The Meaning of Article 13 of the Treaty of Washington, March 28, 1836

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to lands. Squatters, crossing the Grand River and establishing themselves on public lands, hoping for the first right to purchase the lands after the passage of a future preemption act, were threatening to deny these citizens access to nearby investment property.

Technically, it was illegal for American citizens to establish farms on public lands without first purchasing them or receiving them in grant. But the eviction of squatters on public land was rare. From 1799 to 1820, Congress had passed several acts that retroactively granted "preemptionists" the right to the first purchase of lands that they had already actually settled. The laws were always retroactive. They were not "homesteading" laws promising future settlers the right to claim public lands. They were instead laws providing squatters with legal protection, within tight limits, to lands squatters had already, effectively if not legally, taken out of the public domain. They were also generally restricted to a certain region.[7]

In 1830, "An Act to grant pre-emption rights to settlers on the Public Lands" won congressional approval and Jackson's signature. The act resembled earlier acts, but it was more general. "This law entitled a settler who had occupied and cultivated any part of a tract up to 160 acres in 1829 to purchase that land at the minimum government price."[8] This was still only retroactive protection for the squatter. Squatting still "constituted criminal trespass."[9] But squatters had good reason to hope for more such bills forgiving their trespass and permitting them to purchase the lands at a bargain price. More than amnesties, these bills provided squatters with the critical advantage of the right of first purchase, if they could demonstrate that they

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[7] Laura Jensen, Patriots, Settlers, and the Origins of American Social Policy (New York, 2003), 143-144, 146; Kenneth E. Lewis, West to Far Michigan: Settling the Lower Peninsula, 1815-1860 (East Lansing, 2002) 122.

[8] Lewis, West to Far Michigan, 122; Jensen, Patriots, Settlers, 172.

[9] Jensen, Patriots, Settlers, 176.

actually settled the land.

Leading citizens at Grand Rapids, hoping for the orderly settlement of lands north of the river, and hoping, too, for the opportunity to purchase those lands, had good reason to oppose squatting. If squatters poured across the river and established claims before the Land Office opened the claimed lands for sale, a new preemption law (such as the radically general one that would pass in 1841) would deny the Grand Rapids citizens the right to purchase any lands already staked out by preemptionists. The recent experience in Michigan suggests the extent of lost opportunities facing the Grand Rapids investors. Kenneth Lewis finds that "In Michigan, squatter settlement ranged well ahead of official land openings, spreading rapidly across the interior." In 1834-1835, the territory saw an "onslaught of preemption claims," especially in western Michigan, served by the Kalamazoo land office. In 1833, 694 acres sold under preemption laws; that figure jumps to 4,363 acres in 1834 and 37,045 acres in 1835.[10] No one interested in land could ignore the implications. Laws against squatting had proven ineffective in the past. But if Indians possessed rights to the ceded lands until the moment of public sale, their continued legal presence (within tight limits) might provide a disincentive to squatting. Hoping for such a ruling, the Grand Rapids' citizens had turned to the federal government.

Like the city fathers of Grand Rapids, the Grand River Ottawas also opposed the squatters. But they did not resort to Article 13. Instead, the Indians decried the squatter's seizing of their improvements as a violation of Article 8. Months before the citizens of Grand Rapids sent Schoolcraft their queries, Rev. Slater had already submitted the Indians' protests to the agent. In December, 1836, Slater alerted Schoolcraft that preemptionists were not only taking

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[10] Lewis, West to Far Michigan, 123.

lands north of Grand River, they were also attempting to take over some of the Indians' improvements (houses, barns, and so on). This was a pressing issue for two reasons. First, with squatters claiming Indian structures as their own, Ottawas might lose the compensation promised by the treaty. Second, the squatters were deviously planning to use those very improvements to establish their claims to the land under the doctrine of preemption. Slater observed that, "Previous to our leaving the Rapids the Indians leased their houses and fields together with their saw mill to different individuals that no injury may be sustained until the appraisal should be made by Govt." Slater continued:

> Last evening I received information that preemptionists were determined to take possession of the houses and fields and also the mill, on account of our leaving and declare that they will not desist from their purpose without the Agent of Indian Affairs sanction the authority of the Indians to hold their improvements till appraised and paid.[11]

If Slater is accurate, it is the squatters themselves who first sought to know who was to benefit from the Indians' improvements. The squatters wondered whether Indians could lease improvements to "individuals" who might seek to hold those improvements, to the exclusion of others, until the land was offered for sale. It is, of course, highly likely that the "individuals" in question, those possessing the wealth to rent the Indians' improvements in an effort to hold the land until the public offerings, were men of substance in the region.

This was not the only word Schoolcraft had received regarding the abuses of the preemptionists, for on January 24, 1837, he sent information "respecting the forcible seizure of Indian dwellings and property north of Grand River" to the Commissioner of Indian Affairs. Three men had crossed into the public lands, and they were carrying away the valuable milled

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[11] Leonard Slater to HRS, Richland, Dec.. 28, 1836, NAM1R41 562-564.

flooring in a house belonging to one of the leading Grand River Ottawa. The Ottawas wondered if the government would permit them to suffer these "aggressions."[12]

The contest was not a simple one between Indians and squatters, but a complicated triangular conflict among Indians, squatters, and speculators. Ottawas sought payment for their improvements. Squatters sought to establish preemption claims and did not wish to be blocked from doing so by either Indians or investors who had leased Indian improvements. The leading citizens of Grand Rapids sought both opportunity in lands north of the river and orderly relations with Indians, the latter an essential ingredient to regional prosperity.

Schoolcraft immediately understood the importance of the questions that were coming to him from the region, and he must have seen that his treaty had failed to account for preemption, an enormous lapse given the doctrine's importance to land policy in Jacksonian America. He had once hoped for a different Article 13. The "power of sale" that he had drawn up in late December, 1835, would have terminated the Indians' usufructuary rights when the lands are "surveyed and sold," but the actual treaty protected them until the lands are "required for settlement," and the articles of assent protected the rights until the lands are "required for actual survey and settlement." Now preemptionists, as actual settlers on unsold public lands, were claiming Indian improvements and disrupting the investment plans of leading citizens. If the squatters (actual settlers) terminated Indian rights, and if the federal government was manifestly unwilling to arrest squatters, what power could stop the squatting? The questions coming to him from the Grand Valley induced Schoolcraft to reinterpret the article in conformity with his pre-

[12] HRS to C.A. Harris, Detroit, Jan 24, 1837, NAM1R37 143; Slater to HRS, Barry, Jan. 18, 1837, annexed in same; Schoolcraft's letter (but not Slater's) is also in HRSP/DLC/SHSW, container 42, Part 1: fr. 15272.

treaty hopes, not with the post-treaty reality. He offered Lyman, Rathbone, and Finney his "private opinion, that the right secured to the Indians by the 13th Article of the treaty, applies to the lands, while they remain the property of the United States, and ceases the moment any part of it becomes private property."[13] Squatters would thus face Indian antagonists backed by the law until survey and sale, and, once the land office disposed of the land to individuals, remaining Indians would face legal purchasers backed by the law thereafter.

Opposing preemption, his reinterpretation favored the citizens of Grand Rapids; it also favored private ownership over retained Indian rights. The leading citizens and Schoolcraft alike could have sought to oust the squatters on the basis of their criminal trespass, but that was neither practical (given the absence of a willing militia, a police force, or a nearby federal army unit), nor would it have resolved the larger question posed by Article 13. The day he offered his views to Lyman, Rathbone, and Finney, Schoolcraft reported the dispute to Carey Allen Harris, Commissioner of Indian Affairs. He stated, as he had in 1836, that it was upon the article that the Indians had agreed to the treaty and to the Senate modifications. He again creatively asserted that Article 13 would cease to provide Indians with use of the ceded lands once the lands had been sold by the Federal government. He claimed for the first time, and without citing any evidence, that he had patiently explained this to the Indians making the treaty both in Washington and at Mackinac. And, at the same time, he contradicted himself: stating that the term "settlement" in Article 13 is meant in its common usage:

> The main question in the cession made by the Indians at Washington may be said in a great measure to have turned on the right stipulated to be secured to them, to hunt upon,

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[13] HRS to D. A. Lyman, A.D. Rathbone, N. H. Finney, Detroit, Feb. 27, 1837, in NAM1R37 171 and NAM234R422, frs. 636-637.

> and occupy the lands, ceded, until they were required for settlement. I caused the operation of this provision to be carefully explained to them, stating that as fast as the lands were surveyed and sold, and thus converted into private property, this right would cease. But that it would continue to be enjoyed by them, on all portions of the territory ceded, not surveyed and sold. It was believed, from the best information then extant, that portions of the large and imperfectly explored territory ceded, were uninviting to agriculturalists, and would be chiefly valuable for lumber and mill privileges, and to these tracts the Indians adverted, as places of temporary residence. The same view of the gradual extinction of this right, was urged upon their consideration, at the council held at Michilimackinac for obtaining their assent to the Senates (sic) proposition to modify the tenure of their reservations from reservations in perpetuity, to reservations for five years. And with the same effect. Their assent, was given. In the course of these negotiations, the bearing of this stipulation, was fully discussed, and the Indians, appeared to set a high value, upon it, and resisted the idea of a general cession of their lands without it. I employed the term "settlement" in its ordinary meaning to denote the act or state of being settled, and as answering, as nearly as the terms of the two languages would permit, to the tenor of my agreement with them.[14]

Schoolcraft asserts that Article 13 preserves the rights of the Indians to use the ceded lands until the Federal government sold them to private citizens; he also asserts that the Indians held the article to mean that they had the right to use the ceded lands until they were in the "act or state of being settled" by American citizens. This is a contradiction. The ownership of lands by, say, nonresident speculators is quite a different thing from their actual settlement by resident farmers or villagers. Schoolcraft understood this as well as anyone.

The particular language of the Article 13, already proving troublesome in 1837, was never again deployed in a federal Indian treaty. Schoolcraft explained the article by reminding Harris that it had been absolutely essential to obtaining the Indians' assent to the vast cession at a good price and against Indian resistance:

> They manifested a disposition to sell but a small portion of the country actually purchased, setting a value on it, rateably disproportionate to that which was finally paid for the entire cession. It was felt to be bad policy on the part of the government to

[14] HRS to C. A. Harris, Detroit, Feb. 27, 1837 in NAM1R37 168-9, and NAM234R422 fr. 631.

> purchase small tracts, which would be absorbed by the extension of settlements in a few years, and lead to the necessity of renewed negotiations, at each of which, the price of the lands would not only be enhanced, but their creditor and half breed claimants, renew their claims, with the power, of influencing the Indians to refuse or accede to the terms, as the private interests of these individuals might dictate. And the right named, combined with the principal of consolidated reservations, was found to to [sic] be among the more efficacious reasons brought forward, to induce them to enlarge the tract ceded and finally to make it general, comprehending the whole peninsula, and a part of the country northwest of it. Nor is the operation of this right, upon United States lands, found to be objectionable. The Indians will gradually remove before the increasing circle of settlement, and keep out of the way of it, and did not congress hold out inducements to preemptionists to cross over into the Indian Country, before it is surveyed and offered for sale, few difficulties of the kind . . . would probably occur.[15]

It is striking that Schoolcraft calls the ceded lands, "Indian Country." It is worth noting this off-hand acknowledgment of retained Indian rights to the ceded lands. But Schoolcraft had expected settlement to occur after survey and sale; instead, squatters were bringing about settlement before survey and sale, disrupting his vision of orderly settlement.

Schoolcraft endeavored to define "settlement" as the sale of land, but "settlement" was then (and generally still is) commonly understood to mean the actual occupation and inhabiting of a plot of land. The Indians understood Article 13 to mean the latter, actual settlement. But Schoolcraft felt that the government had the right and the power to apply another meaning, against common usage and to reduce the attractions of preemption. "Actual settlement," as we shall see, was a phrase with implications in both federal policy and common usage.

The intrusion of preemptionists onto unsold public land had alarmed Lyman, Finney, and Rathbone. Squatters disrupted not only the orderly sale of land, not only investment opportunities, but also, it was feared somewhat extravagently, the peace between the Ottawas and the region's American citizens. Schoolcraft agreed with the Grand Rapids citizens that the

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[15] HRS to CA Harris, Detroit, Feb. 27, 1837 NAM1R37 169-170, also in NAM234R422 fr. 631.

Indians' rights under Article 13 would not cease because of the intrusions of preemptionists. He hoped this interpretation would pose a deterrent to such squatting, protect Indians from outright theft, and protect those citizens who had an interest in a more orderly acquisition of the public lands.

Commissioner of Indian Affairs Carey Allen Harris also recognized the importance of a careful interpretation of Article 13, and he forwarded the query to the Secretary of War, with the request that the Attorney General of the United States offer an opinion.[16] That opinion, issued on April 20, 1837, upheld Schoolcraft's developing interpretation of Article 13. Benjamin F. Butler agreed that the Indians' rights in usufruct would expire when the public lands were sold "to individuals." This is highly innovative, since Article 13 says nothing about private ownership. Schoolcraft had the opinion published in the Detroit Daily Advertiser, Thursday, May 4, 1837:

> In answer to the questions proposed in the letter of the Commissioner of Indian Affairs and referred to me by your communication of the 23d ultimo, I have the honor to inform you, that, in my opinion, the thirteenth article of the treaty of March 1836, with the Ottawa and Chippewa Indians, by which "the Indians stipulate for the right of hunting on the lands ceded, with the other usual privileges of occupancy, until the land is required for settlement," must be regarded as reserving the use of the ceded lands, for all the purposes of Indian occupancy as it existed prior to the treaty, until such lands shall have been actually disposed of, to individuals, by the United States. Such disposition may be made by sale, under the general laws, or by special grants, or in any other way that Congress may direct, and whenever an actual disposition of any particular tract shall be made, the usufructuary right of the Indians will cease as to such tract.
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> In the mean time, however, that right cannot lawfully be interrupted by the Government, still less by any citizens, of the United States.[17]

Butler's emphatic statement that citizens could not interfere with the Indians' rights under

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[16] C.A. Harris to J.R. Poinsett, March 23, 1837, Washington, D.C., NAM1R37 638.

[17] Detroit Daily Advertizer, May 4, 1837, in NAM234R422 678.

the article suggests at first blush that the government's concern was with the preemptionists' intrusions into the recently ceded lands. These intrusions could not prevent, according to Butler, Indians from using the lands. Butler's interpretation of the article, however, is creative. Instead of protecting Indian rights until the land is actually settled, as required by the treaty, he protects those rights only until it would be actually "disposed of, to individuals." In his view, preemptionists, as "actual settlers," did not disrupt Indian rights, but purchasers of public lands, who might not be settlers at all, did bring an end to such rights. Butler, like Schoolcraft, favored private property over both squatters and retained Indian rights. He neglected the property Indians (noncitizens) had in those rights.

It is my opinion that Butler and Schoolcraft, like the established citizens of the Grand River area, had intentions in this matter that can be honored. They were concerned to preserve the peace and to maintain an orderly northward expansion of the American settlements. They also were interested in protecting Indians from the squatters' unjust taking of the Indians' improvements. It is also true, however, that Schoolcraft had by this time embraced the view that Indians would be better off if kept at a great distance from ordinary settlers, who would only corrupt them or otherwise damage them. It must be added that he had much Jacksonian company in holding to this view. He grew worried that soon, as settlements pressed northward in the lower parts of the Lower Peninsula, lawlessness might prevail. His fears stemmed in part from the general national debate over Indian removal, a policy he had come to advocate and one that saw great controversy in the 1830's. The episodes of 1836-1837 that surrounded the Attorney General's opinion were occurring, it should be recalled, at the very time that the United States was deploying troops to ensure the brutal and deadly removal of the Cherokees from their

Georgia and Tennessee homelands. It was also at this time that the United States' efforts to remove the Seminoles were meeting a resistance that would cost the United States Army almost as many lives as the later Mexican War, not to mention an unknowable number of Seminole deaths. Keeping the frontier in order and peace was a major concern for any dutiful agent of the Office of Indian Affairs or other federal office. Bending the meaning of a treaty article was certainly worth doing if it maintained peace and order at the expense of squatters, and dishonest squatters taking Indian property, at that.

But then, there were laws against squatting, and even if they were poorly enforced, they could have been turned against the preemptionists. The turn to Article 13, originating with the citizens of Grand Rapids, suggests a powerful urge to establish clear rights to private property, in the face of both squatters and an Indian treaty that might muddy those rights. It is my opinion that Schoolcraft and Butler reinterpreted the article in the context of unfolding events and in the presence of propertied citizens.

The truly injured party in all of this, the Ottawas at Grand River whose improvements were being taken over or destroyed, strikingly expressed no concern about possible violations of Article 13. The Ottawas do not mention the article in the documents that convey their concerns. Instead, they fixed on the events as a violation of Article 8, which promised them compensation for their improvements. Slater reported that the Ottawas of the Grand River area were wondering "What they are to do in regard to their property? Is it possible to have their property appraised soon?"[18] From the Indians' perspective, what was most alarming was the destruction or appropriation of improvements at a time when the government had promised then compensation.

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[18] Leonard Slater to HRS, Barry, Jan 18, 1837, in HRS to C.A. Harris, Detroit, 24 Jan, 1837, NAM1R37 143.

They were less alarmed than we might imagine by the threat of settlement on the ceded lands. Alone of all Indian participants in the Treaty of Washington, they anticipated rapid American settlement; some were moving to Gull Prarie, where they knew they would soon be surrounded by Americans. What concerned them, and highly, was not so much the settlement, which they had anticipated, but the pillaging of resources they had worked hard to acquire and for which the government had promised them compensation.

This is evident in the report made by two men whom Schoolcraft had sent to appraise the improvements in the Lower Peninsula. John McDonell and John Clark left Detroit in the spring of 1837 and traveled overland to the Grand River country, where they confirmed that "a number of the principal chiefs and a considerable body of Indians, had been obliged to leave their houses and former residence, in consequence of the intrusion of the whites, who had illegally possessed themselves of the Indian houses and plantations by squatting. . . ."[19]

The displaced Indians were, when McDonell and Clark gathered this information, at Gull Prairie. The appraisers went to the mission, and what they learned alarmed them. Note well that the appraisers were concerned about two problems, disorder in the disposition of public lands and the need to compensate Indians for their improvements, while the Indians were concerned largely about the latter alone. The Ottawas were, to be sure, aggrieved by

> the ill treatment which they had received from the whites, in taking forcible possession of their houses and premises, and fraudulently and falsely impressing them with the belief, "<u>that in as much as they had sold their lands by Treaty to the Government all their right and tittle(sic) had ceased and that they must surrender possession whenever a white man approached</u>."

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[19] John McDonell and John Clark to C. A. Harris, Detroit, June 8, 1837 NAM234R402 frs. 358-360; see also HRSP/DLC/SHSW Container 42, Part 1: 15505-15508.

McDonell's and Clark's concern for the orderly disposition of the lands comes through in their next sentences, but here they are speaking for themselves, not for the Indians:

> It is proper here to mention, that a number of white persons, have not only possessed themselves of the Indian houses and property, but have by squatting obtained the possession of many valuable points on the Indian purchases-- a number of land speculators, living elsewhere (sic) have made locations, and placed persons thereon with the view of eventually securing the same by a preemption right, and likewise many emigrants are daily settling on this purchase, under the impression, that the lands will be eventually confirmed to them as preemptionists--and as far as the undersigned have learned, all these squaters (sic) have formed and entered into a combination to obtain from the Government, by fair means or otherwise a title to their valuable locations at one dollar and twenty five cents per acre--as preemptionists, to the exclusion of other citizens of the United States, who have waited the action of the Government--to offer those lands for sale. The population of this region will soon become so dense, that the removal of those squaters will occasion much embarrassment to Government, unless some decisive measures are soon adopted, this view-- and the fact, that great injury is daily committed, by the destruction of the timber, has induced the undersigned thus to digress from the principal narration of the expedition.

McDonnell and Clark clearly understand that Indian rights were not the only issue; the issue also concerned the actions of squatters at the expense of those "other citizens of the United States, who have waited the action of the Government–to offer those lands for sale." That alarming digression concluded, McDonell and Clark returned to the subject of their negotiation with the Indians whose houses and improvements were being illegally appropriated. Article 8, not Article 13, was the subject:

> The Indian chiefs observed to the undersigned that it was desirable to them and their People to be present when the value of their improvements was appraised agreeably to Treaty that at this time their tribes were scattered in different sections planting corn and that it would be both inconvenient and injurious to their interest to quit their present occupation, and desired the postponement of the appraisement until the latter part of the present month, when they would notify their different tribes to attend at their respective stations.
> This request the undersigned considered reasonable and just, and agreed to meet them then and there accordingly, consequently the undersigned returned to this place to make

further arrangements, and shall meet them according to promise.[20]

The Ottawa leaders, then, had zeroed-in on obtaining compensation for their improvements and had expressed satisfaction that the United States would accommodate their reasonable request to be present when the appraisal was made. They knew that recently ceded lands in portions of the Grand Valley were being settled by U.S. citizens, and they understood that such settlement would prevent their own "usual privileges of occupancy." But they intended that Article 8 apply to the buildings and works they left behind.

McDonell and Clark worked on their appraisements of Indian improvements later in 1837, and they reported their findings in December. Of the Grand River controversy and the method they took to settle it, they wrote:

> In some cases the whites burned the Indians' Houses in other cases destroyed the Houses and carried away the timbers, which naturally produced considerable excitement and discontent amongst the latter. In this state of things the undersigned [McDonell and Clark] deemed it their duty to interpose their good offices which had the desired effect, the whites who thus possessed themselves of the Indian Houses and plantations, agreed to pay the latter a stipulated consideration, which appeared to restore harmony and good feeling between the parties.[21]

During this affair, then, the Grand River Ottawas, unlike Schoolcraft and Butler, were not as concerned about preemption on public lands as they were about the theft of the fixed property they had added to the ceded lands. The Ottawas did not complain that preemptionists were violating Article 13; that was the interpretation of Lyman, Rathbone, Finney, Schoolcraft, and Butler. Instead, they saw the preemptionists as serious violators of Article 8.

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[20] John McDonell and John Clark to C. A. Harris, Detroit, June 8, 1837 NAM234R402 frs. 358-360; see also HRSP/DLC/SHSW Container 42, Part 1: 15505-15508.

[21] John McDonell and John Clark to C. A. Harris, Detroit, Nov. 17, 1837, NAM234R 402, frs. 362-365.

Schoolcraft, McDonell, Clark, and the Grand Rapids citizens had concerns that differed from those of the Grand River Ottawas. The American authorities and Grand Rapids' founders had strong incentive to seek an interpretation of Article 13 that would pose a deterrent to squatting while clarifying title to property. The issue of preemption posed an opportunity to form such an interpretation while appearing to defend some of the very Indians whose interests and rights the interpretation would actually deny.

Order, "Settlement," and Article 13

For federal agents in the late 1830's, the Treaty of Washington created immediate jurisdictional problems. The vast cession of lands to the United States suddenly cast into doubt the Indian Department's authority to regulate relations between citizens and the thousands of Indians who still resorted to the ceded lands. A Trade and Intercourse Act of June 30, 1834, had given authority to Indian Department Officials only in areas "within the country to which the Indian title has not been extinguished, and which is not within the limits of a State."[22] The treaty meant that these thousands, after the expiration of the five-year reservations, might even be inhabiting lands without Indian title and within the state. If the ceded lands were no longer Indian Country, the Indian Department might lose authority to regulate Indian-settler relations. A perplexed Schoolcraft asked his superiors in Washington:

> What is now the meaning of the term "Indian Country" in the act to regulate trade and etc. 30 June 1834 so far as relates to the peninsula of Michigan, or the Indian reserves therein; and can convictions be had, under this act, for violations of the law, committed on territories ceded by treaty of March 28, 1836, but which is still in the occupation of the Indian tribes, and not within any organized county? Or can the Indian laws be maintained over this country, as existing instructions require, to be executed by the orders of the

[22] Circular: Regulations of the War Department, NAM1R51 651-652.

President?[23]

Schoolcraft's brother James was equally uncertain, wondering if he, as an employee of the Indian department, could prevent American fisherman from either exploiting fishing grounds ceded in the Treaty of 1836 or selling alcohol to Indians.

> 1st. Are Licenses to trade, or for fishing, necessary to be obtained by persons going into the country embraced within the limits of the treaty of the 28th March, 1836? 2nd. Does the operation of the existing laws regulating trade and intercourse with the Indian tribes, extend over that portion of country embraced within the above mentioned limits? 3rd. Do such laws extend to Reservations under said treaty?[24]

By September, 1840, Henry Schoolcraft concluded that "it is no longer deemed practicable to attempt exercising the authority in question, over the ceded portions of the Upper Lake Country. And the tribes must therefore abide such legal enactments, or such want of them, touching their internal affairs, as may result from local legislation." At the same time, he understood that Indians maintained, under Article 13, their right to occupy and use portions of the ceded lands. Here was a major problem. How could the state assert authority over Indians who retained rights that antedated the state itself, indeed, the United States itself? Schoolcraft could only hope that the government might renegotiate these rights and induce the Indians to remove to the West, where they might be better protected.

> Could they be induced to give up, by compact, the right of occupancy upon the unsold public lands, at least to all the territory situated south of the straits of Michilimackinac, it is believed their own best interest would be secured thereby. It is satisfactorily shown from the surveys that the Michigan peninsula will settle compactly up to that point. . . .

This is a fascinating, even startling, admission: the government might have to renegotiate,

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[23] HRS to T Hartley Crawford, Washington, July 15, 1840 NAM234R424 fr. 168-169, and NAM1R38 296-299.

[24] James Schoolcraft to T. Hartley Crawford, Michilimackinac, July 11, 1840, NAM1R38 295.

to induce by compact, the Indians to surrender their rights under Article 13. He soon continues,

> Settlements have already extended about midway of the valley of the Maskigo [Muskegon]. The entire peninsula is now surveyed into townships up to the straits of Michilimackinac, and subdivided to near the south point of Little Traverse Bay, Lake Michigan, and the remainder is in the process of subdivision, and with the close of the present year, will all be reported to the General Land Office, for its action.

Schoolcraft, in the passage just quoted, again suggests that Article 13 protected Indians until the land was sold ("the right of occupancy upon the unsold public lands..."), but at the same time, he uses the word "settlement" conventionally, in a manner distinguishing it from both general survey and subdivision to mean instead a place actually inhabited and occupied. He says that "settlements" have reached a midway point toward the Muskegon River, while the whole Lower Peninsula has been surveyed into township squares, which have in turn been mostly subdivided in survey south of Little Traverse Bay. In this very passage, Schoolcraft distinguishes settlement from survey. This is conventional usage, and it is what Indians would have understood when speaking with federal agents. In fact, earlier in the same document, Schoolcraft had mentioned that the tribes had not, for several years after the cession, seen any changes in either their "location or pursuits" because of the cession's great extent and the "remote location of parts of it, with relation to actual settlements. . . ."[25]

Schoolcraft's immediate successor, Robert Stuart, clearly distinguished the sale of lands from their settlement when he forecast Indian migration away from the Grand and Manistee Rivers. Perhaps, he thought, the Native Americans would move toward the top of Michigan's mitten; he was not as keen as Schoolcraft to see them removed to the west. "The region between the Grand Traverse and Thunder Bay . . . with the country north of the straits of Mackinac will

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[25] HRS to T. Hartley Crawford, Sept. 24, 1840, NAM1R38 366-390, esp. pp. 366, 366-367, 368, 369.

neither be purchased or settled by the whites for ten or perhaps twenty years to come--so there is no urgent necessity for removal on that account." For our purposes, Stuart's uses of both words "purchased" and "settled" is interesting. If purchase is all it would take to have the Indians vacate the lands, why did he bother to add "settled"?[26] It is my opinion that he did so because Article 13 allowed the Indians to remain as long as the land went unsettled by American citizens.

Article 13 says nothing about the sale of lands. Many other treaties, including several made before 1836, do mention the sale of public lands as terminating any retained Indian usufructuary rights. Had the article explicitly mentioned the sale of lands, it would readily have been understood. "Settlement" was generally held by citizens, their legislators, their jurists, and by Schoolcraft himself to be quite a different thing from "sale" or "purchase."

This distinction between settlement and sale is most clear in the history of the preemption policy. Schoolcraft had hoped when he made the treaty that he could effect the removal of Indians from Michigan. Removal would have rendered Article 13 irrelevant. But the Indians did not remove, and Article 13 remains to protect Indian rights on unsettled land.

"Actual Settlement" in Public Land Policy: Preemption

Actual settlement, public land, and privately owned but unsettled land all featured in nineteenth-century discussions of the policy of preemption. This segment investigates the term "settlement" as it was employed in public, nineteenth-century documents, and in twentieth-century histories of the frontier and public land. This segment establishes that when American officials noted that the Ottawas and Chippewas would retain the full use of the land until it was actually required for settlement, they were not using words casually, but were calling upon an

[26] R. Stuart to T.H. Crawford, Detroit, October 18, 1841, NAM1R38 576-587.

understanding of the terms "actual" and "settlement" that were grounded in federal policy.

We have seen how Schoolcraft, upon securing at least some of the Indian's consent to the Senate modifications, reported the Indians' understanding of Article 13. Ottawas and Chippewas had agreed to the amendments, he wrote, when they concluded that Article 13 "secures to them, indefinitely, the right of hunting on the lands ceded, with the other usual privileges of occupancy, until the land is required for settlement."[27]

We have seen, too, that the first article of assent to the Senate modifications states that

> The Chippewa and Ottowa tribes, confiding in the disposition of the Government of the United States to permit them to reside upon their reservations, after the period hereafter mentioned until the lands shall be required for actual survey and settlement, as the white population advances from the south towards the north. . . .[28]

Let us keep in mind the terms "indefinitely," and "actual survey and settlement," as we return to a final, third point. As we have seen, Schoolcraft reported in his letter to T. Hartley Crawford of Sept. 30, 1839, that the Indians reserved

> the usufructuary right of living and hunting upon, and cultivating the ceded portions of the soil until it was actually required for settlement.[29]

The key phrase here, of course, is "actually required for settlement." To these two examples of the word "actual" being attached to words that relate to settlement and occupancy we can add Schoolcraft's annual report to the Commissioner of Indian affairs the very next year, in which he writes of the treaty that

> The extent of the cession and the remote position of parts of it, with relation to the actual settlements, led to but slight changes in either the location or pursuits of the Indians, for a

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[27] HRS to Cass, Michilimackinac, July 18, 1836, NAT494R3 369; also in NAM1R37 3-5.

[28] HRSP/DLC/SHSW, container 42, Pt. 1: frs. 15165-68.

[29] NAM1R38 120-135; also in NAM234R423 frs. 442ff.

time. . . .[30]

"Actual survey and settlement," "actually required for settlement," and "actual settlements" are examples of uses of the adjective actual and/or its adverbial form in the context of Article 13. Glossing Schoolcraft's securing of the Indians' assent to the Senate's modifications, biographer Richard Bremer also refers to Article 13's protection of Indian rights "on ceded lands until they were required for actual settlement."[31] "Actual" is a small word, but this is not a small matter.

The frequent use of the term "actual" importantly illuminates the meaning of Article 13, and powerfully suggests the Indians' understanding of the term "settlement" as Schoolcraft and others discussed it with them in the context of the Senate's elimination of their permanent reservations. Schoolcraft and others were well-aware that the phrases "actual settlement" and "actual settler" had precise meanings, especially in the 1830's. Throughout that decade, Congress passed several laws granting, under a variety of restrictions, squatters on public lands the first right to purchase those lands once they came up for sale by the government. Schoolcraft understood that these laws protected the settlers' improvements and allowed them to buy lands on which they had squatted. An indication of this is recorded in a letter that he wrote to a federal employee faced with the loss of a house when the employee's mission moved from Manistee to Grand Traverse. Schoolcraft assured the man that his "house and improvements, at that place, will be your own, as much as any other settler's is, on public lands."[32] The squatters were known in the law as "actual settlers."

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[30] HRS to T. Hartley Crawford, Annual Report, Sept. 24, 1840, NAM1R38 366.

[31] Richard Bremer, Indian Agent and Wilderness Scholar, 172.

[32] HRS to Lucius Gary, Michilimackinac, July 4, 1839, NAM1R38 8.

During the twentieth century, partly under the influence of the "frontier synthesis" of American historical study formed in the 1890's by Frederick Jackson Turner, American historians devoted considerable attention to the history of public lands. For these scholars, the terms "actual settler" and "actual settlement" were clearly to be distinguished from those denoting the landowner or the speculator in real estate. These scholars were not historians of American Indians, though (because they dealt in frontier issues) Indians do appear in their writings. They were instead interested in the degree to which the Federal Government supported its pioneering citizens' struggles to obtain legal title to land.

A 1915 scholarly article on the settlement of Michigan, for example, generally distinguishes "settlement" from the extinction of Indian title to, the survey of, and the sale of lands: "A very important task of the national government in the interests of settlement for which the extinction of Indian titles and the military protection of the frontier were preliminary was the survey and sale of lands."[33] A later passage distinguishes settlement from the surveying of county lines:

> Of first rate importance to settlement were the provisions for county, township, and village government. The establishment of counties ran far ahead of settlement, it being the intention apparently to invite settlement and to avoid the difficulties that would attend the running of county lines after settlers should have located farms.[34]

R. S. Cotterill, one of the most important historians of the Old South's frontier in the middle decades of the twentieth century, wrote that in the understanding of early nineteenth-century legislators, "actual settlers were mostly 'squatters,' having no legal rights except that

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[33] George N. Fuller, "Settlement of Michigan Territory," The Mississippi Valley Historical Review 2 (1915) 33-34.

[34] Fuller, "Settlement of Michigan Territory," 52.

nine points of the law that consists of possession."[35] Cotterill, then also, sees "actual settlers" as distinct from purchasers.

Paul W. Gates, a leading historian of public lands, was interested in the development of American laws that conceded the right of occupancy and the right of preemption to actual settlers. In an essay on the development of preemption laws, Gates writes of early steps toward preemption in the young state of Kentucky. Like the Michigan historian and the Southern historian, he clearly distinguishes landowning from settlement: "The legislature of Kentucky, though dominated by resident landlords, was not unmindful of the interests of actual settlers."[36] In an article on homesteading, Gates debunks the myth that homestead legislation opened vast free lands to the intrepid pioneer. Instead, he argues that after the passage of the Homestead Law in 1862, "As before, it was still possible for the foresighted speculators to precede settlers into the frontier, purchase the best lands, and hold them for the anticipated increase in value which the succeeding wave of settlers would give to them."[37] "Settlers," in the passage just quoted, are something other than "speculators."

Several times elsewhere Gates distinguishes the actual settler from other claimants to the land. Referring to the Indian Allotment Act of 1887 (commonly known as the Dawes Act), he notes that the act distinguished the sale of lands from their actual settlement: "The Dawes Act continued the policy whereby the government purchased the surplus lands from the Indians and

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[35] R. S. Cotterill, "The National Land System in the South, 1803-1812," The Mississippi Valley Historical Review 16 (1930), 499.

[36] Paul W. Gates, "Tenants of the Log Cabin," The Mississippi Valley Historical Review 49 (1962), 10.

[37] Paul W. Gates, "The Homestead Law in an Incongruous Land System," American Historical Review 41 (1936), 662.

subsequently resold them, but it provided that lands so acquired in the future should be reserved for actual settlers in tracts of 160 acres."[38] The owners of the land, in this case, were neither squatters nor homesteaders, who could not be permitted to invade unceded Indian land. Still they, the actual settlers, would have to be those who were living on the lands they had purchased.

Gates quotes Indiana Representative George W. Julian, who deployed the phrase "actual settlement" during a congressional debate in 1867-1868:

> In order to carry into full and complete effect the spirit and policy of the preëmption and homestead laws of the United States, the further sale of the agricultural public lands ought to be prohibited by law and that all proposed grants of land to aid in construction of railroads, or for other special objects, should be . . . rigidly subordinated to the paramount purpose of securing homes for the landless poor, the actual settlement and tillage of the public domain, and the consequent increase of the national wealth.[39]

Roy M. Robbins, writing in 1931, distinguishes the actual settler from the purchaser of lands. In the aftermath of the War of 1812, he writes, "The question arose as to whether it would not be better to allow the settlers a general preëmption and thus provide for actual settlement rather than to sell to speculators who merely held lands until they reached higher values."[40]

The phrase "actual settler," appears in a title. Henry Tatter never reworked his Northwestern University dissertation, "The Preferential Treatment of the Actual Settler in the Primary Disposition of Vacant Land in the United States to 1841 -- Preemption: Prelude to Homesteadism," into a book, but Arno Press deemed it worthy of reproduction and distribution in book form in 1979. Tatter states his concerns succinctly on the first page, in a manner that makes it very clear that actual settlement and land ownership are two different things.

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[38] Gates, "The Homestead Law in an Incongruous Land System," 661.

[39] Gates, "The Homestead Law in an Incongruous Land System," 678.

[40] Roy M. Robbins, "Preemption--A Frontier Triumph," The Mississippi Valley Historical Review 18 (1931), 339.

> Specifically, the preferential treatment won by the squatter in the first stage of his struggle with the landed institutions was the recognition in law of the right of Preemption, that is the grant of the right to settle upon the unappropriated waste or public land and later buy that land at a fixed price in preference to all others. Preemption thus became a method of selling public land to actual settlers at private sale without competition.[41]

Susan Gray, a leading living scholar on the settlement of Michigan, also distinguishes settlement from the sale of federal land, even if she finds that both took place largely simultaneously in the region of Southwestern Michigan that she studies. Writing about land sales in Kalamazoo County in the 1830's, she notes that "preemption was not a factor in the alienation of Richland, Climax, and Alamo. . . . Settlers first came to Climax Township in 1831, and not in any numbers until 1834. Alamo's first settlers arrived in 1835. For the most part, then, settlement and alienation of federal land coincided."[42]

Kenneth Lewis, the author of a recent study of settlement in Michigan, also routinely distinguishes settlement from grant and sale. "Although a number of large tracts along the eastern shore were acquired by British inhabitants, only a few were actually settled, most notably at Gross Isle and along the St. Clair River." The "conveyance of large tracts into the hands of corporations rather than individuals did not encourage immediate settlement." Fears "arose in Congress that price reductions would invite speculation in frontier property by large outside investors who would manipulate prices and discourage settlement." And, in a short examination of the effect of speculation on settlement, he writes, "It was the failure of speculative ventures

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[41] Henry Tatter, "The Preferential Treatment of the Actual Settler in the Primary Disposition of Vacant Land in the United States to 1841 -- Preemption: Prelude to Homesteadism" (Ph.D. Dissertation, Northwestern University, 1933), 1.

[42] Gray, "Local Speculator as Confidence Man," 388.

rather than their success that retarded frontier settlement."[110][43]

If historians of the frontier from across the past century have both distinguished owners from settlers and have understood the terms "actual settlement" and "actual settler" to denote only those habitations that and inhabitants who planted themselves upon and inhabited the land, what of voices from the 1830's, from the years during which Schoolcraft and others employed the terms in their discussions of Article 13? These voices exist in the sources that have given the frontier historians their evidence. Examples from the period are abundant.

Historian Roy M. Robbins describes a preemption act of 1830 that allowed current squatters on public lands the right of first purchase at a low price: "By this act, any settler who had migrated to the public domain and had cultivated a tract of land in 1829, was authorized to enter any number of acres of this tract, not exceeding 160, by paying the minimum price of $1.25 per acre. Although the act was only temporary in character it nevertheless provided a general pardon to all those inhabitants who had settled illegally." He later describes such acts generally as "the form of a pardon for irregularities or for illegalities already committed."[44]

Senator Elias Kent Kane of Illinois, during debates in 1830, admitted that preemption favored one class of persons, the actual settlers, over others. He thought it a matter of justice to favor the actual settler over the speculator, that is, the squatter on the land over the would-be absentee owner or speculator:

> The principle of a preemption bill is a principle of discrimination in favor of the actual settler. It is no new thing. The truth, sir, is that the trespassers, as they are called, have

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[43] Lewis, West to Far Michigan; the quotations come, in order, from pages 23, 101, 103, 110.

[44] Roy M. Robbins, "Preemption--A Frontier Triumph," The Mississippi Valley Historical Review 18 (1931), 342, 345.

always been the favorites of the Government, and will continue to be so, so long as sagacity, good sense, and patriotism shall prevail in its councils.

[There is] something noble in the law which suspends the rapacity of a speculator, by assigning privilege to honest industry.-- The mandate of the Government, which compels the jobber to pay at a rate of discrimination, before he possessed himself of the labor and comforts of another, conveys a just rebuke.[45]

A District Attorney in the western district of Louisiana, Benjamin E. Linton, wrote to President Andrew Jackson from Washington, D.C. in the late summer of 1835 that these preemption laws, first passed in 1830, had changed public land law: "By an act of Congress, dated 29th of May, 1830, giving to actual settlers and occupants on the public domain the right of pre-emption. . . a new era was introduced on this subject of land claims. . . ."[46]

At this time, which coincided exactly with the movement toward the Treaty of 1836, there was a great deal of concern in government circles about the benefits and defects of the various preemption measures and the fraud committed in their guise. Roy Robbins finds that the preemption laws of 1830 through 1834 had led to many abuses, especially in the "rich cotton lands of Alabama and Mississippi." He writes that speculators had obtained the services of others "to set up claims under the law and thus obtain these productive areas at the minimum price of $1.25 per acre. Such speculative enterprise endangered the preëmption principle--a principle which had been established to protect the actual and real settler."[47] Public debate, in historian Henry Tatter's words, "completely aired this question of the irregularities and prepared

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[45] Quoted in Tatter, "Preferential Treatment of the Actual Settler," 178-179.

[46] Benjamin E. Linton to A. Jackson, Washington, D.C., Aug. 25, 1835, American State Papers: Documents of the Congress of the United States in Relation to the Public Lands Class 8, vol. 8 (Washington, D.C., 1861): 538.

[47] Robbins, "Preemption--A Frontier Triumph," 343.

the minds of Congress for constructive legislation for the actual settler upon public lands."[48]

Throughout 1836, congressional debates touched upon the character of those who occupied public lands seeking the color of title. In one speech toward the end of these debates, Senator William Lee Davidson Ewing of Illinois repeatedly employed the term "actual settler" as he pushed for thorough rights of preemption. He defended the settlers against charges that they had formed extra-legal combinations to commit fraud:

> give the actual settler but the poor privilege of preemption to a quarter section of your boundless domain, embracing his domicile, and, as far as it will go, his improvements; then you will no longer hear of these "unlawful associations," as gentlemen are pleased to call them.-- In the absence of some law securing to the actual settler his improvements, which he acquired under circumstances of great privation and hardship, these associations will continue to exist until every acre of the two hundred million that you now flauntingly boast the possession of will have been sold, and until the last acre of another two hundred million is bought and sold; nay, sir, until the last fraction of the Pacific is disposed of. They have existed ever since the national domain has been national property, and such is their moral power, that no force dare attempt to suppress them by violence. But enact now and continue in force a liberal and just system of law in relation to the public domain and rights of the actual settler, and these conventions of the settlers will cease to exist, and in a few years be among the forgotten things.[49]

In this passage, not only is the phrase "actual settler" used three times, but it is used to identify those who inhabited lands without legal title.

The 24th Congress was debating the construction "of the Law Granting Pre-emption Rights to Actual Settlers" in 1836.[50] Also at this time, Congress considered a petition from the Michigan Territorial legislature, requesting that settlers in what is now Iowa (taken in treaty from

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[48] Tatter, "Preferential Treatment of the Actual Settler," 199.

[49] Quoted in Tatter, "Preferential Treatment of the Actual Settler," 218-219.

[50] Levi Woodbury, Sec. of Treasury, to the Senate, Washington, D.C., Feb. 25, 1836, American State Papers: Documents of the Congress of the United States in Relation to the Public Lands Class 8, vol. 8 (Washington, D.C., 1861), 510.

the Sacs and Foxes following the Black Hawk War) be allowed the rights of preemption. The distinctions among settlement, ownership, and speculation are clear in this Michigan document:

> These citizens have, in the settlement and improvement of the country, had to encounter all the hardships and difficulties incident to frontier lives. By the spirit of industry and enterprise, they have, in an almost incredibly short time, settled nearly the whole west of the Mississippi to the extent of three hundred miles, and in some parts to the distance of forty miles back from the river. Throughout the whole of this delightful region, where three years since the white man's habitation was not to be found, there have sprung up, as if by enchantment, flourishing villages and cultivated farms, where all the business of commerce, agriculture, and domestic industry, are prospering in a degree unexampled in the history of our country. The settlers of this important and interesting district have relied upon the liberal policy of the general government, heretofore pursued toward the settlers upon the public lands, for protection in the possession of their homes. Many of them have invested all their means in the improvement of the country, and to be put in competition with the speculator for the purchase of their farms and habitations, would bring distress and ruin upon many worthy and industrious families.[51]

Michigan legislators requested that the inhabitants of these settlements, established without legal title and without legal ownership, be granted the first option of purchase, preventing nonresident speculators from obtaining the settlers' improved, if not yet legally held, lands.

Preemption legislation would not give the settlers the land outright; it would provide them the right to purchase the lands that they had already actually settled. "Actual settlers" establish themselves on lands not yet sold by the government. The sale of the land, therefore, is quite a different thing from its actual settlement. In the case of squatters, or actual settlers, settlement precedes sale. In preemption, the actual settler gets there first, and prevents others from purchasing the land to which he has staked a claim. He has settled it, but to own it, he must still purchase it from the government.

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[51] "Application of Michigan for the Survey and Sale of the Public Lands in Michigan, Establishment of Land Offices, and the Extension of the Pre-emption Law," March 1, 1836, in American State Papers: Documents of the Congress of the United States in Relation to the Public Lands Class 8, vol. 8 (Washington, D.C., 1861): 514.

Schoolcraft knew well of the preemption laws. He had to know about them: as the Michigan Indian agent it was critical for him to be aware of such legislation. In 1834 he alluded to a preemption law when he issued a circular explaining that the recent trade and intercourse act prohibited "the formation of settlements on Indian lands, or any occupancy which is designed to originate a claim to title." In 1836, while awaiting the Senate ratification of the treaty under discussion, he mentioned land policy. In 1839, he advised an Indian department employee who had built a house on a soon-to-be-terminated Indian reserve that the employee could own the house on the same principle of preemption: "your house and improvements, at that place [Manistee], will be your own, as much as any other settler's is, on public lands." Note too that settlement is here possible on public land, that is, unsold land. Schoolcraft, despite his interpretation of events at Grand River in 1837 and in spite of the Attorney General's opinion, distinguished settled lands from sold ones.[52]

Fifteen years later, Norman Barnes and John Campbell, a government carpenter and blacksmith working among the Indians at Grand Traverse Bay, described how "white settlers" were purchasing Indian improvements directly from the Indians and were making their own

> valuable and permanent improvement not only on the lots purchased of the Indians but over the entire Peninsula. . . with the expectation that the government will grant them the right of pre-emption to the locations they have selected and upon which they have established their homes, for the reason that this land was, prior to the settlement by the whites, unoccupied, with the exception of the little tilled by the Indians and for which they have received a satisfactory remuneration.[53]

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[52] HRS, Notice, Michilimackinac, Sept. 30, 1834, NAM1R69 67; HRS to Ramsay Crooks, Washington, May 2, 1836, AFCP23: 1551; HRS to Lucius Gary, Michilimackinac, July 4, 1839, NAM1R38 8.

[53] Norman Barnes and John Campbell, "Statement of the Circumstances under which the Peninsula in Grand Traverse Bay, was settled by the whites, and of the condition of said peninsula prior to such settlement," Dec. 26, 1854, NAM234R404 fr. 960-63.

Barnes and Campbell were very careful to place these settlers in homes upon the land, because bona fide residence was critical to any legal preemption claim.

The Treaty with the Ottawa and Chippewa, Detroit, July 21, 1855 provided for reservations for these peoples. It was amended by the Senate to provide an opportunity for preemptionists to secure their land title. A section of its first amended article states, in all conformity with contemporary usage, that

> It is also agreed that any lands within the aforesaid tracts now occupied by actual settlers, or by persons entitled to pre-emption thereon, shall be exempt from the provisions of this article; provided, that such pre-emption claims shall be proved, as prescribed by law, before the 1st day of October next.
> Any Indian who may have heretofore purchased land for actual settlement, under the act of Congress known as the Graduation Act, may sell and dispose of the same; and in such case, no actual occupancy or residence by such Indians on lands so purchased shall be necessary to enable him to secure a title thereto.[54]

This provided U.S. citizens who had invested their time and energies in the land with the opportunity to protect their investment from the impending reservations, while Indians who had purchased lands for their peoples were being promised an opportunity to sell such lands before fulfilling the original terms of the purchase regarding actual residence. In both instances, the term "actual" is use to emphasize settlement, and settlement means residence or occupancy.

The phrases "actual settler" and "actual settlement" had such precise meanings in the nineteenth century that they were regularly employed in political speech and official writing. Toward the close of the period when the disposition of public land was frequently made to individuals seeking to establish small farmsteads, the United States General Land Office issued a manual or handbook for those seeking public land. In this circular, an application for a

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[54] Treaty with the Ottawa and Chippewa, 1855, in Kappler, ed., Treaties, 728; compare with the original treaty in NA668R11, fr. 429, Executive Sec., April. 15, 1856.

homestead under legislation that had been passed since 1862 had to be "honestly and in good faith made for the purpose of actual settlement and cultivation, and not for the benefit of any other person, persons, or corporation. . . ." The applicant had to declare that "he does not apply to enter the same for the purpose of speculation, but in good faith to obtain a home . . . ." The circular insisted that the settler

> must, within six months after making his entry, establish his actual residence in a house upon the land, and must reside upon and cultivate the land continuously in accordance with the law or the term of five years. Occasional visits to the land once in six months or oftener do not constitute residence. The homestead party must actually inhabit the land and make it the home of himself and family, as well as improve and cultivate it. . . . The period of continuous residence and cultivation begins to run at the date of actual settlement. . . .

It defines "Settlers:"

> Settlers are persons who have attached themselves permanently to the soil. Nomadic persons and persons employed by others to make applications for surveys or to make alleged settlements for the purpose of acquiring a title to lands to be transferred to others are not settlers within the meaning of the law and are not lawful applicants under the provisions allowing settlers to make deposits for public-land surveys.[emphasis original]

In a discussion of limitations on preemption, it forbids preemption on Indian reservations, on lands within incorporated towns, and on "Lands actually settled and occupied for purposes of trade and business, but not for agriculture."[55]

This particular understanding, an official United States understanding from the last year of the nineteenth century, may or may not have a bearing on what the agreeing Ottawa and Chippewa Indians understood "settlement" to mean in 1836. But it does draw our attention to another question: how did the Indians expect settled lands to be used? It is an important question.

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[55] United States, Circular from the General Land Office Showing the Manner of Proceeding to Obtain Title to Public Lands under the Homestead, Desert Land, and Other Laws (Washington, D.C.: Government Printing Office, 1899; reprinted, New York, Arno Press, 1972), 13, 14, 98, 146.