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# Boundaries and Borders: Michigan's Early Legal History in the U.S. Congressional Serial Set

Virginia C. Thomas

Wayne State University, ed5497@wayne.edu

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# Boundaries and Borders

## Michigan's Early Legal History in the *U.S. Congressional Serial Set*

By Virginia C. Thomas

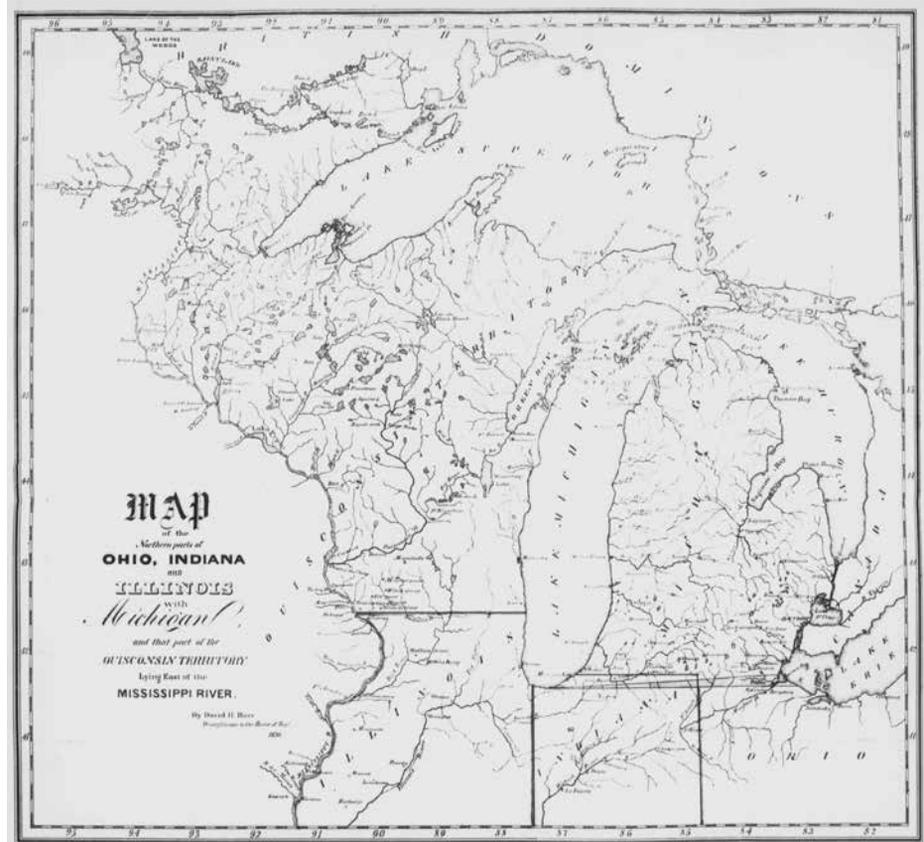
**M**ention the *U.S. Congressional Serial Set* in a conversation among lawyers and you are likely to conjure up visions of law school days, toiling in the law library, seeking to extract bits of archaic information from a seemingly endless series of tan volumes discernable only by the large serial numbers stamped on their spines. And understandably so. Congress has worked diligently for almost two centuries to create a permanent record of congressional and executive activity for posterity.<sup>1</sup> Until recently, available pathways to discovering the gems hidden within the *Serial Set* and its precursor, the *American State Papers*,<sup>2</sup> were few and inefficient. As a result, these historically significant resources have experienced relatively minimal use.<sup>3</sup>

Today, commercial publishers Readex<sup>4</sup> and ProQuest<sup>5</sup> offer comprehensive digital editions of the *Serial Set* and the *American State Papers* with full bibliographic records. In addition, the Library of Congress provides open access to selected documents and reports from the *Serial Set* for a more limited time frame.<sup>6</sup>

These types of enhanced access to the *Serial Set* open a window to eighteenth- and nineteenth-century materials that tell amazing stories about the legal history and formative years of our state.

### Transition from territory to state

The story of Michigan's remarkable journey to statehood goes hand in hand with the history of its borders. Michigan was designated a territory in 1805 with its southern border described in the Northwest Ordinance as "an east and west line drawn through the southerly bend or extreme of Lake Michigan."<sup>7</sup> Ohio had become a state two years earlier; its constitution, as approved by Congress, described a different border with the Michigan Territory, which



Map accessed via ProQuest Congressional

placed the city of Toledo and the mouth of the Maumee River squarely within Ohio. The Toledo War ensued when Michigan later petitioned Congress for admission to the Union, claiming the original Northwest Ordinance line.<sup>8</sup>

To add to Michigan's political woes, Indiana's constitution placed that state's northern border into Michigan territory as described in the Northwest Ordinance. Indiana citizens did not take up arms against Michigan. However, the Indiana legislature issued a resolution expressing its opposition to Michigan's admission to the Union unless Michigan acknowledged its land claims.<sup>9</sup> Ultimately, Michigan agreed to a land swap (the Upper Peninsula for the Toledo Strip)

and officially became a state on January 26, 1837.

### Native American land cessions and treaties

Numerous land cessions and relocations were negotiated with Native Americans residing in the Michigan Territory in the early years of Michigan statehood. The *Serial Set* is a reliable, but not exclusive, resource for the text of these treaties. Many were published in the *United States Statutes-at-Large* or treaty compilations such as Kappler's.<sup>10</sup> However, the *Serial Set* provides a wealth of information helpful to understanding the issues and impact of the treaties themselves.

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On January 27, 1837, one day after Michigan was admitted to the Union, the Senate referred to the Committee on Indian Affairs a memorial of the Michigan legislature about Native Americans living within state boundaries after having ceded their lands.<sup>11</sup> While the memorial conveys a sense of urgency for relocation, it also acknowledges the extreme hardships these peoples would endure in the process:

[T]hey fear the experiment of going ten or twelve degrees directly south, to a country in which their habits of subsistence and domestic economy must suffer an almost entire and sudden change. They are equally strangers to the habits, languages, and opinions of the tribes who must become their neighbors in that location, and cannot contemplate a residence there without alarming fears of depopulation, both by disease and hostility.<sup>12</sup>

As with other land transactions, the federal government kept careful account of Native American land cessions. *Purchase of Lands from the Indians* (1827) compiled data on Native American land transactions from 1776 through 1826.<sup>13</sup> The report shows, for example, that 17,561,470 acres had been purchased in the Michigan Territory for the period.<sup>14</sup>

### Use of public lands—land grant schools

You may be familiar with the Land-Grant College Act of 1862,<sup>15</sup> also known as the First Morrill Act. The statute provided for each state to receive 30,000 acres of federal public land, either within or contiguous to its borders, for each congressional seat held by that state on the condition that the land

be sold to establish an endowment for the ongoing support of at least one college with a mission to provide education in agriculture and the mechanical arts (schools later known as the A & M schools).<sup>16</sup> Michigan State University,<sup>17</sup> originally chartered under Michigan law as a state land-grant institution, was designated a federal land-grant college in 1863.<sup>18</sup>

A number of scholarly works have addressed the nation’s efforts to use public lands for educational purposes.<sup>19</sup> Unique among them is “The Public Domain. Its History, with Statistics . . .” prepared by Thomas Donaldson of the U.S. Public Land Commission.<sup>20</sup> This work is part of a comprehensive codification of laws on the survey and disposition of public lands that was published in the *Serial Set*. It includes a chapter detailing the history of educational land grants in the United States and territories from 1785 to 1880, including the purpose, number of acres, dollar value, and legal authority under which the land was granted. Under the Morrill Act, for example, Michigan State Agricultural College received 240,000 acres, which were sold for \$275,104.

### Maps and city plans

The city of Detroit served as Michigan’s territorial capital from 1805 to 1837 and continued as the state capital until 1847 when the state capital was moved to Lansing, a more central location. Given Detroit’s historical significance, it is no surprise that Congress sought to preserve documentation on the development of the land and its inhabitants. Among these is a report to Congress in 1804 by Thomas Jefferson describing the land, land titles, and settlers in Detroit and southeast Michigan.<sup>21</sup> By 1826,

the city’s growth had almost entirely encompassed a military reservation located near the Detroit River. The mayor and aldermen petitioned Congress to dismantle or relocate the arsenal and grant the remaining land to the city for public purposes.<sup>22</sup> Both the memorial and commentary of the secretary of war are included in the *American State Papers*, along with a map of the military reservation. Four years later, Congress commissioned the governor and judges of the Michigan Territory, “or any three of them,” to develop a city plan for Detroit.<sup>23</sup> In conveying the plan to Congress, Rep. Strong observed that the plan “is believed not to differ essentially from the ‘Plan of Detroit by John Mullett, engraved and published by J. O. Lewis, 1830’ except in the addition of several water lots in front of those on Mullett’s plan.”<sup>24</sup>

Remember the pre-statehood border controversy between Michigan and Ohio? Detroiters effectively organized and expressed their views on the issues. On March 18, 1836, citizens of Detroit convened at City Hall to consider the proposed change in Michigan’s southern boundary with Ohio as a condition of admission to the Union.<sup>25</sup> A memorial adopted by the meeting, and subsequently signed by 736 persons, reads as follows:

Your memorialists . . . are unwilling that Congress, after having ceded to Indiana . . . a district of country extending ten miles north of the line prescribed by the ordinance, should go still farther and cede to Ohio a district of country over which Michigan has exercised jurisdiction from the first establishment of her Government; and they are still more unwilling that any feature of their fundamental law should be changed by any power on earth short of the will of the people themselves . . .<sup>26</sup>

We know how the story ends. Fortunately for Michiganders, the Upper Peninsula, replete with forests and mineral resources, proved to be more than just a “sterile region on the shores of Lake Superior, destined by soil and climate to remain forever a wilderness.”<sup>27</sup> ■

(Continued on the following page)



*Virginia C. Thomas, BA, AM, MBA, JD, CAA, is the director of the Arthur Neef Law Library at Wayne State University. Currently, she serves on the SBM Libraries, Legal Research, and Legal Publications Committee and the ICLE Executive Committee.*

## ENDNOTES

1. McKinney, *An overview of the U.S. Congressional Serial Set* <<http://www.llsdc.org/serial-set-volumes-guide#overview>>. McKinney discusses contents, arrangement, numbering system, and indexing. All websites cited in this article were accessed May 16, 2016.
2. See library of Congress, *A Century of lawmaking for a New Nation: U.S. Congressional Documents and Debates* <<https://memory.loc.gov/ammem/amlaw/>>. This website provides an overview of the *American State Papers* and full text in PDF.
3. DeLong, *What is in the United States Serial Set?*, 23 J Gov Info 123 (1996).
4. The Readex product, *U.S. Congressional Serial Set, 1817–1994*, and its companion product, the *American State Papers, 1789–1838*, are part of the publisher's Archive of Americana series.
5. The ProQuest product, the *U.S. Serial Set Digital Collection*, includes the *American State Papers*.
6. Selected items from the *Serial Set* are included in Library of Congress, *A Century of Lawmaking for a New Nation: U.S. Congressional Documents and Debates* <<https://memory.loc.gov/ammem/amlaw/>>. These items span the 23rd Congress (1833–1835) through 64th Congress (1915–1917). In addition, US Government Publishing Office, *Federal Digital System* <<https://www.gpo.gov/fdsys/>> includes reports and documents of the Senate and House of Representatives from 1995 to date, while its beta site successor, GovInfo <<https://www.govinfo.gov>>, appears to expand retrospective coverage in some areas.
7. *An Ordinance for the Government of the Territory of the United States North-West of the River Ohio* (July 13, 1787), art 5 <<https://www.loc.gov/resource/bdsdcc.22501/?sp=1>>.
8. See Faber, *The Toledo War: The First Michigan-Ohio Rivalry* (Ann Arbor: University of Michigan Regional, 2008) for a highly readable account of this dispute.
9. *Resolution of the Legislature of Indiana, Opposed to the admission of Michigan into the Union unless they shall, in their constitution, acknowledge the northern boundary line of that State*, Senate Doc. No. 72 (1836), reprinted in Serial Volume 280.
10. 1 Kappler, *Indian Affairs: Laws and Treaties* (1904).
11. *Memorial of the Legislature of the State of Michigan, in relation to Indians living within the limits of said State*, Senate Doc. No. 112 (1837), reprinted in Serial Volume 298.
12. *Id.* at 1.
13. *Purchase of Lands from the Indians; surveys, quantity, sales, expenses of the public lands; the amount paid, balances due and amount forfeited by the purchasers of public lands since the Declaration of Independence*, reprinted in Am. St. Papers (Public Lands) No. 579 (1827).
14. *Id.* at 913.
15. 7 USC 301 *et seq.*
16. 7 USC 304.
17. Michigan State University was initially established as the Agricultural College of the State of Michigan. 1855 PA 279.
18. Michigan State University, *The Nation's Pioneer Land-Grant University* <<https://msu.edu/morrill-celebration/history.html>>.
19. See, e.g., Ross, *Democracy's College: the Land-Grant Movement in the Formative Stage* (Ames: Iowa State University Press, 1942); Eddy, *Colleges for Our Land and Time; the Land-Grant Idea in American Education* (New York: Harper & Brothers, 1957); Edmond, *The Magnificent Charter: the Origin and Role of the Morrill Land-Grant Colleges and Universities* (Hicksville: Exposition Press, 1978); Williams, *The Origins of Federal Support for Higher Education: George W. Atherton and the Land-Grant College Movement* (University Park: Penn State University Press, 1991).
20. Donaldson, *The Public Domain. Its History, with Statistics, with references to the national domain, colonization, acquirement of territory, the survey, administration and several methods of sale and disposition of the public domain of the United States, with sketch of legislative history of the land states and territories, and references to the land system of the colonies, and also that of several foreign governments*, House Doc. No. 47 (1884), pt. 4, reprinted in Serial Volume 2158.
21. *Description of the lands and settlers in the vicinity of Detroit*, reprinted in Am. St. Papers (Public Lands) No. 97 (1804).
22. *Relative to the military reservations of land at Detroit, in Michigan*, reprinted in Am. St. Papers (Military Affairs) No. 328 (1826).
23. *An Act Relative to the Plan of Detroit, in Michigan Territory*, ch 151, 4 Stat 413 (1830) <<https://www.loc.gov/law/help/statutes-at-large/21st-congress/session-1/c21s1ch151.pdf>>.
24. *On the Establishment of the Plan of the City of Detroit, in Michigan*, reprinted in Am. St. Papers (Public Lands) No. 900 (1831).
25. *Southern boundary of Michigan: proceedings of a meeting of the citizens of Detroit*, House Doc. No. 207 (1836), reprinted in Serial Volume 290.
26. *Id.* at 5.
27. *Id.* at 2.

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