with the Michigan-Ohio boundary controversy are Tod B. Galloway, "The Ohio-Michigan Boundary Line Dispute," Ohio Archaeological and Historical Publications, IV, 199-230, and Claude Larzelere, "The Boundaries of Michigan," MPHC, XXX, 1-27.

Articles giving useful information on transportation problems in Michigan Territory include: Joe L. Harris, "The Walk-in-the-Water," Detroit Historical Society Bulletin, XIX, 4-11; Lewis Cass, "The Black Swamp Road--Winter of 1814-1815," MPHC, XXXVI, 369-378; George Catlin, "Michigan's Early Military Roads," Michigan History, XIII, 196-207; and A. N. Bliss, "Federal Land Grants for Internal Improvements in Michigan," MPHC, VII, 52-68.

The need for an educational program in Michigan was an early concern of the territorial officials. Useful articles on education include: E. B. Isbell, "The Catholepistemiad of Michigania," Michigan Alumnus Quarterly Review, XLIII, 590-602; William J. Cameron, "John Monteith, First President of the University of Michigan," Michigan History, XXVIII, 572-583; Fred Dustin, "Education During the Territorial Period," MPHC, VII, 36-51; and Shelby B. Schurtz, "Gabriel Richard and the University of Michigan," Michigan History, XIX, 5-18.

A useful discussion of Michigan's economic problems in this period is Floyd Russell Dain, Every House a Frontier: Detroit's Economic Progress, 1815-1825 (Detroit: 1956). A good survey of banks

and banking in the territorial period is Alpheus Felch, "Early Banks and Banking in Michigan," MPHC, II, 111-124. William Jenks, "The First Bank in Michigan," Michigan History, I, 41-62 absolves the governor and judges from any blame in the failure of the territory's first bank.

Any discussion of the Michigan Territorial Supreme Court must begin with the "Transactions of the Supreme Court of the Territory of Michigan." Volume one of this manuscript collection is in the Burton Historical Collection of the Detroit Public Library. The four remaining volumes are in the Bentley Library of the University of Michigan in Ann Arbor. Also at the Bentley Library are the files of the various cases appearing in the "Transactions." William Wirt Blume has edited Transactions of the Supreme Court of the Territory of Michigan, 1805-1836, 6 vols. (Ann Arbor: 1935-1940), but the published Transactions do not include all the material available at the Bentley Library. Blume's introduction to the Transactions is an excellent discussion of the problems of law courts in Michigan and is a good starting point for one unfamiliar with the court system under the British and the French. Blume's charts showing the changes in judicial districts and the specific officials who made up Michigan's early court system are particularly useful. Also important is the "Reports of Cases Argued and Determined in the Supreme Court of the Territory of Michigan, James Duane Doty, Detroit, 1819," ms journal in the Law Library of the University of Michigan, Ann Arbor. Doty served as clerk for the Supreme Court in 1819 and later became a judge in Michigan.

Valuable material relating to the Michigan Territorial Supreme Court can be found in the papers of Augustus B. Woodward, Solomon Sibley, Benjamin F. Witherell, and William Woodbridge in the Burton Historical Collection of the Detroit Public Library. As chief justice, Woodward was the most important member of the court, and his papers contain opinions regarding many of his cases as well as his observations on other members of the court. Sibley was an influential lawyer in Detroit and often represented the territory in important cases. Benjamin Witherell was the son of Judge James Witherell. Woodbridge served as secretary of the territory and also served as acting governor after the War of 1812.

Robert Ross, The Early Bench and Bar of Detroit (Detroit: 1907) is a useful work on the early territorial courts. Two articles dealing with capital punishment in Michigan are Louis Burbey, "History of Executions in Michigan," Michigan History, XXII, 442-457, and Albert Post, "Michigan Abolishes Capital Punishment," Michigan History, XXIX, 44-50. William Potter discusses the history of the Michigan judiciary in two articles: "The Michigan Judiciary; 1664-1805," Michigan History, XXVII, 418-433; and "The Michigan Judiciary Since 1805," Michigan History, XXVII, 644-660. Also useful is C. M. Burton, "Relation of Probate and District Courts," MPHC, XXXVII, 32-38.

Governors Hull and Cass also served as Superintendent of Indian Affairs in Michigan. Several valuable government collections relate to this role. Letters Sent by the Secretary of War Relating to Indian Affairs, 1800-1824, Record Group 75, M15, and Letters Received by the Office of the Secretary of War Relating to Indian Affairs,



1800-1823, Record Group 75, M27 are very useful. There is also pertinent information concerning Indians in Letters Received by the Secretary of War, Main Series, 1801-1870, M221, and Miscellaneous Letters Sent by the Office of the Secretary of War, 1800-1809, M370. Important for Michigan are the Records of the Michigan Superintendency: 1814-1851, M1. Also useful is the collection designated as Documents Relating to the Negotiation of Ratified and Unratified Treaties with Various Indian Tribes, 1801-1869, T494. Letters Sent by the Superintendent of Indian Trade, 1807-1823, M16, does not have a great deal of information concerning Michigan, but does help to understand the problems of maintaining a fair trade with the Indians. The Statutes at Large include legislation affecting Indians. Also useful for Michigan Indians is American State Papers, Indian Affairs, II.

Basic works for the study of the government's dealings with Indians are Charles Kappler, ed., Indian Treaties: 1778-1883 (New York: 1972 reprint), and Felix S. Cohen, Federal Indian Law (Albuquerque, New Mexico: 1973 reprint). Still useful is Charles C. Royce, comp., Indian Land Cessions in the United States (Washington: 1899). There is a great deal of information regarding Michigan Indians in The Territorial Papers of the United States, X-XI.

Secondary works are of value for an understanding of the government's relationship to the Indians. Francis Paul Prucha, American Indian Policy in the Formative Years: The Indian Trade and Intercourse Acts, 1790-1834 (Lincoln, Nebraska: 1970) is a scholarly account of the emergence of a national Indian policy. An older but still useful study is George D. Harmon, Sixty Years of Indian Affairs:

Political, Economic, and Diplomatic, 1789-1850 (Chapel Hill, 1941).

Ora Brooks Peake, A History of the United States Factory System: 1795-1822 (Denver: 1954) is somewhat disorganized but still useful.

An older work dealing with the same topic is Royal B. Way, "The United States Factory System for Trading with the Indians, 1792-1822," Mississippi Valley Historical Review, VI (September, 1919).

The governors of Michigan Territory often attempted to obtain land for the United States from the Indians by treaty. A number of secondary works are useful in examining this aspect of the rule of the governor and judges. Alpheus Felch, "The Indians of Michigan and the Cession of Their Lands to the United States by Treaties," MPHC, XXVI, 274-297, is brief but worthwhile. Francis Paul Prucha, Lewis Cass and American Indian Policy (Detroit: 1967) is an excellent short study of Cass's relations with the Indians not only as Governor of Michigan but also as Secretary of War. Fred Dustin, "The Treaty of Saginaw," Michigan History, IV, 243-278, is a good account of the treaty negotiations. Dustin maintains that the Indians did not know what they were signing. Henry Naegely, "Lewis Cass and the American Indian," Michigan History, XXXVII, 286-298 praises Cass's efforts to protect the Indians. Ephriam S. Williams, "The Treaty of Saginaw, 1819," MPHC, VII, 262-269 is a brief treatment of the negotiations. Benjamin F. Comfort, Lewis Cass and the Indian Treaties (Detroit: 1923) is useful for details but is somewhat dated. Sue Silliman, "The Chicago Indian Treaty of 1821," Michigan History, VI, 194-197, contends that avaricious whites undermined the intent of the treaty. Land cessions in Ohio and Michigan are discussed in Dwight L. Smith,

"Indian Land Cessions in Northern Ohio and Southeastern Michigan, 1805-1808," Northwest Ohio Quarterly, XXIX, 27-45.

Trade with the Indians was an important concern of the governor and judges. The fur trade was particularly important in Michigan. A valuable source on the fur trade in the upper Great Lakes region after the War of 1812 is the Mackinac Letter books, 1816-1830, of the American Fur Company, available on microfilm at the Clarke Historical Library of Central Michigan University at Mt. Pleasant. Also useful is "The Fur Trade in Wisconsin, 1812-1825," Collections of the State Historical Society of Wisconsin, XX, 1-393.

Kenneth W. Porter, John Jacob Astor: Business Man, 2 vols. (Cambridge, Massachusetts: 1931) while presenting a sympathetic view of Astor's activities in Michigan, also provides useful information on Cass's dealings with the Indians and the importance of the fur trade in Michigan. David Lavender, The Fist in the Wilderness (Garden City, New York: 1964), is a popular but careful study of Astor's fur empire. Ida Amanda Johnson, The Michigan Fur Trade (Lansing: 1919) is useful for details on the Michigan fur trade but is dated. Wayne E. Stevens, "The Michigan Fur Trade," Michigan History, XXIX, 489-505 is a short but scholarly treatment of the subject. John Harold Humins, "George Boyd: Indian Agent of the Upper Great Lakes, 1819-1842" (unpublished Ph.D. dissertation, Michigan State University, 1975) is useful for its discussion of the importance of the fur trade in Michigan and Astor's influence on Cass. Boyd was Indian agent at Michilimackinac from 1819 to 1832.

Henry Rowe Schoolcraft left useful memoirs and reminiscences concerning Indians in Michigan and his journey with Cass in 1820 to the headwaters of the Mississippi. These include Personal Memoirs of a Residence of Thirty Years with the Indians on the American Frontier . . . 1812 to 1842 (Philadelphia: 1845), and Narrative Journal of Travels Through the Northwestern Region of the United States . . . to the Sources of the Mississippi in the year 1820, edited by Mentor L. Williams (East Lansing: 1953). Schoolcraft served as Indian agent at Sault Ste. Marie from 1822 to 1832, when he became agent for the combined agencies of Sault Ste. Marie and Michilimackinac.

General articles that have been written on Michigan Indians are not very satisfactory. Melvin D. Osbond, "The Michigan Indians," MPHC, XXIX, 697-709, is brief and superficial. Claude S. Larzelere, "The Red Man in Michigan," Michigan History, XVII, 344-376 is a shallow discussion, while Emerson Greenman, "The Indians of Michigan," Michigan History, XLV, 1-35 is for school children.

Certain general works on Indians were useful for this study. Two fine works on the Indians of the upper Great Lakes are William W. Warren, A History of the Ojibway Nation (Minneapolis: 1957 reprint), and W. Vernon Kintietz, The Indians of the Western Great Lakes, 1615-1760 (Ann Arbor: 1940). An excellent anthropological study of upper Great Lakes Indians is George Irving Quimby, Indian Life in the Upper Great Lakes: 11,000 B.C. to A.D. 1800 (Chicago: 1960).

Two valuable handbooks on Indians are John R. Swanton, The Indian Tribes of North America (Washington: 1953), and Frederick Webb Hodge, Handbook of American Indians, North of Mexico (New York: 1959 reprint).

One of the most devastating blows to the development of Michigan Territory was the War of 1812. A very useful collection of materials on Michigan's involvement in the war is the series of documents in volume XL of the MPHC, which contains a great many Hull papers and correspondence between Hull and the Secretary of War. See also "Copies of Papers on File in the Dominion Archives at Ottawa, Canada, Pertaining to the Relations of the British Government with the United States during the Period of the War of 1812," MPHC, XV, 1-751, and XVI, 1-746, and "Papers and Orderly Book of Brig. Gen. James Winchester," MPHC, XXXI, 253-312. Winchester was the American commander whose troops were killed by Indians in the infamous "River Raisin Massacre" in 1812.

Three collections in the National Archives useful for a study of the war are Records of the Secretary of War, Letters Received, Main Series, 1801-1870, M221; Letters Sent Concerning Military Affairs, 1800-1889, M6; and "War of 1812 Papers" of the Department of State, 1789-1815, M570.

A useful documentary compilation on the War of 1812 is Ernest A. Cruikshank, ed., Documents Relating to the Invasion of Canada and the Surrender of Detroit, 1812 (Ottawa: 1913). For the account of

a participant in the Detroit phase of the war, see Milo Milton Quaife, ed., War on the Detroit, the Chronicles of Thomas Vercheres de Boucherville and The Capitulation by an Ohio Volunteer (Chicago: 1940).

A number of secondary accounts were useful in a study of the War of 1812. Alec Gilpin, The War of 1812 in the Old Northwest (East Lansing: 1958) is the standard account of the war on the Detroit frontier. Two general accounts of the war are Harry L. Coles, The War of 1812 (Chicago: 1965), and Reginald Horsman, The War of 1812 (New York: 1969). Fred Hamil, Michigan in the War of 1812 (Lansing: 1960), is a short work with emphasis on Hull's activities. Levi Bishop describes two battles in Michigan in the "Battle of Brownstown," MPHC, VI, 464-466, and the "Battle of Monquagon," MPHC, VI 466-469. "Battle and Massacre at Frenchtown, Michigan, January, 1813," MPHC, XII, 436-443 is by one of the survivors of that episode, Rev. Thomas P. Dudley. Josephine D. Elmer, "The Raisin River Massacre and Dedication of Monuments," MPHC, XXXV, 200-238 is a narrative of that massacre.

Indians played an important role in the War of 1812. The best biography of the Indian leader, Tecumseh, is Glenn Tucker, Tecumseh: Vision of Glory (Indianapolis: 1956). Reginald Horsman, "British Indian Policy in the Northwest, 1807-1812," Mississippi Valley Historical Review (June, 1958) maintains that while the British did not incite the Indians, they did capitalize on Indian unrest to foment discontent among the red men to insure the preservation of Canada. A useful article is George F. G. Stanley, "The Indians in the War of 1812," Canadian Historical Review, XXXI, 145-165.

William Hull is a central character in Michigan's involvement in the War of 1812. Two articles by John Van Deusen which are sympathetic to the general are "Detroit Campaign of General William Hull," Michigan History, XII, 568-583, and "Court-Martial of Gen. William Hull," Michigan History, XII, 668-694. Hull's own court-martial defense is found in MPHC, XL. Also useful is Milo Milton Quaife, "General William Hull and His Critics," Ohio Archeological and Historical Quarterly, XLVII, 168-182.

The papers of the territorial officials in the Burton Historical Collection of the Detroit Public Library are the most valuable source of information on the public and private lives of the governor and judges. They include the Woodward Papers, the Hull Papers, the Benjamin F. Witherell Papers, and the Cass Papers. There is also a small collection of Cass papers at the Clements Library of the University of Michigan in Ann Arbor.

A number of books and articles depict the lives of the governor and judges. Maria Campbell, Revolutionary Services and Civil Life of General William Hull (New York: 1847), written by Hull's daughter, is a defense of Hull, but offers useful details on his private life. A brief but objective treatment of Hull's life is William Jenks. "Sketch of the Life of William Hull," MPHC, XL. Frank Woodford, Mr. Jefferson's Disciple, A Life of Justice Woodward (East Lansing: 1953) is a useful biography of the chief justice, but lacks citations. Articles on Woodward's life include: William Jenks, "Augustus Elias Brevoort Woodward," Michigan History, IX, 515-546;

Sister Marie Heyda, "Justice Woodward and the Michigan Territory," Michigan History, LI, 43-55; Elizabeth Gaspar Brown, "Judge Augustus Brevoort Woodward, Man of Property," Michigan History, XL, 190-202; and C. M. Burton, "Augustus Brevoort Woodward," MPHC, XXIX, 638-664. The best work on Frederick Bates is Thomas M. Marshall, ed., The Life and Papers of Frederick Bates, 2 vols. (St. Louis: 1926). Also useful are William Jenks, "Frederick Bates," Michigan History, XVII, 15-19, and Edward Bates, "Sketch of Frederick Bates," MPHC, VIII, 563-565. Edward Bates, the brother of Frederick, served as a member of Lincoln's cabinet. Thomas W. Palmer, "Sketch of Life and Times of James Witherell," MPHC, IV, 103-107 is a brief but important picture of Witherell's private life. A short treatment of John Griffin is William Jenks, "Judge John Griffin," Michigan History, XIV, 221-225. Biographies of both Griffin and Witherell would be very useful. Much has been written on Lewis Cass. Two older biographies include W. L. G. Smith, The Life and Times of Lewis Cass (New York: 1856), and Andrew McLaughlin, Lewis Cass (New York: 1892). Both are laudatory accounts. More modern biographies include Frank B. Woodford, Lewis Cass: The Last Jeffersonian (New Brunswick, New Jersey: 1950), and Willis F. Dunbar, Lewis Cass (Grand Rapids: 1970). Woodford's book is a full treatment of Cass's life but lacks citations. Dunbar's work is short but scholarly.

The papers of several contemporaries of the territorial officials are important aids in understanding the public and private lives of the governor and judges. These include the William Woodbridge



Papers, the Solomon Sibley Papers, the John R. Williams Papers, and the Henry Rowe Schoolcraft Papers, all in the Burton Historical Collection of the Detroit Public Library. There are also valuable printed Schoolcraft Papers in MPHC, XXXVII, 207-419.

Secondary works on the contemporaries of the territorial officials also contributed to this study. Two studies of territorial secretaries by William Jenks are "Stanley Griswold," Michigan History, XV, 5-18 and "Reuben Atwater," Michigan History, XXIII, 262-264. A useful work is Louis Rau, "Solomon Sibley, the Public Servant, 1768-1845," ms. on microfilm in the Burton Historical Collection of the Detroit Public Library. Sibley was an important lawyer who became a territorial delegate to Congress. The best work on Gabriel Richard, territorial delegate and influential Detroit priest, is Frank B. Woodford and Albert Hyma, Gabriel Richard: Frontier Ambassador (Detroit: 1958). A brief article on Richard is J. A. Girardian, "Life and Times of Gabriel Richard," MPHC, I, 481-496. Alice E. Smith, James Duane Doty: Frontier Promoter (Madison: 1954) is a solid work on a Michigan judge who became a political enemy of Woodward and Griffin. Charles Lanman, The Life of William Woodbridge (Washington: 1867) is eulogistic. A new biography of Woodbridge is needed. Lanman was Receiver of the land office at Monroe, Michigan in 1830 and a friend of Woodbridge.

Other secondary works provided general background and information concerning Michigan Territory. They include Willis Dunbar, Michigan: A History of the Wolverine State (Grand Rapids, Michigan:

1965); James Campbell, Outlines of the Political History of Michigan (Detroit: 1876); George Catlin, The Story of Detroit (Detroit: 1921); Clarence M. Burton, The City of Detroit, Michigan, 6 vols. (Detroit: 1922) and History of Wayne County and the City of Detroit, 5 vols. (Detroit: 1930); Silas Farmer, History of Detroit and Michigan (Detroit: 1884); Henry M. Utley and Byron M. Cutcheon, Michigan as a Province, Territory, and State, 4 vols. (New York: 1906; Alec Gilpin, The Territory of Michigan (East Lansing: 1970); F. Clever Bald, Michigan in Four Centuries (New York: 1961); Beverly Bond, Jr., The Civilization of the Old Northwest (New York: 1934); and R. Carlyle Buley, The Old Northwest, 2 vols. (Bloomington: 1951).



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