The Ohio Company and the Confederation: A Study of the Speculator - Squatter Conflict, 1783-1788

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THE OHIO COMPANY AND THE CONFEDERATION:
A STUDY OF THE SPECULATOR-SQUATTER
CONFLICT, 1783-1788

BY

JAMES BRUGGEMANN

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James Bruggeman
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Martin's Map of Ohio Surveys

[The "Geographer Line," from which point the survey of the Seven Ranges began, is indicated by the arrow]
CHAPTER I

THE NEWBURGH ASSOCIATION

Nature had made such a display of her bounty in those regions, that the more the country is explored, the more it will rise in estimation. The Spirit of Emigration is great, the people have got impatient; and though you cannot stop the road, it is in your power to mark the way.

George Washington to R. H. Lee
December 14, 1784

The spirit of emigration was rampant in revolutionary America. By the end of the Seven Years' War, the wave of colonial settlement had dashed itself against the Appalachian wall and sloughed over into the Ohio Valley. Land hunger had always been a persistent strain in the colonial mentality, and it had always been satisfied by the vast colonial lands. But in 1763, the Colonial Office attempted to check this Western surge by a royal decree which prohibited emigration beyond the Appalachians. The tactless British ministry could have no more

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2New York Colonial Records, VIII, 460. quoted in William and Julia Cutler, Life, Journals and Correspondance of Reverend Manasseh Cutler (Cincinnati, 1888), I, 335. Hereafter cited as Cutler: Sir William Johnson in a letter dated June 20, 1774, states that, "a considerable number of settlements were made on the Ohio as early as 1765."
stopped this tide than it could have prevented the progression of the day. This proclamation only exacerbated the already irritated colonial tensions which led to the insurrection of 1775.

The restless borderman and the hopeful speculator, long confined behind His Majesty's Proclamation Line of 1763, had contracted the fever of Western expansionism. Even before the Revolution, the Vandalia Land Company had sought to circumvent the decree by embarking upon a "scheme in agitation of establishing a colony on the Ohio."3 The Vandalia project and kindred speculations were cut short by the Revolution, but the enthusiasm generated continued throughout the post-war period, nurturing a whole new generation of speculators.

The trans-Appalachian lands, wrested from Britain at the Treaty of Paris, were not considered a national domain at the disposal of the central government. The land had been won by the independent military activities of various states and the cession of hostilities found these powers re-asserting their claims. The western territories were originally claimed by Massachusetts, Connecticut, New York, Virginia, North Carolina, South Carolina, and Georgia. Except for New York which claimed lands by right of Iroquois suzerainty, the state titles

rested upon royal charters issued during the colonial period. Since the British royalty were never overly discreet with their favors, the claims conflicted and overlapped. It was also questionable whether these titles were valid since Great Britain had repudiated the colonial claims when it extended the province of Quebec to the Ohio in 1774.4

While the colonies had regarded these lands as areas for settlement, Congress regarded them as potential sources of income. Silas Deane of Connecticut, a secret agent of the Continental Congress in France, offered the first suggestion for the use of the western territories as a "national asset." Writing from Paris in December, 1776, Deane pointed to the fertile land along the Ohio as a means to defray the expenses of war and to compensate the soldiers of the Continental line. He suggested that Congress set aside a tract of twenty-five million acres at the junction of the Ohio and the Mississippi Rivers to be settled by an indiscriminate mixture of Americans and Europeans. One-fifth of the settlement would be reserved to pay the national debt. The company was to consist of at least 100 persons and would receive its grant on condition that it settle a prescribed number of families within seven years. After this period, the company could regulate civil government with the advice

of Congress, so as to "form a distinct state confederated with and under the general regulation of the United States General of America."\(^5\)

Deane's suggestion was noted but never considered by Congress. The advice of the Parisian spy, however, was not without its implications for the future. The Deane plan introduced the assumption, later embodied in the Ordinances of 1784 and 1787, that "new states" and "intended governments" were to be regarded as the proper course of public policy in dealing with the public domain. The Deane proposal with its unique combination of land company and state government in a single political economy was also a prototype for the relationship later established between the Ohio Company and the territorial government under Arthur St. Clair. Finally, the proposal raised the troublesome question of sovereignty over the western territories; implicit in such a proposal was the necessity of the state cession of their claims to the trans-Appalachian lands and assumption of control by the national Congress.

The lesser states without western claims were quick to seize upon the attractive possibility of a national domain beneficial to the nation as a whole. They were ably goaded by speculators in Maryland and Pennsylvania whose schemes had been thwarted by the

settlement policy of the claimant states. Maryland, Pennsylvania, and New Jersey were jealous of the landed states. The speculators in these states hoped to make the power of Congress very extensive in the West, thereby annulling the state claims, while limiting the formation of native western governments which might interfere with their land transactions.

The landless states were bitterly opposed by Virginia who held the Northwest territories through various colonial charters and the practical force of George Rogers Clark's conquest. In essence, the struggle for state cession was between two groups of speculators: George Groghan's Ohio Company of Virginia supported by the state of Virginia, and the Illinois-Wabash-Indiana Speculators supported by Pennsylvania, Maryland, and Virginia. Virginia naturally took care of her own speculators by asserting her claims to the West, while Maryland and the landless states asserted the West should be administered for the "good of the whole"—that is, her speculators.

Maryland was the first to act. On May 21, 1779, she instructed her delegates in Congress to introduce the proposal that the western lands, 

wrested from the common enemy by the blood and treasure of the Thirteen States would be considered a common property, subject to be parcelled out by Congress into free, convenient, and independent governments

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6 This work will use two sources for the Continental Congress' records. This passage is quoted from
This proposal introduced a long struggle spearheaded by Maryland to coerce the larger states to cede their western lands. In this task, she was pre-eminently successful: by 1784, the last state cessions were consolidated into a coherent national domain.  

The acquisition of the western territories created two new problems for Congress. First, it would have to formulate a policy for the disposal of western lands. Second, it would have to adopt a plan of government for the new settlers. The first step toward the administration of the public domain was taken by the Continental Congress, October 10, 1780, in a resolution which declared that all territory ceded to the United States shall be:

... disposed of for the common benefit of (all) the United States and be settled and formed into distinct Republican states, which shall become members of the federal union and have the same rights of sovereignty, freedom, and independence as the other states ... that each state which shall be so formed shall contain a suitable extent of territory, not less than one hundred, nor more than 150 miles square ... That the said lands shall be occupied or settled at such

Journals of the Continental Congress, 1774-1783, ed. Gaiulard Hunt (Washington, 1904-1922), XXVII, 184. All congressional citations after 1783 will be drawn from Journals of the Continental Congress, 1774-1789, ed. by Worthington Chauncey Ford and successors (Washington, 1904-1937). Hereafter both sources will be cited as Journals.

7It is not within the scope of this work to consider the history of the state cessions. The whole western cession question has been admirably analyzed by Herbert B. Adams in "Maryland's Influence Upon the Land Cessions to the United States," in John Hopkins University Studies, 3rd Series, No. 1, 1885 (Baltimore, 1882). A revisionist analysis of the problem is to be found in Merrill Jensen, "The Cession of the Old Northwest," Mississippi Valley Historical Review, XXIII (June, 1930), pp. 27-48.
times and under such regulations as shall hereafter be agreed upon by the United States in Congress assembled.  

This was the first official statement concerning the ultimate federation of the western territory. It became the cornerstone of the territorial system, laying the basis for all subsequent territorial legislation.

The resolution of 1780 was strengthened in 1784 when Virginia in its deed of cession stipulated that the national domain should be "faithfully and bona fide disposed of" for the common benefit of the United States. This document further stipulated that before the cession became final, Congress must declare null and void all land company purchases in the region, but guarantee Virginia's rights to Kentucky. These provisions were aimed directly at the land speculators in Pennsylvania and Maryland who claimed land both north and south of the Ohio. Aided by their state governments, they had elaborated involved theories to prove Congress had sovereign power over the national domain, and must, therefore, protect their property claims in that area. While not making any specific commitments, Congress in accepting Virginia's cession tacitly assumed this point.

8Journals.


10Journals, IV, 342-344.
of view. The speculators now had to drop their self-defeating theories and begin anew within the framework of the national domain.

There were three "bona fide" methods for the disposal of public lands. First, the lands could be sold to speculators and land companies in order to pay the enormous national debt. Second, it could be sold to insure the proper spread of population. In this case, low land prices, governmental surveys and strict provisions for occupation and improvement would be integrated into the land system. Since the frontiersman or the squatter could not meet such rigid terms, sale would be to affluent eastern settlers or to land companies encouraging settlement. In both methods, the territorial government would have to be authoritarian and to a great degree undemocratic in order that the right of property be preserved and squatting discouraged.

The public lands could be disposed to encourage political and economic democracy. In this case, "squatters rights" would be recognized and free or cheap land would be provided in small lots to encourage the growth of a substantial body of small landholders. Upon this base could be built a democratic state, which, in Jeffersonian terms, would serve as an effective counterpose.


to the growing strength of the eastern landholding aristocracy and the New England merchant capitalists.

Congress was soon faced with new problems which made the first two alternatives much more expedient. The first of these was a deteriorating financial situation. When the Articles of Confederation went into effect in March, 1781, Congress found herself in debt roughly $3,500,000 to both private and foreign investors. This plight was further complicated by a national credit which was all but worthless, and a national paper currency which had ceased to circulate.

The public creditors joined with the army officers and the land speculators in demanding a full refund of the bonds they had purchased at deflated wartime prices. They soon found advocates among the congressional "federalists" who had frequently expressed their disgust with democratic forms and were bent upon creating a strong, centralized national government. This growing anti-democratic element frightened the democrats and the "confederalists" who, though tolerant of frontier democracy, were ready to sacrifice the frontier interests for a greater good: the survival of the Confederation.

Thus Congress had early entered into a policy of treating the vacant lands in the backcountry as a potential source of federal revenue. The subject was taken

14 Ibid., pp. 42-43.
up by a grand committee composed of one member from each state on July 31, 1782. On September 5, 1782, the committee reported "... that it is their opinion that the western lands, if ceded to the United States might contribute toward a fund for paying the debts of the States." On the motion of John Witherspoon of New Jersey, the proposition was changed to read: "... it would be an important fund for the discharge of the national debt." This substitution for "debts of the states" shows the tendency of the federal government to take charge of these lands.

Congress was also threatened by a possible mass mutiny among her armed forces. Army pay was a crucial problem at the end of the war. During the early years of the Revolution, state and Continental paper adequately served to pay both officers and men. In time, however, inflation rendered these notes valueless, and the army was completely thrown back upon the hopelessly confused and inadequate supply system of the Commissary and Quartermaster General Departments.

Most of the officers had suffered grievous losses during the war: their estates had been confiscated, their businesses had lapsed into bankruptcy, and, in some cases, their families had been imprisoned or scattered. Unexplained and even sometimes unconscious was the pervasive fear among this cadre that upon dismissal they would

15Cutler, I, 129.
have to accept a humiliating financial status in a society which they had freed.16 Their acceptance of final certificates drawn upon a bankrupt United States Treasury in lieu of payment made it impossible for the officers to recoup their lost fortunes without congressional aid.17 As peace negotiations dragged on after Yorktown, the officers grew desperate; with a treaty of peace, Congress would no longer have use for them, hence their influence would diminish or vanish completely.

A mutinous spirit was everywhere, but it was particularly acute among Washington's troops at Newburgh, New York. The half-pay provisions promised the troops in 1780 were rejected by the states, and their regular pay was hopelessly in arrears. After the Massachusetts men failed in their petition to the Massachusetts legislature, they returned to Newburgh where they took the lead in drawing up a list of grievances to Congress.18

Washington, though cognizant of the growing discontent among his troops, had failed to take full leadership in representing their demands to Congress. Fearing a military coup, Alexander Hamilton urged Washington to intervene persuasively in the situation.

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16Washington, V, 430-431.
17Cutler, I, 148, 155: The certificates which these men received as evidence of their country's debt were, in most practical situations, utterly valueless. They were bought and sold on the market at two shillings and a six pence for twenty shillings. As late as 1788 they were worth only five shillings to the pound.
18Jensen, p. 36.
In the process of formalizing their grievances, the officers hit upon a scheme of recouping their fortunes in the West. They recalled the promises of the "honorable Congress" to compensate enlistees with bounty lands in the West and saw in it the possibility of forming a colony much after the model proposed by Deane in 1776.

Initially, the cadre regarded western colonization only as a desperate, threatening alternative. On March 10, 1783, Washington received, together with a summons to a cadre meeting, a fiery and rhetorical appeal which outlined the compensations sought in earlier petitions. The anonymous pamphleteer ended his petition with a call for direct action:

"... in any political event, the army has its alternative. If peace, then nothing can separate them from your arms but death; if war, that courting the auspices, and inviting the direction of your illustrious leader, you will retire to some unsettled country, smile in your turn, and 'mock when their fear cometh on.'"\(^{19}\)

As Washington interpreted the appeal, the soldiers would desert the coastal defenses if the war continued and would take up homes in the wilderness; if peace, they would refuse to lay down their arms in defiance of Congress and perhaps attempt a military coup d'etat.

From March 11-15, Washington managed to quiet the more rebellious spirits in the army and assumed the responsibility of presenting their claims to Congress. Under his auspices, the western colonization scheme

\(^{19}\text{Washington, V, 430.}\)
evolved from a desperate panacea into a realistic program for the relief of the soldier's grave financial distress. The first evidence of serious discussion between officers and men regarding Ohio colonization is found in a letter of Timothy Pickering, dated April 7, 1783:

But a new plan is in contemplation, no less than forming a new state westward of the Ohio. Some of the Principal officers of the army are heartily engaged in it. About a week since the matter was set on foot and a plan is digesting for the purpose . . . . As soon as the plan is well digested, it is intended to lay it before an assembly of officers and to learn the inclination of the soldiers. If it takes, an application will be made to Congress for the grant and all things on them . . . .

From its inception, the New England troops assumed leadership of the colonization scheme. Virginia's troops in Washington's army had been granted a large tract of land north of the Ohio in 1778, and thus were less interested. Immediately, General Rufus Putnam of the Massachusetts line assumed control of the organization. Again on April 14, 1783, Timothy Pickering wrote to Mr. Hodgdon:

General Putnam is warmly engaged in the new planned settlement on the Ohio. He is very desirous of getting Hutchins' map. Mr. Aitken had them to sell. If possible, pray forward me one.21

Unrest grew after the congressional rebuff of the Army petition in March, but Washington's presence in camp had a stabilizing effect and helped channel the protest into milder forms. Washington himself had a rabid inter-

20Octavius Pickering, The Life of Timothy Pickering (Boston, 1867), I, 457.

21Cutler, I, 149.
est in western lands, and his influence was a considerable factor in later land legislation. As early as 1773 he had proposed a Ohio colonization scheme quite similar to the Officers' plan.22 Hence he could readily sympathize with and promote their proposals.

On April 4, 1783, Washington wrote a long letter to Theodorick Bland in answer to some inquiries concerning the Army situation and requested Bland to forward this letter to Alexander Hamilton. A few days later (April 22), Washington received a letter from John Armstrong requesting him to drop a hint to Congress about the subject discussed in his letter: a plan for colonizing the western Ohio country. Armstrong's opinions strongly mirrored the eastern attitude concerning the disposal of the territorial lands—an attitude held by Washington. The highest concern of the national government, Armstrong maintained, must be the preservation of the western territories "from avaricious claimants and vagrants," so that in time, it might be sold for "large amounts" to discharge the national debt. A "proper" government would administer the territory primarily to protect property rights, thereby inducing "the emigration of men of character and wealth from foreign parts."23

The plan proposed by Washington—the Bland or

22 Ibid., pp. 140-141.

Financiers' Plan--was taken up by Congress early in June, 1783. On June 5, Bland, supported by Hamilton, moved its adoption as an Ordinance. It was then referred to a grant committee for consideration.

True to its name, the Bland Plan considered the land question from the standpoint of the financier; the ordinance appears to have been a financial measure designed to relieve the Confederacy of pressure from its merchant capitalist creditors. Tax-free lands (at thirty acres to the dollar) would be substituted in place of all commutation for half-pay and arrears due the Army. The territory set aside in the West would be divided into districts and townships by government surveyors.\(^{24}\) Statehood would be granted only when the colony attained a population of 20,000. Ten thousand of the 100,000 acres granted were to be reserved for the benefit of the national government to be used in public projects and the maintenance of a navy--a project dear to the heart of Hamilton and his merchant friends.\(^{25}\) Despite its attractive character, the question of Virginia's cession had not been completed; hence the Bland Plan was not acted upon.\(^{26}\)

It is rather strange that Washington should

\(^{24}\)They would be no more than 2 degrees of latitude and 3 in longitude. *Ibid.*, p. 12.

\(^{25}\)Treat, p. 18.

\(^{26}\)Barrett, p. 11.
combine with Hamilton to push so hurriedly for an ordinance not particularly identical with the Army's aspirations. He appears to have been frightened by the first petition and thought a more conservative proposal might temper the Army's demands. On this point he was opposed by Colonel Pickering who had been mildly critical of Washington throughout the Newburgh affair.\footnote{27}

On June 1, the Officers' Plan which had been debated among the officers and men during April and May, was crystallized in its final form. It was principally the work of Pickering, Samuel Huntington, and Rufus Putnam. Sensing Washington's competition, the petition was hurriedly submitted to Congress on June 16. The Army Plan found a champion in Elbridge Garry who had always been concerned with "doing justice to the Army of the United States, who are entitled to lands as a bounty . . . ."\footnote{28}

From the outset, the overriding ambition of the petitioners was the formation of a new state northwest of the Ohio River. The creation of a government to protect their landholdings would be the dominant theme--the resolute thread of purpose--which was to carry through these proceedings until 1787. The Army petitioners demanded a huge grant of land which would roughly correspond to the boundaries of what is today the state of Ohio.

\footnote{27}{See Pickering, pp. 438-440, 442; also Douglas Southall Freeman, \textit{George Washington} (New York, 1952), V, 435.}

\footnote{28}{\textit{Journals}, XXV, 677; \textit{Cutler}, I, 339.}
Bounty lands, in varying amounts according to rank, were to be awarded in fulfillment of the promises made to the Continental line by Congress, and additional quantities were to be granted to associates who actually settled within one year after the purchase. Surplus land was to be set aside as common state property to be "disposed of for the common good; as for laying out roads, public buildings . . . and establishing schools and academies." All grants carried rigid provisions for occupation and improvement. The Confederation would equip and supply the associates with the necessary implements and livestock to establish them in agriculture. All settlers would also be provided with a subsistence allowance for four years.30

The associates demanded the formation of a constitution for the new state before commencing settlement. The proposed state would immediately be admitted into the Confederation, and delegates elected by the associates would take their place in Congress upon settlement. Welfare functions, such as the care of the families of disabled and deceased associates, and the "total exclusion of slavery" were to be included in the constitution.

The new state would be a military republic of

30Specific promises of bounty lands were made by Congress on September 16, 1776; August 13 and September 30, 1780.

The complete text of the petition and accompanying proposals are printed in Appendix A.
veterans who would serve their country by protecting its frontier. The whole object of the scheme, however, was to do justice to the demands of the soldiers who could not be expected to find financial relief in any other form. The Army Plan was doomed from its inception; such a scheme would only add to the Confederacy's indebtedness--an indebtedness the revenue-minded Congress hoped the western lands would eradicate. The proposed Ohio republic would be a democracy, and therefore, differed from the government that would be established by the Ordinance of 1787; but it did anticipate the Ordinance's provisions for a government established before settlement and applicable to frontier conditions immediately. Absolutely no provisions were made for those settlers already occupying the lands northwest of the Ohio.

Washington unhesitatingly threw his influence behind the Army Plan. On June 17, he forwarded to Congress the Officers' petition, Putnam's plan for the Ohio republic, and a personal endorsement of the officers' activities. Devoted as he was to the procurement of compensation for his troops, Washington could not help but perceive the more practical aspects of such colonization:

I am induced to give my sentiments thus freely on the advantages to be expected from this plan of colonization, because it would connect our governments to the frontiers, extend our settlements progressively, and plant a brave, a hardy and respectable race of people, as our advanced Post who would be always ready and willing (in case of hostility)
to combat the savages and check their incursions.\textsuperscript{31}

On June 18, 1783, the troops at Newburgh were unceremoniously dismissed. The veterans of the long struggle for independence were discharged without the martial honors of snapping flags and blaring bugles. With their pockets stuffed with Robert Morris' fiat money,\textsuperscript{32} they shouldered their muskets and disappeared down the road. That they did so with little protest and no violence can only be credited to Washington's promise of his personal support for their cause in Congress. For the volunteers the war had ended, but the three-year men were to march to the frontier and garrison the posts still held by the British. There they would fight another war against a far different foe: the squatters who threatened to pre-empt the lands the veterans hoped to make their own.

Congress' refusal to act upon the Newburgh petitions was not tantamount to their failure, but it did mean indefinite delay in their execution. The demobilization of the Army forced the dispersal of the petitioners, but the Newburgh Association persisted until it was transformed into the Ohio Company in 1786. Although the Associates never organized a definite land company, ties

\textsuperscript{31} \textit{Washington}, XXVII, 16-18.

\textsuperscript{32} To "secure" the men on their long tramp home, Robert Morris, the Treasurer of the United States, had resorted to the shoddy expediency of printing worthless requisitions for three months' pay directed to the states of the individual soldiers. \textit{Freeman}, V, 442.
of friendship and interest effectively bound them into an informal, interstate association. Between 1783 and 1786, their influence was felt on two fronts: in Congress, the Association won over powerful friends who toiled incessantly to acquire their promised bounty lands; on the frontier, the Newburgh officers in the Army of the Ohio struggled to prevent the pre-emption of their prospective land claims by the squatter.

Mutual participation in several military and Masonic associations welded the Newburgh Associates into an effective political force. The first of these was the Order of Cincinnati organized at Newburgh, May 11, 1783, as a veteran's fraternal organization "to perpetuate . . . as well the remembrance of this vast event (Independence) as the mutual friendships which have been formed under the present war." Fully 90 per cent of the Newburgh Associates belonged to this hereditary and fraternal organization.33

Another cohesive force was the American Union Lodge of Free and Accepted Masons (now American Union No. 1 of Marietta, Ohio) which consisted of Masons from various New England lodges. It was erected in Roxbury, but its charter specified that it might move wherever the fortunes of its members carried them. Among its most distinguished members were George Washington, Rufus

Putnam, Samuel Holden Parsons, and Major Heart, later commander of Fort Harmar, Ohio. Of the thirty-four men listed by Hildreth as the leaders of the Ohio Company, twenty-two were members of Masonic Lodge No. 1.  

Also prevalent was the influence of Washington in favor of the Newburgh scheme. He was attached by deep bonds of affection to the New England troops whose personal loyalty to the Commander-in-Chief had been steadily manifest throughout the war. Washington also had a deep personal interest in the Newburgh speculation. He owned a vast estate in the Great Meadows area of the Ohio Valley and was involved in a scheme to connect the Ohio settlements to the Virginia seaboard by means of trans-Appalachian canals. Thus Washington’s hatred or at least distrust of the stubborn Scotch-Irish squatters who insisted upon having their way on the frontier in a democratic fashion was partially stimulated by the trouble he had with them on his lands at Great Meadows.

The veterans’ post-war life offered little which might dispel their Ohio ambitions. For example, Rufus

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34 The Records of the Original Proceedings of the Ohio Company, ed. Archer Hulbert, Marietta College Historical Collections, Vols. I-II (Marietta, Ohio, 1917), I, xvi. Hereafter referred to as Hulbert, Records. Also, Cutler, I, 178-179. While affirming the basic continuity between these two organizations, both authors confuse their purposes: the Newburgh Association was primarily concerned with securing bounty lands for veterans; while the Ohio Company was concerned solely with pure speculation in land.

35 For an analysis of the canal project, see Archer Hulbert, Washington and the West (New York, 1905).
Putnam, one of the more fortunate associates, secured a contract to survey the Maine lands of Massachusetts. Putnam, however, was generally unimpressed with the possibilities of settlement in the North:

The country in general is not fit for cultivation, and when this idea is connected with the climate, a man ought to consider himself cursed even in this world, who is doomed to inhabit there as a cultivator of lands only. 36

It is not surprising then that the Newburgh Associates through their chief lobbyist, Washington, kept pressing Congress to act upon their petition. Within a short time, a revived colonization scheme took definite shape and provoked widespread interest in New England. Early in 1784, Putnam informed his old Commander of the scheme's progress:

The settlement of the Ohio Country, sire, engrosses many of my thoughts and much of my time since I left camp has been employed in informing myself and others with respect to the nature, situation, and circumstances of that country... from these circumstances and many others... we are growing impatient; and the general inquiry is: When are we going to the Ohio? Among others Brig. General Tupper, Lt. Colonel Oliver, and Major Ashley have agreed to accompany me to that country the moment the way is opened for such an undertaking. 37

The distinct possibility that the Ohio lands might be pre-empted by squatters and "adventurers" before Congress got around to setting accounts with the Army, lent a tone of urgency to the efforts of the Associates. Putnam wrote to Henry Knox, as early as the

36 Cutler, I, 178-179. 37 Ibid., 174-175.
fall of 1783, that rapid settlement was so certain that the interests of the veterans lay in immediately locating and becoming settlers, "as well as adventurers by purchases (of) Public Securities."\(^{38}\)

Washington too was becoming deeply concerned with the reports of mass squatter migrations to the Ohio frontier. In a letter of James Duane in September, 1783, he proposed that one large western state be erected to form a tract of saleable land extensive enough to meet the nation's financial obligations and confine the rapacious settlers who might otherwise aggravate the Indian problem. One large state in the Northwest instead of a welter of small republics would have the additional advantage of securing the eastern dominance of Congress. Washington had absolutely no sympathy with the squatters who sought to take up homesteads on the prospective bounty lands:

Unless some measures as I have here taken the liberty of suggesting are speedily adopted, one of two capital evils in my opinion will inevitably result, and is near at hand; either that the settling, or rather overspreading of the Western Country will take place by a parcel of Banditti, who will bid defiance to all Authority, while they are skimming and disposing of the Cream of the Country at expense of many suffering Officers who have fought and bled to obtain it . . . .\(^{39}\)

Such frightening possibilities spurred Washington's lobbying activities. After receiving news of the

\(^{38}\)Hulbert, Ohio, Document XIII, 679.

\(^{39}\)Washington, XXVII, 133-140; also Hulbert, Ohio, Document XIII, 679.
final peace agreements in Paris, he went to Annapolis where Congress was sitting, but obtained little satisfaction. Washington later visited Congress when it moved to Princeton; but again he received little encouragement. Congress pleaded that it could do little until the last states completed the cession of their Western lands. 40

The Associates in turn pleaded an incomplete cession of land, but Congress could not be dissuaded from its demand for complete control of the national domain. Finally, in the Memorial of October 29, 1784, Congress declared it could not at that time make any appropriations of land "much less can they assign certain districts to any particular corps." 41

This pronouncement effectively ended for a time the efforts of the Associates to procure bounty lands. Many now lost interest and looked to their native resources to regain their fortunes. Yet a substantial core of the Newburgh Associates led by Putnam and Tupper still waited for a chance to revive their claims to the western lands—a chance which would soon present itself. In the interim the original association was to undergo a strange transformation. Their inability to procure free bounty lands from Congress convinced many of the Associates that their only alternative was to purchase

40 Washington, XVII, 410-411.
41 Journals, IV, 304.
a land grant in the West. Such an assumption involved a subtle shift of purpose from military colonization to pure land speculation. The Newburgh Association began as a military colonization scheme, but it ended as a company speculating in western lands.
CHAPTER II

THE OHIO PROBLEM AND THE
ORDINANCE OF 1784

The possibility of squatter pre-emption of the proposed military bounty lands was a source of deep anxiety for the Newburgh Associates. The demobilization of the Army had precipitated various military colonization schemes into a loose interstate association of officers which had as its object the procuring of lands in the Ohio Valley. Under the astute leadership of Rufus Putnam and George Washington, the Association had petitioned Congress for an Ohio colony only to be refused. Despite this setback, the petitioners remained in close touch with each other until the day when another opportunity would allow them to present their scheme before Congress. In the interim, the organization underwent a subtle transformation from a military colonization scheme into a purely speculative enterprise. As this transformation progressed, it became increasingly clear that the squatters' interests were incompatible with those of the land speculators.

Land speculation in colonial America was more than just a "major get-rich-quick" activity of eighteenth century planters, merchants, and men of affairs. The very
basis of the southern plantation economy was sustained by the easily pre-empted lands in the West. The ability of the planters to make a profit as speculative landlords furnished the incentive for the flow of short-term capital from England for the financing of planting, cultivating, and the harvesting of crops and the purchase of slaves and other capital goods. These short-term borrowings were in turn converted into long-term indebtedness by placing mortgages on their capital goods. At the outbreak of the Revolution, the southern planters were indebted fully 5,000,000 pounds to English merchant capitalists.¹ When the profits from land speculation ceased, so did the flow of English credit.

The Revolution added further impetus to speculative activities. The breaking of connections with the great British commercial empire disrupted the normal channels of mercantile trade. British restrictions of American trade with the British West Indies and the mother island itself severely crippled American commerce and agriculture. The war with England disrupted the normal flow of short-term credits and drastically constricted the flow of colonial agricultural commodities to the West Indies. These restrictions had the effect of giving the British merchant-capitalists and shipowners a monopoly of the carrying trade between the United States and the West

Indies and of placing an embargo upon all products that might compete with Canadian exports to these islands.\(^2\) The resultant damage to New England shipping interests was extensive. Hence the New England and Middle States merchant capitalists looked increasingly to the landed wealth of the Ohio Valley as a means of sustaining themselves through the economic slump.

American agriculture also suffered a major setback in the post-war period. Not only had the West Indian outlet for agricultural goods been narrowed, but the home market which had been inflated by war demands now contracted to pre-war dimensions.\(^3\) The war had also cut off the British bounties on indigo and cotton and had abolished the advantages and monopolies which American-grown tobacco had enjoyed in the English home islands. From 1783 American farmers suffered a price decline which did not abate until late 1787 and early 1788. The severe price decline in agricultural commodities coupled with the disruption of the normal flow of short-term credits forced the southern planter and the northern grain producer to rely solely upon speculation in the West as a source of income.

Congress was not adverse to assisting these speculative elements. It was not difficult for an

\(^2\)Chitwood, pp. 606-607.

\(^3\)Ibid., p. 607.
adventuresome speculator with a grandiose scheme of continental land development to find enthusiastic supporters in Congress. In 1783, all of America was a gigantic land bubble and its inhabitants were crazed with land fever. Thus, leading members of Congress had ardently championed the cause of various speculative companies during the state cession struggle. Virginia's deed of cession, however, destroyed the old Vandalia-Illinois, Wabash, Indiana Company feud; but new speculative forces, especially among the veterans' organizations, were arising to take their place. They too could expect to find a ready hearing in Congress.

The squatter, on the other hand, was a distinct frontier type. But as a type he no more conformed to a pattern than did the rest of the frontiersmen, and he differed from them in no particular except possibly in possessing fewer worldly goods. The character of the squatter was as ambivalent as all of human nature, and, hence, cannot be generalized. There were evil and pernicious men among them, possibly more than in the ordinary lot of men; yet there were also the "meek and passive failures who could battle nature and the Indian more successfully than the realities of economic life."4

In the mass, however, they were the ordinary agrarian types of the late 18th century who were just awakening

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to the commercial possibilities inherent in western lands. Most were of a hardy Scotch-Irish stock whose families had been squatters for generations. The squatter was the vanguard of permanent settlement and was swept like human flotsam before a tidal wave of legitimate land sales and illegitimate land speculation.

Two fallacious myths have grown up around the squatter experience. The first might be termed "the myth of the independent yeoman." The squatter has been erroneously identified by many authors with the self-sufficient yeomanry lauded by Thomas Jefferson and Hector St. Jean de Crevecoeur. The yeoman, who owned a small farm and worked it with his family, was conceived to be the perfect man and ideal citizen. Wedded as he was to the soil and content as he was with the simple fruits of his labor, the yeoman was a free soul who spurned the crass entrepreneurialism of the city. Agriculture was a way of life, and his relationship to the soil was never conceived in terms of profit and loss.

An opposing myth has been perpetuated by certain "conservative" historians. The conservative has been prone to record only the anarchistic tendencies of the squatter. Seen through conservative spectacles, the squatters were nothing better than "wandering Banditti," the violators of property rights and the destroyers of law and order. Their democratic tendencies were interpreted as radicalism and their leaders as demagogues.
Neither interpretation can be taken seriously. The squatter was above all a primitive entrepreneur. Deprived of participation in a commercial market by lack of access to transportation facilities, the squatter was forced to rely “more on the process of appreciation than on the sale of crops.”5 His real attachment was not to land, but to land values. His real concern was not to establish a farm, but to hold land until the pressure of population would raise land prices to a point where a profitable sale could be made. Hence, the squatter had all the qualities of a speculator except the ready capital to invest in land. In the place of liquid capital, he substituted prior occupancy and pre-emption.

Despite his lack of liquid capital, the squatter was not always the pauper many historians believe. True, he came from the poorer agrarian classes, and frequently, the uncertain returns from his land sales kept him impoverished; but many squatters were moderately wealthy, not in reserves of ready cash, but in slaves, tenants, and extensive land “claims.” What distinguished the squatter from the traditional eastern land speculator was a lack of liquid capital, his democratic approach to frontier problems, and his persistent mobility.

The lure of fresh lands and their inability to acquire large reserves of cash instilled in the squatter

a tremendous urge for early liquidation and frequent moves. It was the squatter's mobility coupled with his desire for political protection of his dubious land claims, rather than any philosophical commitment to democracy, which made the establishment of a traditional conservative society impossible; yet paradoxically, it was this same mobility which negated any possible yeoman virtues of stability which he might have. This geographic mobility facilitated social and occupational mobility, and hence was related to social change. Consequently the squatter was too mobile and too commercial to cut a yeoman figure; yet, he was too imbued with a bourgeois reverence for property to fit the radical definition given him by eastern conservatives.

The squatter's contribution to western development was somewhat more positive than the reckless land speculator. Captain Basil Hall, a nineteenth century English traveler, admired these "free and easy settlers" and was cognizant of their positive contributions:

As these people, after all, do great good to the countries in which they settle, their operations are not discouraged. In the process of time, many become useful citizens of thickly peopled territories, of which a few years before they were the only inhabitants, while the idlers and rovers proceed to the Westward . . . . It is the fashion to speak slightly of these . . . squatters . . . . In general, I thought they had less of that frigid, uninviting formality which characterizes the Americans further to the Eastward. They were somewhat gruff, indeed at times; but they seemed to trust themselves and us with more readiness, and sometimes understood a joke which I hardly ever saw
exemplified on this side of the Mississippi.6

The fears of the eastern conservatives were not, however, wholly unfounded. From the earliest colonial days, the danger of a frontier revolt was a constant menace to the conservative society of the Eastern Seaboard. The opening of vacant lands in the West had a peculiar tendency to stimulate a "frontier spirit"—a democratic, leveling spirit which in the eyes of the East always had been dangerous, arrogant, and uncontrollable. Frederick Jackson Turner characterized this "spirit" with the traits of social fluidity, political mobility, democracy, and nationalism. Turner believed frontier democracy sprang from a "return to the primitive conditions of development,"7 a lowering of the standards of civilization which correspondingly enhanced the stature of the individual by freeing him from traditional institutional controls and forcing him to diversify his activities in a primitive economy. The applications of old social norms to the frontier geography produced a new social condition—uniquely American—which differed substantially from the society in the "East."

Turner, however, failed to consider the elements of cultural continuity and conservatism in the frontier

6Capt. Basil Hall, Travels in North America in the Years 1827 and 1828 (Edinburgh, 1829), I, 97.

situation. The frontiersman was a radical only in the sense that he was a colonial who chafed under the economic and political bonds of the mother East; he was still a cultural transplant who was disposed to conserve what he had known in the more complex society of the East.  

What we know as "frontier democracy" grew out of two factors: first, a relatively easy access to landed abundance operating within an agrarian context; and second, the necessity of building up a new political order so that this wealth might be exploited and the social order maintained. In the early Republic western land was the most accessible form of material abundance. The urban-industrial complex was not sufficiently developed to offer the immediate wealth which the temporary privations of frontier living promised. The frontier constituted a process whereby this abundance was exploited within the narrow confines of a primitive agrarian economy—an economy based upon a proliferation of equal economic units. The frontiersman equated equality with social mobility; hence parity of competition was not only an ideal means of advancement, but it was an economic reality. Therefore, while democracy as an ideology justified the equality inherent in a primitive political

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8Earl Pomeroy, "Toward a Re-orientation of Western History: Continuity and Environment," *Mississippi Valley Historical Review*, XLI (March, 1955), p. 46.

economy, the factor of landed abundance fulfilled the promises of material progress made by democratic equalitarianism.

For the squatter, the frontier was a political void into which a political framework had to be constructed to foster economic development and social order. Because of the very primitive division of labor, an individual's economic functions were closely related to his political function; hence the tillers of the soil had also to be rulers of men. A political order demanding mass participation and determination was not a choice but a necessity for the frontiersman.

Most colonies had adopted iron-clad policies to control these backwoods leveling instincts. So long as the movement to the West was small, there was little danger; but once the movement expanded and extended beyond the control of the colonial governments, the frontiersman was pressed with the necessity of erecting democratic governments.

Once beyond the pale of the law, the squatter wanted free access to as much land as he needed, but the idea of free land "would destroy the economic and political values upon which (traditional) colonial government was founded."\(^{10}\) Pre-emption, however, provided a compromise between the equalitarian frontier ideal and

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the aristocratic eastern ideals of land ownership. Under this system the government would pardon the settler for his illegal settlement on public lands and confirm his title to his claim in return for a much reduced payment. Pre-emption, however, did not mean "free lands;" rather, it was the recognition as fait accompli of an initially illegal act.

For a settler of the Ohio Valley, squatting (the settlement of public lands in hopes of gaining pre-emption rights) was a necessity and the recognition of pre-emption rights an inevitability. The Confederation Congress was so beset with more pressing problems that it never made provisions for a method of land disposal until 1785. Until that date, the difficulty of obtaining a clear title to western landholdings was so great that squatting had become a necessity for prospective settlers. Even after the Land Ordinance of 1785, legal methods of obtaining land were usually in abeyance. The land offices were usually too distant, and the whole legal process so time-consuming that the frontiersman if he followed this procedure would find his claim pre-empted.\(^{11}\)

Two characteristics made it impossible for the squatter to be banished from the public lands: his persistence and his large numbers.\(^{12}\) To the squatter it was

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\(^{11}\) Amelia C. Ford, Colonial Precedents of Our National Land System as it Existed in 1800 (Madison, 1910), pp. 138-139.

\(^{12}\) Ibid., p. 118.
immaterial who held the land—private company or public trust—all he required was a cabin, a rough clearing for a corn crop, and an over-powering will to defend his claim. Ordinarily the squatter made himself very disagreeable when attempts were made to expel him. Washington's lawyer told him that if he succeeded in his suit against the squatters on his estates at Great Meadows, they would probably burn his barns and fences. Most governments had to come to terms with men of such stubborn caliber and irresistible aggression. It was either compromise or constant turmoil—the result was pre-emption rights. Turmoil did ensue and it would take the United States government until the Pre-emption Act of 1841 to learn its lesson. 

Pre-emption rights had their origins in the Southern and Middle Colonies; the principles of free acquisition and individual settlement had no place in the New England land system with its strong theocratic-communal tendencies. There had always been a persistent demand for free and cheap lands during the colonial era. Consequently, before the Revolution, free land grants had been adopted as a regular and integral part of the land systems of Virginia, North Carolina, and Pennsylvania.

13 Hulbert, Washington and the West, p. 158.

14 Pre-emption laws were passed from 1801 to 1841, but the predecessors of the 1841 act were only applicable to special cases.
Even Massachusetts made some severely limited provisions for pre-emption rights in her Maine lands.\textsuperscript{15} Like the Homestead Law, they usually demanded occupation and improvement within a defined time limit for clear title.

Out of this early squatter experience had evolved a great number of common law precedents and a variety of "rights," all so confusing that their legal definition would engross the entire life of a court system. A squatter could claim his land by virtue of "tomahawk improvements," "cabin rights," "corn rights," and "sugar camp rights." Most settlers believed that the country northwest of the Ohio could be claimed by virtue of tomahawk rights, as had been done in western Pennsylvania and Virginia. As expected, the tomahawk claim became the most predominant form of squatter pre-emption after 1780. According to this procedure, a claim was acquired by deadening a few trees near the head of a spring and initialing the trees on the more important areas of the claim.\textsuperscript{16} The normal procedure for those wishing to settle on prior "improvements" was to make some financial arrangements with the original claimant when and if he chanced to return again. In a like manner, a settler coming back to a claim so occupied could buy it from the squatter, but in neither case did the procedure work

\textsuperscript{15}The St. Clair Papers, ed. William H. Smith (Cincinnati, 1882), II, 17. Hereafter cited as St. Clair.

\textsuperscript{16}Ford, p. 129.
smoothly between two pugnacious and determined settlers.

The squatter had worked out an extra-legal land system suited to his needs and flexible enough to meet the vagaries of any frontier situation. As a means of equitable land distribution, the squatter system proved far more realistic than those improvised by the eastern Congress. Thomas Jefferson, writing in 1780, realized that this customary system could not be ignored in any scheme of orderly settlement:

So multifarious were they at the same time, that no established principles of law and equity could be applied for their determination; many of them being built on customs and habits which had grown up in that country being founded on modes of transporta-
tion peculiar to themselves, and which having entered into almost every title, could not be absolutely neglected.17

The Ohio problem as it evolved after 1780 was that of land distribution. Congress was cognizant of the need for a system of western territorial government and land distribution, but it was undecided as to the nature of such a system. The trans-Ohio lands would be sold to liquidate the national debt; but would the sys-
tem be geared to the small purchaser or the large specu-
lative land company? Would the vast trans-Ohio lands devolve upon eastern speculative interests or would they fall by default to the squatters? Congress hesitated only momentarily, but in that moment both squatter and speculator mobilized their forces to do battle for

17Writings of Thomas Jefferson, ed. Paul Leicester Ford (New York, 1892-1899), II, 293.
possession of the national domain.

Squatter occupancy of the northwest Ohio lands claimed by the Newburgh Associates had begun long before that scheme had been conceived. Throughout the decade preceding the Revolutionary War, the nomadic white population of western Pennsylvania and Virginia had crept out along the Ohio. When Washington came down the Ohio in 1770, he found that hunters and trappers had names for almost every stream which entered into the Ohio from Pittsburg to the Great Kanawah.\(^{18}\) Possibly no formal settlement existed other than the Zane settlement near the present site of Wheeling, West Virginia. Through these early explorations, the Valley's landed riches became well known, and the years 1770-1775 witnessed a constant advance of settlers along the Virginia side of the river. Fort Henry was established at Wheeling in 1774, and it is probable that at this time the best of the bottom land on the Ohio, or the "Indian side" of the river from Pittsburg to Wheeling was being cultivated by those living on the land or "farming it" from the Virginia side of the river.\(^{19}\)

The number of squatters in the Ohio Valley, especially in the "Indian country" on the north and west bank of the river, increased after the failure of the

\(^{18}\)Hulbert, Records, I, xxii.

\(^{19}\)Ibid., p. xxii.
various separatist and statehood movements in western Pennsylvania and Kentucky. The defeat of these movements left political control of these areas in the hands of eastern interests; therefore, the state land systems, which were quite inimical to the interests of the small settler, remained substantially unchanged.

The specter of a squatter government first arose in the Monongahela-Ohio River area where in 1776 a petition was signed requesting the establishment of a state named Westphalia.\(^{20}\) During the Revolution, the Virginia-Pennsylvania dispute over titleship to the Monongahela region had kept the settlers in suspense as to state jurisdiction. An agreement between the two states in 1779 had proven disadvantageous for the Virginia settlers, and the Coghan-Indiana-Vandalia speculators took the task of leading the opposition movement in favor of statehood.\(^{21}\) This abrupt change in constitutional arrangements, and the suspension of Virginia's liberal land laws dispossessed many of the poorer frontiersmen. In order to curb these secessionist movements, Pennsylvania passed an ordinance in 1782 making it a crime of "high treason" for any person to form any "new and independent government" within the bounds of the state.\(^{22}\) In the interim, however, the


\(^{21}\)Alden, p. 67.

dispossession of many poor settlers by state officials accelerated the schemes for statehood north of the Ohio. Emigration to that area also increased at a proportional rate.

At the same time, the failure of the Kentucky radicals to secure a state constitution which would embody their ideals sealed the fate of the squatters in that area and accentuated their attempts to emigrate to the lands north of the Ohio. Estimates of the landless squatters in Kentucky were high. General Richard Butler estimated that the squatter population of Kentucky as late as 1786 comprised nine-tenths of the total:

> Thousands are going to that country (Kentucky) expecting to get land on easy terms; in this they are disappointed and obliged to settle on other persons' lands, (or) cross the Ohio and fix on these lands. 23

From 1779, until their emigration was partially curbed in the late 1780's, numerous bands of transient Kentuckians trickled across the Ohio in search of lands.

Although no formal townsite had been erected on the north bank of the Ohio, rude clearings embracing clusters of ragged huts blossomed along the Ohio and up the Muskingum and Scioto. Such settlement had been forbidden by the Quebec Act and the Proclamation of 1764; the British had hoped such an exclusion policy would pacify the western tribes by creating a huge Indian preserve between the Ohio and the Great Lakes. A number

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23Quoted in Barnhart, p. 129.
of American statesmen had hoped to solve the young Republic's Indian relations in the same fashion, but the terrible Indian raids during the Revolution clouded the whole enterprise. The Revolution and Virginia's resumption of her claim to Kentucky had effectively annulled the Quebec Act, but Congress was too diverted by the exigencies of war and post-war reconstruction to establish a system of territorial government. Thus the military contest in the West had left a jurisdictional void into which neither the United Colonies nor the British were strong enough to assert their sovereignty or maintain order. Into the void moved the squatter, but in doing so he came into sharp conflict with the American military and the British-led Indian bands.

The horrible Indian raids upon the frontier settlements of New York, Pennsylvania, and Virginia convinced the Continental Congress that the British were enticing the Ohio tribes into a policy of complete white extermination. The increasing white penetration of the Indian reserves north of the Ohio was pointed to by British agitators as conclusive proof of American enmity toward the Indian. To prevent the formation of a solidly anti-American alliance of Ohio tribes, Washington dispatched Colonel Daniel Brodhead of the 8th Pennsylvania Regiment to command the Western District's headquarters at Pittsburg.24 His task was to secure the loyalty of

24St. Clair, II, 1.
the Ohio tribes by either military or diplomatic means.

Brodhead quickly discovered that American settlement north of the Ohio was so inimical to good Indian relations that it had to be curbed. The Delawares were a special problem. As a nation, they had not yet become hostile to the United States, but since they claimed the lands adjoining the Ohio, every new band of emigrants reaching the north bank were driving them further under British influence. Already by 1779, attacks by scattered bands of renegade Delawares had forced Brodhead to withdraw his small garrison at Fort Laurens on the headwaters of the Muskingum.²⁵ He concluded that the only proper expediency would be to drive off the squatters.

Brodhead was excessively critical of the ill effects of squatter emigration. The squatter was not alone in his efforts to acquire the trans-Ohio lands. Throughout the Revolution, agents of the Illinois and Wabash Land Company had been feverishly purchasing lands northwest of the Ohio from various Indian tribes, including the Delaware. In 1778, George Rogers Clark had been dispatched by the Virginia Assembly to seize control of the Ohio Valley. He was further instructed to assist a special Virginia Commission which had been created to

gather evidence against these illegal speculative purchases. It is possible that this strong anti-speculative measure reflects the influence of Virginia’s governor, Thomas Jefferson. In any case, Clark chose to ignore his instructions and directed his energies in rooting out the “squatter menace.”

On October 6, 1779, Brodhead was informed by Colonel Shepherd, lieutenant of Ohio County, Virginia, that a certain “Decker, Cox, and Company” with a large band of settlers from Yohogna and Ohio Counties had crossed the river and had taken up “tomahawk rights” on the Indian lands.26 Deciding such a large influx of settlers would inflame Indian relations, Brodhead dispatched Captain George Rogers Clark and elements of the 8th Pennsylvania to arrest the interlopers and burn their huts. Clark burned a number of huts but returned home without capturing settlers. The squatter infiltration was so extensive, Clark reported, that the “inhabitants had made small improvements all the way from the Muskingum River to Fort McIntosh and thirty miles up some of the branches.”27 Upon receiving Clark’s report, Brodhead immediately dispatched runners to the Delaware council at Coshocton to assure the assembled tribes that justice had been done and the offenders punished.28

28 The site of the present town of that name.
He failed to realize, however, that no crime had been committed since there were no express laws prohibiting settlement north and west of the Ohio.

Although the Clark expedition did not substantially curb the trans-Ohio emigration, it appeared to have appeased both the Delawares and the military. The status quo ante bellum was maintained until late 1781 when the secessionist spirit of the discontented Pennsylvania frontiersmen erupted anew with increased fury. By 1781, the Pennsylvanians had abandoned the Westphalia scheme and had embarked upon a more ambitious plan. By the middle of 1780 there was an increasing sentiment in favor of emigrating en masse to the north bank of the Ohio and establishing a new state. That very year petitions were signed in support of a new state and meetings were held to draft a constitution. At first the scheme received very little attention by the military. General William Irvine judged the movement to be of little consequence and preferred to ignore the whole issue. In a communiqué of December 1, 1781, to the speaker of the Pennsylvania Assembly, William Moore, he mentions the scheme only in passing:

I am well informed there have been sundry meetings of people at different places for the purpose of concerting plans to emigrate into the Indian country, there to establish a government for them-

selves. What the results of the meetings will be, I cannot say; and as I do not intend to interfere in civil matters, I have not taken any notice of the affair. 30

The perpetrator of the scheme was a mysterious "Mr. Johnson," a recent immigrant from England, who in a few short years had gained unprecedented influence over the Pennsylvania settlers. Little is known of Johnson's background, but it appears that he was once an Englishman of "affluent circumstances." Since had only recently immigrated from England, he was strongly suspected of Tory sympathies. A number of military men at Pittsburgh accused him of plotting to erect a pro-British colony on the Ohio, but Irvine dismissed his colleague's accusations as "possible but very doubtful." 31

Johnson appears to have drawn his greatest support from the Virginia squatters who were discontented with "a divided allegiance" in the Pennsylvania-Virginia boundary disputes and insufficient protection against the savages. Most aspired to acquire free land along the Ohio despite Irvine's warnings against such settlements.

Although the evidence is not conclusive on this point, it appears that Johnson actually called a convention on Christmas day, 1781, and formulated a constitution for the new state. 32 A number of rumors to this

31 Ibid., p. 245.
32 Ibid., p. 244.
effect caused a great deal of concern among the military and touched off a spate of correspondence between Irvine at Fort Pitt and the governors of Pennsylvania and Virginia. Johnson seemed dead serious in executing his plan because, as Irvine noted, he was "east of the mountains" in the first half of December, purchasing artillery and stores for the trek westward.33

Johnson's vigorous organizational activities now put the whole issue in a different light. The statehood plan, regarded in 1781 as a harmless exercise in illusion, was now taken seriously by Irvine's staff. William Moore, fearful that the establishment of such a state would jeopardize Pennsylvania's western claims, resurrected the Tory bogeyman to discredit Johnson:

The proposed immigration appears to be a dangerous measure. He says that if Johnson is a British Emissary, great harm could be done by his scheme for it would mean that he would place the settlers in a situation which would compel them to place themselves under the protection of the British against savage attack, they scoring a propaganda victory for the British as it would show that they had effective control of the West . . . esp. at time of the peace conference.34

It was not long before Washington and his troops at Newburgh received word of the secessionist movement. The proposed emigration and statehood movement was, according to Hulbert, a constant topic of conversation among both officers and men. If Johnson and his Pennsyl-

33Ibid.

vanians were to emigrate and establish their state govern-
ment north of the Ohio, they would effectively annul the
validity of the Army's bounty-land claims. The Associ-
ates, however, had a close friend in William Irvine who
readily sympathized with their aspirations.

By the late spring of 1782, Johnson's scheme had
crystallized. He circulated advertisements along the
entire length of the Virginia-Pennsylvania border, call-
ing "all who wish to become members of a new state on
the Muskingum" to rendezvous at Wheeling on May 20,
1782.\textsuperscript{35} Irvine was quick to sympathize with his New-
burgh comrades. In a letter to Washington on April 20,
1782, he cited the necessity of taking disciplinary
measures against the insurgents, especially Johnson whom
he suspected of Tory sympathies:

Mr. J------ is at the head of this party; he
is ambitious, restless, and some say disaffected.
Most people agree he is open to corruption; he
has been in England since the commencement of this
present war. Should these people actually emigrate,
they must be either cut off, or immediately take
protection from the British party which I fear is
the real design of some of the party though I think
a great majority have no other view than to acquire
lands.\textsuperscript{36}

It is at this point that Johnson disappears from
the records. It appears, however, that he and his fol-
lowers did emigrate across the Ohio in great numbers.
In a letter, dated August, 1783, Irvine noted that
"great numbers of men have crossed the Ohio and made

\textsuperscript{35}\textit{Ibid.} \quad \textsuperscript{36}\textit{Ibid., p. 109.}
actual settlements from the Muskingum to the Wabash. 37 That no state government was immediately forthcoming was not surprising since the vicissitudes of laying out homesteads diverted most of the squatters' energies. The movement for statehood would soon come, however, if for no other reason than the burgeoning population northwest of the Ohio would soon demand political organization. Now that the Delawares had been driven from the valleys of the Tuscarawas and Muskingum by Irvine's men, there were few remaining barriers to squatter emigration and little justification for the soldiers' driving them off.

By the summer of 1783, Irvine was in difficulty. He was receiving a great deal of pressure from his fellow officers at Newburgh to drive off the squatters and suppress the statehood movement. More volatile officers, such as Cook of Newton, Pennsylvania, wanted the Newburgh troops to march directly to the frontier and "fight the rascal . . . by his own weapons." 38 However, there was no justification for such action. There were no expressed laws prohibiting such settlement, nor could any retrospect laws be made. Eviction could not be expedited in the name of better Indian relations, because the Delawares had been clawed from the area, and the military could hardly dispossess loyal Americans in favor of

37 Ibid., p. 193.
Indians who had been British allies during the war.

Irvine did not have to look far for justification. Despite the Treaty of Paris, American control over the huge expanse of territory between the Ohio and the Great Lakes was at best tenuous. His Majesty's troops still held the northwestern posts and British Rangers still exerted considerable influence over the Ohio tribes. Consequently, the United States could ill-afford a renewal of Indian hostilities which might jeopardize its bargaining power at the Paris peace conference. As early as August 17, 1783, Irvine, in a letter to Benjamin Lincoln, the Secretary of War, expressed fears that the squatter emigration would probably renew the Indian war. 39

Irvine's fears were not ill-founded. The British officials at Fort Sandusky had been receiving numerous complaints from their Indian wards saying that the Americans were pre-empting all of their lands northwest of the Ohio. The Indian protestations soon caught the receptive attention of Captain Alexander McKee of Sandusky. His reaction to their plight was not without a degree of concerned sympathy:

... not withstanding the tracable temper of the Indians, they are not without apprehension of the designs of the Americans upon their country which by their accounts they have just reason, for as parties are constantly on this side of the Ohio marking the country. 40


40 Captain Alexander McKee to Colonel DePeyster, Sandusky, September 8, 1783, The Historical Collections
The British, however, were hardly motivated by any altruistic concern for the Indian's well-being. McKee and his military superiors were determined to protect "His Majesty's children" from further deprivations only insofar as such action would weaken the United States. The British, though defeated in war, still had ulterior designs on the young republic's western territories.

On September 9, 1783, Sir John Johnson assembled the different western tribes at Sandusky in order to divert their anti-Americanism into channels more favorable to the Crown's interests. McKee learned in council that numerous boats had been seen passing down the Ohio, carrying squatters to the Shawnee's hunting grounds. Several parties of hunters just returning from that area also informed him that they met several parties of Virginians who told the Indians that they were claiming their hunting grounds "before their great people engross'd them, which they expected would soon be the case."41 McKee could do little, however, but reaffirm the Crown's protectorship over the western tribes. The Indians were clearly being driven to war and would do so


with or without British support.

With the threat of an Indian war looming on the horizon, Irvine's correspondence with the Secretary of War could not be without some effect; William Jackson, Lincoln's assistant, informed Irvine on September 15 that his letters which "mentioned an apprehension of the Indian war being renewed by the settlement . . . between the Muskingum and the Wabash" had been laid before Congress and referred to a committee. 42 Congress was quick to act upon the Irvine-Jackson-Lincoln recommendations. On September 22, 1783, Congress issued a proclamation which expressly prohibited all settlement north and west of the Ohio River:

Whereas, it is essential to the welfare and interest of the United States, as well as necessary for the maintenance of harmony and friendship with the Indians . . . therefore the United States in Congress assembled, have thought proper to issue their proclamation, and they do hereby prohibit and forbid all persons from making settlements on lands inhabited or claimed by Indians without the limits or jurisdiction of any particular state, and from purchasing or receiving any gift or cession of such lands or claims, without the express authority and directions of the United States in Congress assembled; and it is moreover declared that every such purchase . . . is null and void . . . . 43

This congressional proclamation was in effect a limited revival of the old British Proclamation of 1764. It represented a stalemate between the squatters and the

43 Journals, XXV, 640.
Newburgh Associates—now both were frustrated in their attempts to obtain control of the trans-Ohio lands. Until 1783 Congress had been more or less an impartial arbiter between these two interests; but now powerful speculative interests in Congress were massing their forces for an all-out attack on the squatters. The battle would be fought both on the frontier and in Congress; the weapons would be both military and legislative.

Irvine had secured from Congress a proclamation excluding the squatters from the Ohio lands, but a number of realistic members of Congress realized that the Confederation's western territories could not be administered by a negative policy of exclusion. The aggressive land-hunger of the squatter and the speculator had to be satiated, the national debt had to be paid, and the Indians had to be appeased—all these demands predicated the need for an orderly method of land disposal and a system of territorial government. The Congress' efforts to solve these problems resulted in a unified and coherent system of territorial government and land disposal as embodied in the Ordinance of 1784 and the Land Ordinance of 1785, and hence a summary examination of their evolution is necessary to illuminate later developments.

It cannot be claimed that there was any concerted action between the former Newburgh Associates and Congress in regard to the formation of the first plan for the organization of the West. Yet coming as it did close
on the heels of the Newburgh petition, the formation of the Ordinance of 1784 was spurred but not shaped by the influence of the Associates.\textsuperscript{44}

Virginia's cession of her western claims on December 20, 1783, made western legislation possible; but it also eliminated any further obstacle to the settlement of the bounty lands in question. As previously, the idea of parceling out the western territories into independent governments was first proposed by Maryland in the land cession dispute; but the first definite plan for the formation of new states in the West was proposed by George Washington in a letter of James Duane, delegate to Congress from New York. The letter concerned the congressional discussion of western territorial government which had coincided with the congressional prohibition of squatter occupancy of the Ohio lands. Washington urged Congress to take action against the parcel of Banditti, who \ldots bid defiance to all Authority while they are skimming and disposing of the Cream of the Country at the expense of many suffering Officers and Soldiers.\textsuperscript{45}

Washington was obviously referring to the Ohio squatter problem, but there is no conclusive evidence to support the conclusion that the Duane letter was directly responsible for the anti-squatter proclamation of September 22.

\textsuperscript{44}Cutler, I, 338.

\textsuperscript{45}The Duane letter is cited in Washington, XXVIII, 133-140.
However, the additional authority which the Commander-in-Chief's opinions gave the Irvine-Lincoln proposals undoubtedly aided their acceptance by Congress.

In the same letter, Washington proposed the establishment of a great western state. His proposal came too late, however, to influence the first step taken by Congress to provide a plan of government for the West. On September 13, 1783, a committee, consisting of John Rutledge, Oliver Ellsworth, Nathaniel Gorham, and James Madison, while considering the question of state cession of western lands, reported the following proposition which was agreed to by Congress:

That the territory so ceded should be laid out and formed into states containing a suitable extent of territory, but less than 100 nor more than 150 miles square, or as near thereto as circumstances will admit; and that the states so formed should be distinct republican states and admitted members of the Federal Union, having the same right of sovereignty, freedom, and independence, as the other states. 46

This resolution foreshadowed the generous and liberal policy which was later to characterize the Ordinance of 1784. It was approved by Congress and embodied in Virginia's deed of cession of March 1, 1784. 47

James Duane did not hesitate in acting upon his old Commander-in-Chief's suggestions concerning territorial government. By a happy coincidence, he was the chairman of a committee considering the subject of Indian

46 Journals, XXV, 554-567.
47 Cutler, I, 337.
affairs and western lands. The committee itself consisted of Richard Peters, Daniel Carroll, Benjamin Hawkins, and Arthur Lee. In its report of October 14, 1783, the committee acknowledged that they had conferred with the Commander-in-Chief; moreover, the report itself incorporated the contents of the Duane letter. As would be the case in future land legislation, Washington's influence was decisive.

During the discussion of the report, Elbridge Gerry, a stalwart friend of the Associates, offered an amendment to the committee's report. The proposition was "agreed to," although there is no evidence that the entire report was adopted. He moved that the report be amended to read as follows:

Your committee therefore submit it for consideration, whether it will not be wise and necessary, as soon as circumstances shall permit, to erect a district of the Western territory into a distinct government, as well for doing justice to the army of the United States, who are entitled to the lands as bounty, or in reward for their services, as for the accommodation of such as may desire to become purchasers and inhabitants, and in the interim to appoint a committee to report a plan, consistent with the principles of confederation, for connecting with the union by a temporary government the purchasers and inhabitants of said district, until their numbers and circumstances shall entitle them to form a permanent constitution for themselves and as citizens of a free sovereign and independent state, to be admitted to a representation in the Union.

Gerry's proposal illustrates the close relationship between the question of territorial government and


49Journals, XXV, 564-567.
the bounty lands issue. At this time, the Associates were still determined to acquire the Ohio lands by settlement of bounty lands rather than by speculation. Gerry's request for the settlement of bounty lands upon the Associates failed, but the proposal as a whole initiated the formation of a system of territorial government.

By the spring of 1784, these previously declared intentions of Congress in regard to new states were so far consummated as to make the general lines of a governmental scheme quite clear. The cession question and the state land systems had deposited a mass of precedents with which Congress could formulate a coherent plan of territorial development. Very little Confederation legislation was done de novo; seemingly new land legislation was based upon the best and worst of colonial precedents.\(^{50}\) Thus the task of Congress was to recommend and incorporate the best features of the existing state systems into a national system of territorial government and land disposal.

As previously, every definite proposal regarding the public lands up to 1784 consisted of two facets: that of marking out new states into new states and dividing these states into saleable townships; that is, a system of government and a system of land disposal. Thus it is not illogical to regard the Ordinance of 1784 and the Ordinance of 1785, as "two parts of one integral

\(^{50}\)Treat, p. 234.
system . . . ."51 Thomas Jefferson has traditionally been regarded as the architect of this integrated system.

To claim that Jefferson was the architect of the first national land system is somewhat of an exaggeration. Aside from the unique methods of rectangular survey and a meticulous concern for democratic forms, neither the Ordinance of 1784 nor that of 1785 show any features which are remarkably Jeffersonian. Jefferson began and initially shaped the system, but he was absent from Congress when both measures were enacted. He was in France when the Ordinance of 1784 was finally approved by Congress, and while abroad, he showed little interest in the formulation of the Ordinance of 1785. Yet as chairman of both the territorial government committee and the land committee, his democratic ideas and personal influence provided the impetus for both measures. Moreover, his principles of rectangular land survey provided what was radically new in both ordinances.

Honest settlers and squatters could hope to profit while speculators could expect to lose from any land system in which Thomas Jefferson played a part. Jefferson's western background and his romantic agrarian and political convictions led him to sympathize with the "men of the western waters." As the governor of Virginia, he was forced to deal with the problem of the Kentucky pioneer, and it was this experience which led him to

51 Ford, pp. 63-64.
formulate a basic policy of western development—a policy which he would embody in the Ordinance of 1784. In the Kentucky dispute, Jefferson came into direct confrontation with the Indiana-Vandalia Land Company, and this experience left him with a deep distrust of land speculation.

The myth of the yeoman constituted the basis of Jefferson's strategy for continental development. He hoped the vast expanse of western territory would be settled by a self-sufficient and democratically inclined yeomanry whose ideals and interests would form the basis of the Republic. The fundamental principle of this policy was that every actual emigrant had the right to claim and secure title to all the lands he needed in the West. This main principle was enforced by several minor themes: the government and not speculative interests or other favored groups held title to the western lands; new settlements should enjoy the right to autonomous growth towards equality and self-determination; and any price paid for land should be as painless as possible.53

Jefferson could sympathize with the tremendous urge for land and the imperative need for self-government felt by the western immigrants. He also realized the dangers of the secession movements which might arise if


53Ibid., p. 552.
these needs were ignored by an eastern-controlled Congress. He wrote:

The people who will migrate to the Westward whether they form part of the old or of a new colony will be subject to their proportion of the Continental debt then unpaid. They ought not to be subject to more. They will be a people little able to pay taxes ... by selling the lands to them, you will disgust them, and cause a revulsion of them from the common union. They will settle the lands in spite of everyone.\textsuperscript{54}

Jefferson conceived the proper object of the public domain to be settlement rather than revenue. The poorer settler could not be saddled with more than his share of the continental debt which would be the case if he were forced to pay the high prices inherent in a revenue-orientated land system. Such a policy, he contended, would only lead to mass squatting on the public domain and the creation of a welter of secessionist governments. His predictions were correct in both cases.

Jefferson, however, was not prepared to campaign for squatter's rights. He was in favor of low land prices and the exclusion of speculators from the national domain--two measures which would make squatting unnecessary. His main concern was to "liberalize" the relationship of the landholder to the central government.

The cession of hostilities found Jefferson as Virginia's delegate to Congress, and deeply in a scheme for western government. Shortly after Virginia's cession of her western lands, Jefferson introduced in Congress a

\textsuperscript{54}Jefferson to Pendleton, August 13, 1776, cited in Ford, pp. 78-82.
plan of territorial government. His original proposal contained two interesting provisions which were not included in the final act of April 23, 1784. The first was his proposal to create ten new western states with such bizarre names as Assenissipia, Metropotamia, Doly- potamia. The second was a clause, prohibiting slavery after 1800 in any of the new states.\textsuperscript{55} The last clause was bitterly opposed by the southern states and defeated by a vote of seven to six. Despite this setback, the report was submitted to a committee of which Jefferson was the chairman.

While Jefferson's report was debated in April, the "federalist" elements and friend of the speculative interests mustered a stiff resistance to any provisions which might give the settlers of the western territories any substantial determination of their own affairs. Jacob Read of South Carolina led the opposition in favor of a stronger territorial government. He was a staunch federalist who believed the West should be administered as a colonial appendage of the eastern states. During the debate, he introduced an amendment which would later form the basis of the Ordinance of 1787:

\textit{That until such time as the settlers aforesaid shall have adopted the constitution and laws of some one of the original states as foreshaid for a temporary government, the said settlers shall be ruled by magistrates to be appointed by the United States in Congress assembled and under such laws and regu-}

\textsuperscript{55}Documents in American History, ed. Henry S. Commager (New York, 1949), II, 121-123.
This proposal introduced for the first time the notion that an unrepresentative territorial judocracy was equivalent to "strong" territorial government. Read, however, was supported only by Pennsylvania and Maryland, and hence his proposal was voted down in favor of more democratic provisions. It is hardly surprising that Pennsylvania with its own secessionist problems and Maryland whose speculators led the cession struggle should be the only states to support Read. It would take three more years of bitter squatter insurgency to convince the eastern federalists that only a revitalization of the Read proposal would protect their investments in western land.

The defeat of the Read proposal cleared the way for the final passage of the Ordinance. It was adopted by Congress on April 23, 1784. Aside from Gerry's proposal, the Ordinance of 1784 placed the exercise of governmental powers in the hands of the settlers restricted only by six articles of the compact. The first settlers would erect a temporary government with a legislature, elected delegates, and one representative in Congress. The temporary government would control the territory until the population reached that of the smallest of the original states; then the territory would be

56Cited in Cutler, I. 362-363.
57Journals, XXVI, 273-279.
admitted to the union as an equal partner. The new state must agree to remain a part of the United States; be subject to the central government as were the other states; be liable for its share of the federal debt; and maintain a republican form of government. 58

The opposition forces protested that such a large number of states proposed by the Ordinance would eventually out-number the older states and rule the nation in favor of the West. Much more alarming to the East, however, was the complete democracy provided by the Ordinance. The eastern conservatives had always asserted the inability of the frontier "banditti" to manage their own affairs in an orderly fashion. They were disturbed, if not frightened, by the fact that now the inhabitants of the territory were in firm control of their affairs in every step of the evolution from territory to state. The Ordinance of 1784 freed the frontiersman to work out his own political and economic destiny in accordance with the needs of the frontier situation. Such democratic heresies were also dangerously contagious; if you grant the back country such liberties, they reasoned, one would soon find the eastern mechanics and farmers demanding like privileges.

Moreover the East feared that a welter of squatter governments would forever impair the "proper" disposal of the national domain. Such governments had been

58 Ibid.
known to enact severe disabilities against eastern speculative activities. The eastern politicians knew all too well the close correlation between economic legislation and class control of government. The best antidote for such "anarchy," they maintained, would be strong external control by the East during the territorial period and a reduction of the number of states to be formed out of the territories. In short, the eastern speculative interests had to wrest governmental control of the national domain from the West, if they were to profit from its landed wealth. Those classes which controlled the territorial government controlled the landed domain.

Once the broad outlines of territorial government had been framed, Congress felt ready to prepare a complementary ordinance for the sale and location of western lands. Again Jefferson was appointed the chairman of a committee consisting of Hugh Williamson, Joseph Howell, Elbridge Gerry, and Jacob Read. It was not until 1785 that the committee presented a report. By then Jefferson's absence and frontier developments combined to give the land ordinance a twisted complexion.
CHAPTER III

SQUATTER INSURGENCY ON THE MUSKINGUM

The spring of 1784 came early to the Ohio country. As the warm weather improved traveling conditions, new bands of settlers began to trickle down the Ohio and surreptitiously took up claims on the Indian lands. According to most observers the 1784 emigration was massive. The commander of Fort Pitt counted hundreds of boats descending the Ohio that year. It seemed to the inhabitants of the Pittsburgh area "as if the old states would depopulate and the inhabitants be transported to the new."¹

This mass emigration made it quite clear that the prohibition of settlement on Indian lands by Congress was not having its desired effect. The Ohio military officials were on guard; but despite the vigilance of their commanding officer at Pittsburgh, boats "frequently passed down the Ohio bearing parties whose outspoken designs were to encroach upon Indian country."² Some boats were fired upon and captured, but many escaped.

¹Andrew Craigie in The Olden Time, II, 499. Craigie reported that 100 boats passed Pittsburgh in 1785; the mass of the settlers, however, usually crossed the river from Kentucky.

These intrusions were complicating the new nation's delicate Indian relations. The presence of the Ohio squatters was at complete cross-purposes with the Indian policy outlined by Congress. In a sense, this clash compelled Congress to reconsider the Indian policy it had adopted during the War. An Indian Ordinance was passed on October 15, 1783, to clarify the role of the Indian in the new republic. Congress hoped thereby to keep the "savages" as fully as possible from any British influence and to tie them to the United States by means of treaties; when they were civilized by treaties, they would be confined to narrower limits by gradually and nominally purchasing their claims to the western territories. The ordinance also confirmed for a time the existence of an Indian territory north and west of the Ohio closed to all settlement. This provision effectively reinstated the anti-settlement policy of the Quebec Act.

Under instruction from Congress, five commissioners--Arthur Lee, Richard Butler, George Rogers Clark, Oliver Wolcott, and Benjamin Lincoln--were chosen to administer the Indian affairs of the West. Their task was two-fold: first, to negotiate treaties for the purchase of Indian lands; and second, to prevent the incursion of squatters on the Indian reserve. On this

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3 Journals, XXV, 686.
4 Ibid., XXV, 667.
last point, Congress was quite explicit:

That the said Commissioners be and they are hereby instructed to obtain information of the numbers and places for residence of the citizens of the United States who have seated themselves on the northwest side of the Ohio; to signify to them the displeasure of Congress that they have taken this step, with which the public interest and response are so intimately connected, without permission or authority, and to discourage to the utmost of their power all intrusions into any of the territories of the United States within their respective departments. 5

A whole year lapsed before the commissioners made contact with the western Indians. Finally in October, 1784, a whole series of councils took place at Fort Stanwix in upstate New York. Here Cornplanter of the Seneca and Captain Aaron Hill of the Mohawks met with the commission and concluded a treaty which was presumed to apply to all the tribes east of the Mississippi. According to the terms finally agreed upon, the Iroquois surrendered all lands north and west of the Ohio. The other western tribes, however, would not be treated so cavalierly. They accused the Iroquois of a breach of faith and refused to accept the terms of the treaty. 6

The western tribes may have repudiated the generous Iroquois terms, but this fact was either not known or ignored by the inhabitants of western Pennsylvania.

5Ibid., 692-693.
Virginia, and Kentucky. As they interpreted it, the Treaty of Fort Stanwix overruled the congressional prohibitions of 1783 and opened up all the lands north and west of the Ohio to immediate settlement. As soon as the news reached Pittsburgh, the West was swept with numerous schemes for colonization. The new wave of land-hunger induced the more hardy breed of settlers to rush west before the winter set in. The more law-abiding frontiersmen, however, banded together and petitioned Congress for permission to settle on the Ohio.

Even before the conclusion of the Stanwix treaty a society for the promotion of emigration to the Ohio had been formed in Lancaster County, Pennsylvania, under the direction of Mr. Henry Dulhre. They had petitioned Congress in April, 1784, for permission to take up a tract of land in the Indian country, but their request had been pigeon-holed. Like all prospective squatters, they appealed to their supposed yeoman status and asserted that like the military they had spent the war, "not in heaping up of treasure, but in stopping the inroads of the savages." Such Congressional rebuffs were generally ignored by the adventuresome frontiersmen. They would have land

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7 Journals, XVIII, 374 (May 11, 1784); a copy of the Dulhre petition is to be found in Hulbert, Ohio, III, Document XIX, pp. 95-97.

8 Ibid., p. 97.
no matter now they acquired it. The squatters had all the qualities of the speculator save the capital to speculate in land. Their real attachment was not to land, but to land values. Their real concern was not to establish a farm, but to hold land until the pressure of population would raise land prices to a point where a profitable sale could be possible. All of America was a giant land bubble, and no law could contain the scramble for its treasure. Why should they obey the law? As the squatters viewed the situation, the federal land laws were made merely for the convenience of the wealthy land speculators in the East.

The squatters had an over-simplified, but an acute insight into the problem. The approaching conflict would not be the traditional yeoman-speculator conflict, but would be a new phenomenon: a struggle between two essentially entrepreneurial classes for control of the frontier's vast reservoir of landed wealth. If the eastern speculator held the advantage of national political power, the squatter could only balance the scales with his tenacious occupation of the disputed land.

Already the struggle was taking on the appearance of an ideological contest. While the squatter concealed his interests by appeals to his supposed status as a "noble yeoman," the speculator masked his greed with appeals to law and order, orderly settlement, and
the protection of Indian rights. Even Washington attacked the squatter under the guise of Indian relations. But in a letter to Jacob Read, dated November 3, 1784, he revealed that he was primarily afraid of a possible squatter pre-emption of all the Ohio lands before his speculative friends could mobilize their forces:

Such is the rage for speculating in, and aforestalling of lands in the No. West of the Ohio that scarce a valuable spot, within any tolerable distance of it, is left without a claimant. Men in these times talk with as much facility of fifty, a hundred, and even five hundred thousand acres, as a gentleman formerly would of one thousand. In defiance of the proclamation of congress, they roam over the Indian side of the Ohio, mark out lands, survey and even settle upon them.

He then prescribed a harsh remedy:

That any person who shall presume to mark, survey or settle on lands beyond the limits of the new states . . . shall not only be considered an outlaw but fit subject for Indian revenge. If these or similar measures are adopted, I have no doubt of Congress' deriving a very considerable revenue from the Western territories.  

This letter is particularly interesting since it was written immediately after Washington had concluded a journey as far west as Pittsburgh. While on a tour of his lands, he found his estates in the Pittsburgh-Great Meadows area "in possession of people who set me at defiance, under the claim of pre-occupancy." Quite embittered, he had initiated law proceedings, but left the matter drop rather "than to make a bad matter worse."

9Washington, XXVII, 485-490.
by hazarding abuse from the savages of the country."\textsuperscript{10}
To Washington's mind, this was clearly an act of war by
the squatters.

The fact that Washington had to cut short his
western journey is indicative of the growing discontent
among the western tribes after Fort Stanwix. There was
a widespread feeling among the Indians that they had been
sold out by the Iroquois and that if immediate action was
not taken, they would be drowned in a deluge of white
immigration. Sensing another Indian war, Congress dis-
patched the Indian Commission to the Ohio to make a more
inclusive peace treaty.

Washington's anti-squatter views were shared by
the members of the Commission of Indian Affairs. They
were tied to the former Commander-in-Chief by strong bonds
of kinship, common interest, and patronage. Arthur Lee
was a cousin and close friend of Washington. He was
always congenial to any speculative enterprise and would
later become a warm advocate of the Ohio Company's cause.
George Rogers Clark had always been favored by his fellow
Virginian; in fact, he owned large tracts of land in the
Ohio Valley which had been threatened often by squatter
pre-emption. General Richard Butler actually owed his
position on the Commission to Washington's influence.\textsuperscript{11}

\textsuperscript{10}Ibid., XXVIII, 4. The complete narrative of
Washington's journey is to be found in Hulbert, Washington
and the West.

\textsuperscript{11}Ibid., p. 280: Butler's appointment was
secured after Washington in a letter to the President
of the Congress recommended him for the position.
Consequently Washington's anti-squatter bias would be a significant factor in framing the new treaty.

The new agreement was consummated at Fort McIntosh early in 1785. Delegates of the Chippewa, Ottawa, Delaware, and Wyandotte tribes were summoned to a crude blockhouse a number of miles downstream from Pittsburgh and intimidated into surrendering all of their Ohio lands except for a small reservation between the Cuyahoga-Tuscarawas portage and the Maumee River. The Commissioners' demands were ably supported by Lt. Colonel Josiah Harmar's federal troops who were on the march to the frontier to occupy the abandoned frontier posts. The treaty effectively opened most of the territory north and west of the Ohio to settlement, but the Commission was determined not to allow the territory to fall into the hands of the squatters until the Associates had a chance at the prize. Reflecting upon the best method of squatter exclusion, Arthur Lee concluded that their purposes would be best served by inserting the following stipulation in the Treaty of Fort McIntosh:

If any person shall attempt to survey or settle any of the said lands (the lands obtained from the tribes by the treaty), until the commissioners have informed the Indians that permission is given by Congress to such surveyors or settlements, such persons shall be out of the protection of the United States and the Indians may drive them away.\textsuperscript{13}


\textsuperscript{13}Excerpts from the Journal of Arthur Lee, December 19, 1784, in Heart, pp. 50-51.
This article is strikingly similar to that suggested by Washington in his letter to Jacob Read three months earlier. There is no evidence to suggest Washington had any direct influence on the Commission's decision to include the article, but in a letter to Arthur Lee on March 15, 1785, he expressed his full agreement with the terms of the treaty. 14

The anti-squatter article was inserted in the last draft of the treaty, signed on January 21, 1785, and was made public in a proclamation by the Commission. Three days later they forwarded the following instructions to Josiah Harmar, the new commander of the Ohio military district:

Surveying or settling lands not within the limits of any particular state being forbidden by the United States in Congress assembled, the commander will employ such force as he may judge necessary in driving off persons attempting to settle on the lands of the U. S. 15

After signing the treaty, the Commissioners settled down to the tedious problem of enforcing its provisions. In this sense, they exercised the first colonial government in the Northwest. Although they were created primarily to make and enforce an Indian treaty, they effectively served as the government's agent to preserve inviolate the ceded region from the encroachment of the squatters. Because of their deep ties of sympathy and


15 St. Clair, II, 1-2.
interest with the speculative element, they could find a great deal of satisfaction in such a task.

There was also a definite nexus between Harmar's army of the Ohio and the Newburgh Associates. Many of the officers and the men occupying the Ohio garrisons had participated in the Newburgh discussions, and a number had actually become members of the Association. The remainder of the Army were veterans, and, as such, they could hope to acquire bounty lands if the squatter tide was contained.

The immediate effect of the McIntosh treaty was disastrous for the eastern interests. Although the treaty was completely invalidated by the Shawnee refusal to sign, it gave the frontiersmen an excuse to swarm across the Ohio in greater numbers. By the spring of 1785, the entire north bank of the Ohio from Pittsburgh to Vincennes had blossomed into crude settlements. The influx was of such magnitude that it momentarily caught the Commission and the military off balance, and for a whole month they lapsed into indecisive inactivity. William Buter, writing to John Armstrong from Pittsburgh in March, reflected the frustrating torpitude which gripped the federal officials:

I presume the council has been made acquainted with the restlessness of the people in this country, they are flocking from all quarters, settling and taking up not only the United States lands, but also this states, many hundred have crost (sic) going, many with their family's, the Wisdom of the
Council I hope will provide against so gross and growing an evil.16

"So gross and growing an evil" was rapidly taking the form of an outright political insurrection. During the winter of 1784-1785 the settlers on the Muskingum, Miami, and Scioto Rivers had become increasingly disturbed by the anti-squatter provisions of the Treaty of Fort McIntosh. Some had been occupants of the land for over five years and therefore felt that their occupancy was tantamount to clear title. They rejected the possibility that relief might be sought through the proposed land legislation before Congress; their earlier experiences in Pennsylvania and Virginia had taught them that federal and state land legislation was all but a tool in the hands of eastern speculators. The Ordinance of 1784 was an exception. In this they saw some basis for political organization.

The intransigent anti-squatter stand taken by the Indian Commission finally convinced the settlers that their only recourse was to form a state government and apply to Congress for admission into the Union. If the establishment of national authority over the Ohio country meant their lands would fall into the hands of speculators, the squatters felt they had no alternative but the establishment of a state government to protect their property. But more than their property was in jeopardy; article

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16 Pennsylvania Archives, XII, 176-177.
four of the McIntosh treaty legalized and encouraged any
slaughter the Indians made against the settlers upon
their land. The McIntosh treaty put the squatters out-
side of the pale of the law; their only alternative to
destruction was political association.

The leader of the secessionist movement was John
Emerson. He is the only "personality" to emerge from
the squatter movement; the other leaders have been lost
to history. Emerson appears to have had a certain charis-
matic quality common to most frontier demagogues. What
qualities he lacked from political organization, he made
up for with sheer pugnacity.

Emerson realized that if he waited too long, his
infant statehood movement would be crushed by inevitable
military intervention; the arrival of spring now made
military expeditions from Pittsburgh or Fort McIntosh
possible. Consequently, on March 12, 1785, Emerson dis-
tributed an advertisement to all inhabitants on the north-
west bank of the Ohio River, which announced an election
of delegates to a state constitutional convention. The
voting was to be held at separate polling stations at the
mouths of the Miami, Scioto, and Muskingum Rivers with
an alternative station at Jonas Mezon's settlement on
the Ohio. The delegates so elected were then to
assemble in convention at the mouth of the Scioto on the
twelfth of April.

17 John Armstrong gives his name as "Amberson" in
a letter dated April 12, 1785.
The second half of the advertisement contained the squatters' declaration of rights. Couched in defiant and belligerent tones, the declaration is the very essence of western democracy—in a very real sense it is a declaration of independence:

I do certify that all mankind agreeable to every constitution formed in America, have an undoubted right to pass into every vacant country, and there to form their constitution, and that from the Confederation of the whole United States, Congress is not empowered to forbid them, neither is Congress empowered from that Confederation to make any sale of the uninhabited lands to pay the public debts, which is to be a tax levied and lifted (collected) by the authority of the legislature of each state.

John Emerson

The Muskingum Declaration is an unique statement of eighteenth century liberal radicalism. Implicit in Emerson's statements is John Locke's notion that the land is the common inheritance of society to which every man has right and to which occupancy and utilization form the only basis for ownership. The right to erect such a government derived from man's innate need to protect his property and common liberties. Finally, Emerson denied the right of Congress to use the western territories to pay the national debt. Such a procedure would constitute an unjust and unrepresentative tax on the western inhabitants. Despite its ideological appeals, the Declaration convinced the national authorities that something more was necessary to preserve the integrity of the Ohio lands than verbal rebuffs and military inactivity.

18The Emerson advertisement is to be found in Hulbert, Ohio, Document XXI, pp. 98-99.
The national government's offensive was carried out on two fronts: the military and the political. On March 31 Colonel Harmar dispatched Ensign John Armstrong and a detachment of twenty-three soldiers down the Ohio "with orders to drive off sundry persons who have presumed to settle on the lands of the United States." At first the expedition encountered little opposition. From the first to the fourth of April, he ousted several families at Little Beaver and Yellow Creek. Armstrong, however, precipitated a rather dangerous situation when he arrested a certain Joseph Ross, a wealthy squatter with extensive lands and a number of tenants at Mingo Bottom. Having refused to obey the military's order to evacuate, Ross cast many "reflections on the honorable Congress, the Commissioners, and the commanding officer . . . ." Armstrong was so provoked that he chained Ross and sent him to Wheeling under heavy guard.

It appears that Emerson's government had formed a militia to defend itself from the United States Army. Ross apparently was an influential and popular member of the squatter community for news of his capture brought to his defense a large group of armed men under the command of Charles Norris. That evening they appeared in Arm-

19Heart, p. 59.

20Little Beaver is in the present Columbia County, Ohio; Yellow Creek is near the site of Wellsville, Ohio; St. Clair, I, 4n.; the entire report of Ensign Armstrong is to be found in Hulbert, Ohio, Document XXIV, 106-109.
strong's camp and demanded to know his intentions. He managed to soothe the enraged tempers of Norris's militia, but he learned from the party that another militia of seventy to eighty men had assembled at Norris's Town. 21

Under a less astute man the situation might have escalated into a military confrontation between federal troops and embittered frontiersmen. Armstrong, however, possessed a rare sense of tact and an inclination for intrigue one rarely beholds in military men. He perceived Norris to be a "man of influence in the country," and hit upon a scheme to use his influence to subdue the rebellious squatters. Norris appeared to have been a timid soul who was easily cowed by a show of force. Hence, Armstrong told Norris that he would treat any armed parties he encountered "as enemies of his country" and would fire upon them if they did not disperse.

When Armstrong's detachment reached a point within two miles of Norris's Town, he ordered his men to prime their pieces before Norris. Quite shaken by the gravity of the military's intentions, Norris hurried ahead to warn his militia. By the time Armstrong had reached the settlement, Norris had persuaded his followers to lay down their weapons and submit to the superior force. Armstrong's terms were unusually lenient. Because of the severe weather, he allowed the squatters to stay

21 Norris' Town was located in Jefferson County, Ohio, three miles below Stuebenville.
in their homes until April 19. After that time, all those still on the west bank of the Ohio would be punished severely.

With the destruction of Norris's Town, the rebellion had been suppressed on the west bank of the Ohio, but small pockets of local resistance still remained. The chief officials of the squatter government were meeting at Hoglin or Mercer's Town, a small settlement somewhere in Belmont County, Ohio. With the surrender of Norris's militia, however, all further resistance collapsed.

On April 6, Armstrong marched into Mercer's Town. The news of his approach had properly intimidated the hamlet's citizens who were all but relieved to accept Armstrong's terms. While looting their buildings, he discovered a number of "precepts" which indicated that the infant government had reached the point of electing two justices of the peace, Charles Norris and John Carpenter, and had drafted a temporary constitution. However, the squatters were ordered to evacuate their lands on the very day their constituent assembly was to meet.

The next day Armstrong broke up a settlement opposite Wheeling and marched his troops back to Fort McIntosh. In his wake, he left a train of destroyed cabins, burned hamlets, and a demoralized band of squatters who had been so presumptuous as to form the first government of Ohio. William Smith feels "that the settlers were equal to self-government and if left undis-
turbéd, would soon have laid the foundations for the state of Ohio. 22

What was the import of Emerson's futile rebellion? Obviously it had left the squatters in a more precarious position than they had been in before Armstrong's expedition. But few would obey Armstrong's evacuation order; the squatter was too obstreperous a breed to be deterred by an unenforced threat. A few of the more timid souls scurried across the River, but the mass remained to plant their spring corn crop, rebuild their ruined cabins, and perhaps, spin a new plan of government.

The Muskingum government was illegal in that it presumed to establish a state upon lands which Congress had set aside for revenue purposes. Just as illegal, however, was the rule of the Northwest by the Indian Commission. Its power was defined by Congress to be limited to the procurement of Indian treaties and the supervision of Indian lands. However, it now presumed to wield military and administrative justice over the American citizens in the Ohio country. The first colonial government of the Northwest territories was, in fact, a military despotism under five men who were determined that the interests of the eastern speculators were to dominate the new territories.

While General Harmar and the Commission were

22St. Clair, II, 5.
conducting the military offensive, their allies in Congress launched a political campaign against the squatter. By 1785 the Lee-Adams juncto controlled Congress. At the height of the squatter controversy Richard Henry Lee, the President of Congress, called his brother Arthur Lee from his post as Indian Commissioner and placed him on the Board of Treasury. From this position Lee had at least partial control of the Confederation's financial affairs, including the management of the national domain, and the squatters had a powerful enemy in Congress.

The squatter insurgency and the continued British influence among the northwest tribes convinced Congress that Harmar's force had to be strengthened. The original Army Act of June 3, 1784, had not specified that these troops were to be used against American citizens. Now in a series of acts passed on April 1, 7, and 12, Congress provided for the raising of an enlarged frontier military establishment,

for the protection of the northwestern frontiers, the defence of the inhabitants against the depredations of Indians, and for preventing unwarrantable intrusions on lands belonging to the United States.

The responsibility for the raising of an additional regiment of federal troops was intrusted to Captain John Heart, Washington's protege and a Newburgh Associate. Throughout the summer of 1785 Heart worked frantically to bring together a regiment which might aid Harmar in

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23 Heart, p. 59, 29n.
his summer campaigns. 24

By the first of May, it had become apparent that even the full military strength of Congress could not keep the Ohio lands inviolate. Armstrong's expeditions had been a mixed success; it had displaced just enough settlers to strengthen the resolve of those remaining to defy Armstrong's ultimatum. The military reprisals did shatter the squatter's political solidarity as has been expressed in the Emerson Declaration. During April, the Ohio insurgents had split into two camps: the moderates who sought to gain concessions from Congress by a policy of appeasement, and the radicals who continued to agitate for an independent state government.

The moderates, led by Wicom and Henry Houglan, drew their main support from those who had lost property or had been directly intimidated by the Armstrong expedition. The center of their movement was concentrated in and around Menzon's or Hoglin's Town, the present Martin's Ferry, Ohio. Generally they believed the best policy was to throw themselves on the mercy of Congress with the hope that they would be granted pre-emption rights to their lands. On April 20, they sent a "representation" to General Harmar, requesting an "indulgence" for the removal of their families and property. Harmar granted them one month of grace, but notified them that his orders

24Ibid., p. vii.
were preemptory. They hoped to use this month to appeal their case to Congress. Little did they realize that their arch-enemy, Arthur Lee, had entrenched himself in the highest council of the Confederation.

On April 11, the moderate delegates, meeting at Hoglin's Town, drew up a petition to Congress and forwarded it by way of Pittsburgh. The petition followed the form of most frontier appellate literature, but the core of the appeal was a request for pre-emption rights:

... We are greatly distressed in our present circumstances; and humbly pray if; you in your wisdom think proper to grant us Liberty; to Rest wherein we are and to grant us th preference to our actual settlements when the land is to be settled by order of Government; where shall Count it our interest to be subject to such law and Regulations as the legislature in their wisdom may think proper ... 26

This humble self-effacing attitude was in stark contrast to the militant tone of the radical petitions. There are no existent records of the leaders or the nature of the "radical movement." Presumably it was led by Emerson and was composed of those squatters in the outlying areas who had not been intimidated by Armstrong's expedition. In any case, their anonymous petition is recorded in the annuals of Congress along with a reply by an equally anonymous secretary. The whole appeal seethes with a suppressed revolutionary sentiment:

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26The full text of this petition is found in Hulbert, Ohio, Document XXIII.
Petitions, Remonstrances, and decent Representations have been disregarded. Your Bills of Credit, your vacant lands, your produce, your all, has been iniquitably exerted from you, and disposed of, not for an equal and general good; but to depress you and aggrandize a few; this same spirit of inequality and injustice, has caused the loss of fleets and of garrisons, and of armies, in fine, it has been the fruitful source of all your misfortunes, and all your disgraces. . . . Turn your eyes to the events of 1776. That memorial era produced a Declaration of Independence, and a Confederation, which when expounded liberally are, or ought to be, the basis of all the subordinate Institutions. They assert and define your rights--Study and learn them well, cherish the principles as an immense blessing, as a peculiar gift, bestowed on the favourites of Heaven . . . .

This was a clarion call to revolution. The squatters had witnessed their homes burned and their families scattered by the military so that the national debt might be funded. The revenue derived from the sale of the western lands would go into the pockets of speculators in government bonds. These adventurers had bought up the deflated debt from the impoverished soldiers and were now enjoying their steep rise in value. The squatters, on the other hand, had borne the brunt of the Indian war during the Revolution and had suffered far greater losses than had the soldiers of the continental line who had been up against a civilized foe. Their first petitions had been mild and begging, but they had been ignored. Now the squatters appealed to the revolutionary principles of 1776—an appeal which bordered on armed resistance.

The eastern interests in their trenchant alle--

---Hulbert, Ohio, Document XXIV.
giance to sound economy were alienating the West. Now the East had no choice; it must either satisfy the West's land-hunger and secure their claims with a liberal land system or risk a frontier revolt in favor of Spain or Great Britain.

The growing frontier restlessness might have been contained if further emigration west of the Ohio could have been curtailed. The military garrisons were spread too thin at this time, and the broad Ohio provided too many possibilities for infiltration. The formal governmental restrictions on trans-Ohio migration only intensified the West's land-hunger.

Without Heart's reinforcements, which were not expected until late in the summer, Harmar could do little but petition Congress. In a circular letter to the President of Congress and the Governor of Pennsylvania, Harmar warned that unless some speedy method was devised to prevent further migrations, "the country would soon be inhabited by a banditti, whose actions are a disgrace to human nature."\(^{28}\) In fact, Harmar suggested that it might already have been too late: there were 600 squatter families on the Muskingum and at the falls of the Hocking and 1500 on the Miami and Scioto Rivers; from Wheeling to the mouth of the Scioto, there was "scarcely one bottom on the river but has one or more families living thereon."\(^{29}\) Some authorities maintain that the popu-

\(^{28}\)Heart, pp. 64-65.  
\(^{29}\)Ibid., p. 65.
lation of the trans-Ohio area had reached 25,000 families--more than enough for statehood according to the Ordinance of 1784. 30

This land hunger was not confined to the squatters who actually took up claims west of the Ohio. Throughout the months of April and May Congress was deluged with a mass of petitions from law-abiding westerners who requested permission to take up claims. The first of these was a petition from some "reputable inhabitants on the eastern side of the River" who disclaimed any participation in Emerson's activities and asked for consideration when Congress passed an ordinance for the disposal of the national domain. Harmar courteously forwarded this remonstrance to the President of the Congress.

The second, from the restless frontiersmen of Washington County, Pennsylvania, was considerably less innocuous. In effect, their petition was an application for statehood under the Ordinance of 1784. The two states they proposed would not include the lands west of the Ohio, as such, but their activities indicated to Congress the general secessionist mood of the West. 31

Kentucky had provided the bulk of the settlers illegally residing on the Indian lands. A great many Kentuckians, however, were disposed to seek governmental approval before they crossed the River. Consequently,

30 Alden, p. 68.
31 Journals, XXVIII, 89.
429 heads of families drew up a general petition which was submitted to Congress in May, 1785. As the Kentuckians described their plight, they had no alternative but to seek new lands because the whole of the lands in the country (Kentucky) . . . are engrossed in the hands of a few Interest men, the greater part of which live at ease in the internal parts of Virginia . . .

They threatened to "become subject to the King of Spain," if Congress were to deny their request. Despite their thinly veiled threat, Congress denied their request, and at least one-third of the group took up claims on the west bank of the Ohio.32

The East was just as susceptible to the land-hunger as was the West. The Newburgh Associates now had no justifiable reason to be alarmed by the rash of new interstate, speculative enterprises which were sweeping the East. The most ambitious of these schemes was that of Nathaniel Sackett and Associates who proposed to rent for an ear of corn a year a parallelogram of land running across the Ohio between the Scioto and the Muskingum Rivers. Each male adventurer was to be granted 1,000 acres and 100 additional acres for each of his children. All land would be awarded on the basis of occupation; no absentee landownership would be permitted. The colony

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32 The story of the petitioning element in Kentucky has been told by Professor J. A. Robertson, Petitions of the Early Inhabitants of Kentucky, Filson Club Publication, No. 27; the petition is also printed in Hulbert, Ohio, Document XXXIII, 137-144.
would be organized upon military lines with the express purpose of defending the country against the excursions of British-led Indians. Squatters already occupying the land would be provided for: they would gain title to their improvements on taking an oath of allegiance to the United States. Upon settlement the colonists would form a plan of civil government "upon Republican principles" and be admitted into the Union. The influence of the Sackett Associates was sufficient to induce General Samuel Parsons to later seek to locate the Ohio Company's grant beyond the Scioto River.

A similar proposal for a military colony was advanced by Henry Delay and Associates. Their grant was to be along the Wabash River in the vicinity of Vincennes, Indiana. The colony would also be organized upon military lines in order to defend the West from the "enemy." After a period of martial law, the settlers were to establish a government "more friendly to freedom and compatible with republican principles ..." Land would be awarded on the basis of occupation only. No provisions were made for the squatters already occupying the lands.

Congress could not help but take cognizance of the increasing public pressure to open up the prohibited terri-

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33 The complete text of the Sackett Memorial is to be found in Hulbert, Ohio, Document XXVIII, pp. 114-123.

34 The Delay Petition to Congress is found in Ibid., Document XXIX, pp. 125-127.
tories. Yet it was still committed to the establishment of a system for an "orderly and progressive" settlement favorable to the East. Arthur Lee and his speculator friends feared nothing more than an actual attempt by the westerners to establish a government according to the principles set forth in the Ordinance of 1784.
CHAPTER IV

THE SQUATTER PROBLEM AND THE
ORDINANCE OF 1785

The growing public demand for lands west of the Ohio River convinced Congress it could no longer wait to formulate a system of land sales. The eastern emigrant, the frontier squatter, and the speculator all demanded a predominant share of the vast landed wealth beyond the Appalachians. Somehow Congress had to balance these contending interests and yet favor the "powers that be"—the eastern speculative interests. With the Lee-Adams junto entrenched in Congress, the "powers that be" would take precedent.

At the end of the Revolution, there was no uniform system of land disposal in the United States. By 1776 each state had in operation within its limits a system of land disposal which it had developed as a result of its own individual experience.¹ Despite minor deviations, the collective land systems of the states could either be classified as the "New England system" or the "Southern system." Each system was representative

of the extremes of the colonial experience and the nat-
ural geographic conditions of each section. Any new land
legislation would have to be founded upon the best of
these precedents.

The New England system provided for settlement by
townships. When the pressure of westward expansion neces-
sitated more land, a township of six miles square was sur-
veyed and granted to interested settlers en bloc with the
details of administration left to the townsmen themselves.

Rectangular surveys according to meridian lines
were not generally a part of the New England land system;
this was an entirely new concept introduced by the Ordi-
nance of 1785. In theory this system was to result in a
well-defined group of westwardly progressing colonies,
substantially self-sufficient and self-determining, with
clear title to all land. Improvement and settlement of
all titled townships was subject to strict legal pro-
visions. School and religious reserves were provided for,
and intruders and squatters were ordered off reserve lands
and punished as trespassers.  

The New England system's theory, however, was at
variance with its practice. The impression that the sys-
tem was based upon a non-commercial policy of creating
new towns by grants of land made in advance to approved
settlers is false. In reality, the lands were granted to
men of political influence with the government. Conse-

\[2\text{Ibid.}\]
quently there developed a system of absentee proprietorship in most New England states. By 1762 absentee proprietorship and speculation in state lands were leading features of the New England system.

The Southern system, while chaotic in theory, was much more realistic and equitable in practice. It recognized that the frontiersman and the speculator were more interested in the commercial than the agricultural values of land. Since the geographic and economic conditions of the South favored the development of the county rather than the town, their system was more applicable to the scattered pattern of settlement in the West. The small tracts of the New England town gave way to the large rotating tracts of the Southern planters. Moreover, most Southern states recognized pre-emption rights. This caused a dispersion of the population and a highly inaccurate and confusing survey of titled lands. Land disposal was by means of warrants which could be applied to any unappropriated land. Surveyors were ill-trained and relied upon natural objects rather than precise mathematical calculations to determine boundaries. Haphazard surveys led to innumerable lawsuits in the older tidewater areas and bloody land feuds in the frontier

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Yet it was a surprisingly flexible system adapted to the need of the frontiersman for large, commercially saleable grants. It freed him from the machinations of the seaboard government and gave him a great deal of free control over his property; this economic freedom was a prerequisite, in his mind, for a larger political democracy.

Jefferson's committee on land sales, which met periodically in 1784, considered the merits of both systems. The report they drew up was a combination of the survey method of the New England system and the administrative system of the South with its use of warrants, certificates, and caveats. On March 4 and 16, 1785, the report was read and referred to a committee of one member from each state. By this time, however, Jefferson was in Europe, and William Grayson filled his place. Rufus King of Massachusetts and William Samuel Johnson of Connecticut were added to the original committee.

The new committee's report, presented on April 14, adhered closely to the New England system. The rigid conditions of improvement and settlement which were an integral part of the New England system were conspicuously missing, thereby facilitating speculation.

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4Treat, The Origin . . ., p. 235.
5Ibid., p. 236.
6Journals, IV, 482, 500.
After a moderately successful attempt by the Southern delegates to modify it, the Ordinance was passed by Congress on May 20, 1785. Grid surveys according to meridian lines were to precede land sales. The townships were to be six miles square divided into sections one mile square. In each township reservations for schools and religion were to be provided. Four sections in each township and one-third of all mineral rights were to be reserved for the future disposition of Congress. The land was to be sold by townships at auction with one dollar per acre as the minimum price. Five ranges (later seven) were to be surveyed: one-seventh was to be withdrawn by the Secretary of War for honoring the debts to the veterans of the Continental line; the balance was to be put up for sale in the individual states according to the quotas of the preceding requisition. 7

The method of survey as embodied in the Ordinances of 1787 and 1785 was neither the original invention of Jefferson nor of one group of men; rather the various elements of this method were developed through colonial experience. However, Jefferson in proposing parallel and meridian survey for the new states and townships was reacting against the tendencies of the time and the best of frontier experience. 8 Contrary to the

7Treat, The Origin . . . , p. 237.
8Amelia C. Ford, pp. 70, 81-82.
belief of many historians, the rectangular survey system was regarded as immensely theoretical in Jefferson’s day. As the country west of the Alleghenies became well known, there was a tendency in the plans of new states to move away from such arbitrary lines toward national boundaries. The new governments projected beyond the Alleghenies were marked by irregular, natural limits. The frontiersman disliked the limitation of his claims to the rigidities of township lines which did not recognize variations in the terrain.

The strict adherence to rectangular surveys was summarily denounced and vehemently opposed by easterners and frontiersmen alike. An immediate movement materialized to revise this provision of the Ordinance. Grayson, aided by James Monroe, attempted to modify the system but failed. Washington wrote Grayson that,

the lands are of so versatile a nature that to the end of time they will not, by those acquainted therewith, be purchased either in townships or by square miles.10

Nathan Dane of Massachusetts, the state which has traditionally been thought to have provided the model of such a system, led the opposition to the survey provisions. His opposition was telling. On May 12, 1786, Rufus King on a motion seconded by Hornblower of New Jersey, moved that the surveyor should not be required to run all lines according to the true meridian. The

9Ibid., p. 70.
10Washington, X, 494.
rule of the true meridian was not reinstated until the passage of the Land Ordinance of 1796.\textsuperscript{11}

A second glaring flaw in the Ordinance of 1785 was its failure to admit the necessity of granting pre-emption rights. By 1785 the pre-emption principle was recognized as essential for the functioning of the land systems of North Carolina, Virginia, and Pennsylvania. The natural rights philosophy of the Revolutionary period seems to have been forgotten, and an aristocratic philosophy stressing propertied interests arose to take its place. The Congress might have profited by the experience of the states and established at once some method of adjustment and compromise with the persistent squatter. Instead the policy of summary removal by force "was adopted by the national landlord against all squatters indiscriminately."\textsuperscript{12} In doing so, the members of Congress provoked the irresistible squatter horde which had gained its point everywhere in the states and would eventually gain it in the halls of Congress. The federal legislators took the side of the privileged against the rising forces of liberal capitalism and political democracy. They pitted the old agrarian commercialism of Washington against the new agrarian entrepreneurialism of the frontier.

The frontiersmen of Pennsylvania, Kentucky, and

\textsuperscript{11}Amelia C. Ford, p. 76.

\textsuperscript{12}Robbins, p. 332.
Virginia might cross the Ohio and take up "tomahawk rights" on the national lands, but the prospective eastern emigrant was not ready to risk his fortune in such a dubious venture; he had to invest what meager capital reserves he possessed and purchase his lands in an orthodox method. Even this venture was impossible under the Ordinance of 1785. The smallest amount for purchase under its provisions was 640 acres at a minimum of one dollar an acre. The typical settler had no opportunity to buy even the poorest land at $640 a section. Even the squatter disliked a unit of land which he could not readily dispose of to later settlers.

The Ordinance of 1785 opened the door to speculators who had the capital necessary to purchase sections or townships at eastern auction and then parcel them out to farmers in smaller tracts on credit, thereby establishing a pattern of absentee proprietorship.

Jefferson never expressed a personal interest in the land system as he did in territorial government. Once removed from the American political arena, this disinterest turned into outright ignorance. For example, upon hearing of the enactment of the Ordinance of 1785, whose principles were totally repugnant to his views on landownership, he wrote to James Monroe from France: "I am much pleased with your land ordinance."  

13The Writings of Thomas Jefferson, IV, 86.
On June 1, 1785, General Harmar reported to Congress that the Ordinance of 1785 would be difficult to apply in the Ohio area. Although the squatters had been driven off for a distance of seventy miles below Pittsburgh, he declared, that the number beyond was "immense," and that "unless Congress enters upon some immediate measures, it would be impossible to prevent the lands from being settled." Harmer's letter was referred to a congressional committee consisting of William Grayson, McHenry, Charles Pettit, and Rufus King. They approved of Harmar's actions with regard to the squatters and ordered him to erect a fort at or near the Ohio between the Muskingum and the Great Miami. They hoped that a garrison at the very center of the squatter concentration would discourage further settlement of Congress' lands. This order became the basis for the establishment of Fort Harmar on the Muskingum.

With the passage of the Land Ordinance and the support of Congress for Harmar's anti-squatter stand, the entire problem seemed to be well defined and on the way to solution. However, in June the whole issue was again clouded by steadily deteriorating Indian relations. Although the Treaty of Fort McIntosh had abolished the Indian reserve northwest of the Ohio, the western tribes refused to accept the cession of their ancestral lands. The British traders and agents at Detroit were determined

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14Heart, pp. 71-72.
to encourage this notion thereby keeping alive the Indian resentment of white settlement. Already a council of Shawnee, Mingo, Delaware, and Cherokee had met at Detroit on May 18, 1785, and denounced the provisions of the McIntosh treaty. This increased hostility was reflected in a rash of Indian attacks on the settlements west of the Ohio. Harmar reported on June 21 that "the nations down the river have killed and scalped several adventurers who have settled on their lands." Such atrocities were allowed under the anti-squatter provisions of the McIntosh treaty, and hence Harmar was loathe to take any action against the savages.

Harmar's cavalier attitude toward the Indian massacres was not shared by Congress. The plight of the squatters provoked a sense of sympathy among a number of members of Congress and several attempts were made to "compromise" the severe anti-squatter stand taken by the speculative interests. Timothy Pickering advanced the idea in a letter to Rufus King that encroachment on public lands could be prevented by ceasing to purchase more lands for an indefinite period, as "few would be hard enough to settle on Indian ground." James Wilson, who had discussed the problem with Pickering, called for an

15 Report on the Canadian Archives, 1890, p. 53.
16 Heart, p. 74.
17 Life and Correspondences of Rufus King, ed. Charles R. King (New York, 1894-1906), 1, 104-105.
opposite course of action. Instead, the presence of the squatter should be recognized, he maintained, and land should be purchased from the Indians in order to avoid an Indian war when the squatter tide swept over the Ohio lands.\textsuperscript{18} The events of the same year and the following ones proved Mr. Wilson knew better than the New England federalist the true temper of the frontiersman.

Wilson's efforts, however, made very little impression on the dominant pro-speculative sentiment of Congress. Over his protestations Congress passed a new anti-squatter proclamation on June 15, 1785. It was basically a reiteration of the 1783 proclamation.

According to the Ordinance of 1785, surveys had to be made of the trans-Ohio lands before they could be placed on the market. The surveys were to be conducted by the Geographer of the United States, Thomas Hutchins, assisted by a corps of surveyors. Hutchins was a man of considerable experience. He had served in Colonel Henry Bouquet's expedition of 1764 and had fought in the Revolution with Green's southern army. A week after the Ordinance was adopted, Congress continued him in office for three years and chose thirteen surveyors from lists submitted by the state delegates.\textsuperscript{19}

\textsuperscript{18}Amelia C. Ford, p. 141.

\textsuperscript{19}The surveyors included Benjamin Tupper (Mass.), William Morris (N.Y.), Alexander Parker (Va.), James Simpson (Md.), Robert Johnson (Ga.), Isaac Sherwood (Conn.), Absolom Martin (N.J.), and Edward Dowse (N.H.): Treat, \textit{The National Land System}, p. 236.
Hutchins and his land survey are vital to our story for several reasons. First, the reports of the soils and forests of the West compiled by the survey team were awaited with insane impatience; for it was from such materials as Hutchins' "Account of the Soil and Timber in the Seven Ranges" (1785?) that land companies derived their material for their prospectus. These data were so vital that they were often guarded as closely as a state secret. Thus was to the great advantage of land companies to infiltrate these surveying parties with the hope of acquiring the first-hand knowledge of the country requisite for the location of a land claim.

Such an attempt was made by the Newburgh Associates. As above, the Association persisted after demobilization as a loose, informal organization maintained through correspondence and mutual participation by its members in various fraternal organizations. Rufus Putnam and Benjamin Tupper were still regarded as the unofficial heads of the organization. Putnam saw Hutchins' survey as a singular opportunity and managed to secure an appointment as the representative of Massachusetts in the corps of surveyors. In a letter written to Hutchins on June 11, Putnam frankly stated his intentions:

I must in justice to myself inform them (Congress), that a wish to promote emigration from among my friends into that country and not the wages stipulated, is my principle motive. 20

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20Hulbert, Records, I, xxxvii.
After being called to survey in Maine for his own state, Putnam was forced to withdraw from Hutchins' survey; but in his place he secured the appointment of his partner in the Newburgh venture, Brigadier-General Benjamin Tupper. Putnam also managed to secure a position in the party for his nephew, John Matthews, a competent surveyor in his own right.\textsuperscript{21} Winthrop Sargent, another Associate, was also included in the corps. This infiltration was a deliberate plan on the part of the Associates in order to get into direct touch with the two regions: Maine and the Ohio Valley.\textsuperscript{22} As Putnam had suggested in 1783, the Associates always had the alternative, if favorable terms were not obtained from the national government, to purchase lands from the states.

The first attempt to survey the Seven Ranges ended in a complete failure. Hutchins met the five northern surveyors at Pittsburgh on September 3, 1785. They were delayed there until September 22 by the severe Indian raids which periodically erupted throughout the summer of 1785. From September 23 to October 23 the surveyors ran an east-west line for some distance before the fear of Indian reprisals drove them off. By the time they had been persuaded by the military to continue the survey, the weather had become so inclement that they had to

\textsuperscript{21}Hulbert, \textit{Ohio, I, 187ff}, for the "Journal of John Matthews."

\textsuperscript{22}Hulbert, \textit{Records, I, xxxvii}. 
postpone further operations until the spring of 1786.23

The deteriorating Indian situation convinced Harmar that another campaign against the squatter communities was an absolute necessity. All the information he could obtain indicated that Armstrong's expedition had failed to displace any substantial number of squatters. In fact, as the radical petition to Congress indicated, another statehood attempt appeared to be underway. There is some evidence that Tupper and Harmar conferred about this possibility and came to the conclusion that it would be to their best interests to crush any such movement before it came to the attention of Congress.

The best antidote for any further squatter insurgency, Harmar reasoned, would be to plant a garrison in their midst. Such action had been authorized by Congress that summer and funds had been appropriated for its construction. On October 7 Harmar ordered Captain John Doughty and a company of artillery to move out of Fort McIntosh and to establish a fort at the mouth of the Muskingum. The same day Harmar was called to Philadelphia on personal business. Before he left, he received "a most humble representation" from some of the moderate squatters at Hoglin's Town who

purported that they were convinced they had behaved disorderly and praying . . . that they might only be permitted to stay a short time and gather their crops . . . .24


24The narrative of the Doughty-Heart expedition is to be found in Heart.
Further leniency, Harmar decided, was out of the question, and he instructed Captain Doughty to destroy the remaining squatter settlements.

On his way to Philadelphia, Harmar met Jonathan Heart's "First American Regiment" at Laurel Hill and ordered him to join Captain Doughty. This force reached Fort Pitt on October 12 and joined Doughty's troops three days later. Together they marched to the Muskingum, laying waste to the squatter settlements in their way.

The more radical elements among the squatter group were determined to fight back. An inaccurate but dramatic account of this opposition was left by Levi Munsell, one of Heart's troopers. In a letter to Ephraim Cutler fifty-six years later, Munsell presented an eyewitness account of one incident:

... They (the squatters) were ordered to move immediately off the public lands. They did not, and still refused to quit. They were determined to hold the lands by what is called "Tomahawk Improvements," as many (of them) had in Pennsylvania and Virginia. About one hundred men were set to burn them out. There were about 30 hunters with their rifles parading on the bank of the river with every appearance of an intention to defend themselves. ... Our troops landed and marched up to them and told them if they wanted to save anything that was in their cabins, they might have so many minutes to do it in. They moved what little plunder they had out of them and the cabins were filled with rails and other combustibles and the troops set fire to them and burnt them up...  

Heart and Doughty erected a stockade at the mouth of the Muskingum which they named "Fort Harmar." It was

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25Cutler, I, 133.
not primarily a precaution against Indian attack but was to be used against the white interlopers. Under the command of Captain Heart, Fort Harmar passed a quiet winter.

Butterfield has indicated that not all the squatters were driven to the east bank of the River. Heart's troopers were too preoccupied with the construction of fortifications to serve eviction notices to all the illegal settlements. Moreover, at the first opportunity large numbers of those who had been ejected from their lands returned and rebuilt their cabins. Yet the more radical elements among the squatter group were so widely dispersed that they were never able to achieve any political unity.

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26 Ibid., p. 507.
CHAPTER V

THE OHIO COMPANY

From 1783 to 1786, the Newburgh Association had led a shadow existence. The refusal of Congress to compensate the Army's arreared pay in western land had not ended their efforts; the Associates maintained a loose sense of solidarity through mutual correspondence, participation in various fraternal organizations, and the purposeful efforts of their advocates in Congress. They had prevented the formation of the various anti-speculative state governments in the area in which they had hoped to locate their grant, and had secured a number of congressional enactments in their favor. The Association, however, could not hope to hold off the aggressive squatter forever. The year 1785 had been decisive: it had shown the military to be incapable of snuffing out the squatter threat; and, it had marked the stirrings of the first "pro-squatter" movement in Congress under James Wilson. The new year thus presented the Associates with two alternatives: either to organize into a definite land company and to seek a land grant from Congress or to give up all claims to the military bounty lands.

Three developments during 1785 made the former course possible. First, the cession of Indian titles to
the trans-Ohio lands and Hutchins' survey enabled Congress to dispose of its western lands. Second, the dominance of Congress by the Lee-Adams juncto brought into key governmental positions men favorably disposed to the Association's scheme. Finally, the information gained by Sargent, Matthews, and Tupper in their western ramblings assured the location of a lucrative grant.

General Benjamin Tupper returned to Massachusetts in the late fall of 1785. By January, 1786, he was at Rutland, the estate of Rufus Putnam. General Putnam had just returned from inspecting the quality of the Maine lands, and the partners were anxious to compare notes. Details of this discussion remain unknown, but, as early as 1784, Putnam had written Washington that Tupper had agreed to accompany him to the Ohio, "the moment the way is open." General Tupper's glowing report of the Ohio lands was all that was needed to end the question of where the Associates would settle their grant.1

It was a tradition among the Associates in the later years that the two men spent the winter night of January 9-10 before the generous fireplace in Putnam's kitchen outlining the scheme which was later to become the Ohio Company. However, the real proposals which resulted in the formation of the Ohio Company had been roughly outlined in the Newburgh Petitions and worked into specific form in the correspondence and discussion

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1Hulbert, Records, I, xl.
carried out in the Order of Cincinnati and the American Union Lodge of Masons.

The result of the Tupper-Putnam soiree was an advertisement entitled "Information" which they ran for several days in late January, 1786, in the leading newspapers of Massachusetts. The advertisement was in the form of an address by Putnam and Tupper to the officers and men of the late Continental line, informing them that under the Ordinance of 1785 they were entitled to take up lands in the West. It stated that they with other Associates had inspected the region and found the lands of the Ohio Valley to be far more fertile than the hard-scrabble fields of rock-bound New England. It announced that Tupper and Putnam were determined to form an Ohio Company exclusively of the residents of the Commonwealth of Massachusetts. It further proposed that county meetings were to be held of all qualified citizens on Wednesday, February 15, 1785, to elect delegates to perfect the scheme. The delegates so elected would then meet at the Bunch-of-Grapes Tavern at Boston on March 1.

The plan was well received, and in consequence of the individual county meetings, the delegates convened at the appointed place on schedule. Of the eleven delegates sent to the convention four were signers of the Newburgh petition: Tupper, Putnam, Patterson, and Williams. Sargent would have signed, but he was absent.

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2The full text of "Information" can be found in Cutler, I, 179.
from the Newburgh proceedings, and the same was probably true of Cushing.  It is thus evident that the Newburgh idea, perpetuated among the veterans of the Continental Line banded together by military and fraternal ties, became the basis for the Ohio Company.

Putnam was the chairman of the meeting and Major Sargent was secretary. The glowing description of the Muskingum and Scioto river valleys given by Tupper, Putnam, and Sargent convinced the delegates that their grant should be located in the "Western Eden." A committee consisting of Putnam, Manasseh Cutler, Colonel Brooks, Winthrop Sargent, and Cushing was then appointed to prepare a draft of a constitution for the proposed company.

Two days later, the committee read its report: the purpose of the company was to procure a fund of Continental debt certificates not exceeding $1,000,000 in 1,000 shares of $1,000 apiece to be applied to the purchase of lands in the western territory. The proposed grant was to be located provisionally in the Scioto-Muskingum area. The owners of every twenty shares were to form a "division," and each division was to choose an agent. The agents were then to elect directors and a treasurer for the company.

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3Hulbert, Records, I, xlvii.
4Cutler, I, 180-181.
5John Bach McMaster, A History of the People of the United States from the Revolution to the Civil War (New York, 1904), I, 506-507.
On March 4, the convention resolved that Colonel Hull, Captain Mills, and Major Sargent were to form a committee to transact the necessary business of the Ohio Company until the directors were chosen. In carrying out their duties, they were to exert to the fullest their personal influence and liberally distribute the funds allotted to "interest" important federal officials in the project:

They are to open a correspondence with any gentleman whom they may think likely to encourage the company's designs and forward the completion of the funds proposed in such a way and manner as they shall judge calculated to effect the same.\(^6\)

In addition to bribery, the temporary committee had the more pleasant task of keeping in contact with the agents soliciting membership subscriptions. It also decided that a meeting for the election of company director would be held a year later after an adequate number of shares had been sold. The business was then completed; the convention dismissed; and the individual delegates hurried home to spread the news of the new venture.

After the convention Benjamin Tupper faced the unpleasant task of completing the survey of the Seven Ranges. With the advent of spring, 1786, the attention of Congress turned again to the unfinished survey. Congress had received rumors of the Ohio Company's ambitious scheme; hence they were anxious to complete the survey with utmost dispatch so that the lands might be put up

\(^6\)Cutler, I, 186-187.
for such a sale. By 1786 the impoverished Confederation was desperately in need of funds, and the possibility of such a large purchase was excitingly attractive. On May 9 Congress instructed Hutchins and surveyors to continue their survey "providing they do not proceed further northerly than the east-west line mentioned by the Ordinance of 1785." 7

Hutchins and his corps of surveyors arrived in Pittsburgh on July 25. He was delayed there for several days by the refusal of his assistants, led by Tupper, to continue into Indian country unless they were accompanied by a detachment of Harmar's troops. The veteran Hutchins scorned such luxuries but admitted the justice of their demands; the Indian relations along the Ohio had deteriorated to the point of outright warfare, and any rash act on their part could plunge the whole frontier into a bloody conflict.

Faced with the twin threat of the squatters and the Indians, Harmar hesitated to overextend his already inadequate force to protect the surveyors. Already on July 13 he had authorized an expedition under the command of Captain John F. Hamtramck to suppress a renewal of squatter insurgency. However, a compromise was reached whereby Hamtramck and his three companies of infantry were ordered to provide military security for the survey while, at the same time, they were evicting

7 Journals, XI, 55.
the squatters.

Such an arrangement was a great relief to Hutchins. It was a constant fear of Congress that the Indian lands might be pre-empted before they could be surveyed and put up for public sale. Hence, great pressures were brought to bear on the surveying team to complete their task as soon as possible. So imminent was the pre-emption threat that they felt a second failure "would be calamitous indeed . . . ."8

It was quite possible that the worst of congressional fears might be realized. Through the diary of John Matthews, Putnam's surveyor nephew, one receives the impression that the work of the Indian Commission in rooting up the squatter settlements was far from completed. Hundreds had drifted back after Heart's expedition. Harmon Greathouse had established a settlement in Mingo Bottom; and the settlers were so entrenched near the present site of Stuebenville, Ohio, that their peach orchards had reached maturity and had borne fruit in the spring of 1786.9 Again, for the fourth consecutive year, the squatters threatened to pre-empt all the best bottom land along the northwest bank of the Ohio.

Hamtramack moved his troops to the seat of the problem. After destroying Harmon Greathouse's settle-

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8 Hutchins to the President of the Congress, July 22, 1786, in Hulbert, Ohio, I, Document XXXIV, 146-147.

ment, he established Mingo Bottom as his base of operations. From here his troops ranged up and down the Muskingum and Scioto river valleys in a "reign of terror." His raids caught the squatters completely off balance. The Armstrong and Heart expeditions had been brief and incomplete, thereby enabling the squatter community immediately to re-establish itself relatively unscathed by the whole experience. Hamtramck's repeated raids, however, gave the squatters no respite; there was no escape from his diligent troopers who ferreted out and destroyed even the most secluded settlements. Consequently, the squatter's political solidarity, which had made concerted opposition possible, was shattered. Although the squatter community was atomized, it was not defeated.

Since the presence of federal troops at Mingo Bottom made open resistance impossible, the squatters launched guerrilla sabotage against the survey crews. Their efforts were partially successful. On August 4 Harmar complained to the Secretary of War that so many obstacles had been thrown in the way of the survey, he feared the execution of the whole Ordinance was imperiled.10 Despite these impediments, four ranges were surveyed by February 1, 1787, and the plats were submitted to Congress the following April. The entire

10St. Clair, I, 16n.
survey of the Seven Ranges was not completed until 1800-1801.11

Harmar was able to cripple the squatter opposition, but his military resources were too extended to deal with the rash of Indian terror which erupted along the Ohio and its tributaries during the summer of 1786. By September the Indian violence had reached its peak. Wheeling, Virginia, and lesser settlements on either bank of the Ohio had been ringed with redoubts, and the small contingent of United States troops was hard-pressed to offer adequate protection. Already a small skirmish had brought the deaths of twelve whites and an equal number of Indians.12 In such a turbulent atmosphere the squatter-speculator conflict was momentarily suspended.

Faced with the possibility of another Indian war, Congress directed that a treaty be negotiated with the Shawnee and other western tribes who had disapproved of the Treaty of Fort McIntosh. In October the Indian Commission was dispatched to Fort Finney on the lower Ohio to conduct negotiations. The vacancy on the Commission, left by Arthur Lee's appointment as Treasurer, was filled by General Samuel Holden Parsons, a ranking Newburgh Associate. Parsons was one of the many ex-Revolutionary War veterans who had been impoverished by the war. This scion of Connecticut gentry was never able to reconcile


12Hulbert, Ohio, Document XXXIX, p. 165.
himself with his reduced status. Like others of his class, he turned to the West and the vast horizons of landed wealth to recover his lost fortunes.

Parsons by his own admission was an opportunist; he wished to recover his fortunes, as did other Associates, through political patronage and speculation in land. Through the influence of his Congressional patron, William Samuel Johnson of Connecticut, he obtained his position on the Indian Commission. From the outset, he was primarily concerned with the "additional" profits to be gained from this appointment:

Simply the fees of the office would not tempt a man to undergo the fatigue and risk, but, as it stands in connection with the future disposal of land, I think it may be worth trying especially as land companies may be disposed to make a compensation and army locations are much dependent upon a full knowledge of that country.\textsuperscript{13}

The Indian Commissioners were to rendezvous at Fort Finney at the mouth of the Miami River in October. Parsons traveled as far as Limestone, Kentucky, with a young congressman, Colonel James Monroe. He was delighted to find that many of his views on the national domain coincided with those held by this personable young aristocrat. They were especially shocked by the great numbers of American migrating to Detroit and taking up lands under British protectorship because they could

obtain none in the United States. Monroe concluded that the question with regard to western territorial government was:

Shall it be upon colonial principles, under a governor, council and judges of the United States, removable at a certain period of time and they admitted to a vote in Congress with the common rights of the other states, or shall they be left to themselves until that event.

He decided that the latter course would be a highly undesirable policy. Hence, both men came away from this experience convinced the West needed a strong government in order that property rights might be secured and the West kept under American rule.

Parsons reached Fort Finney on November 21, 1786. After a month of waiting, a knot of sullen chiefs was coerced into negotiations by Harmar’s troops. After three weeks of negotiations, marked by threats from the Indian Commissioners and grudging concessions by the Indian, the Treaty of Fort Finney was signed on January 31, 1787. It was immediately repudiated by the Shawnee as soon as they returned to the safety of their villages. The Indian problem remained.

Parsons may have been an incompetent Indian Commissioner, but he was far more successful in his efforts to locate profitable land sites. He left no records of his speculative activities; but Salmon P. Chase in an

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14 Ibid., p. 475.

early issue of the North American Review related the following anecdote which supposedly originated with General Rufus Putnam:

After General Parsons had examined the country immediately about the junction of the Muskingum with the Ohio, he proceeded up the valley of the former that he might have a view of the interior. Having gone many miles, he met one of the Zanes, four of which family were among the most noted of the frontier rangers. Zane was probably engaged in salt-making, at Salt Creek, which runs into the Muskingum about ten miles below the present town of Zanesville. Parsons, well knowing that the man he had chanced upon knew, from an acquaintance of fifteen years or more, the whole of what now forms the state of Ohio, asked his advice touching the location of the purchase which the Ohio Company proposed to make. Zane, having pondered the matter, and consulted with some of the Old Delaware Indians that lived thereabout, recommended the General to choose either the Miami or the valley of the Scioto, in preference to that which he was examining. What it was that made Parsons doubt the good faith of the pioneer, we know not; but he came to the conclusion that Zane really preferred the Muskingum to any other point, and wished to purchase it himself, when the sales should begin, in a few months. This impression did away what little doubt still remained in his mind. . . .

This incident could not have possibly occurred when Parsons descended the Ohio in the autumn of 1786. In a letter to President Stiles of Yale, October 2, 1786, he related how he stayed at Fort Harmar for two days and examined the ancient ruins of Campus Maritus. Salt Creek, however, lies about sixty miles up the Muskingum and the average speed of the Parson party was fourteen to seventeen miles per day with the current; hence it would seem impossible for Parsons to have reached Salt Creek in a

meager two days. Equally defeating is the fact that Parsons had already met Zane at Wheeling on November 3 and inquired about some archeological artifacts; hence, Zane could not have been up the Muskingum that month.

It is probable, however, that Zane traveled up the Muskingum in the spring of 1787 to replenish his salt supply which had been depleted over the winter. A study of Parsons’ activities that spring reveals that he too could have explored the Muskingum valley for several days, possibly to the mouth of the Licking (Zanesville, or Salt Creek).

This anecdote might be apocryphal; but Parsons himself admitted that he had examined the lands northwest of the Ohio and found them equal in fertility to the best Kentucky lands. He undoubtedly drew up maps and possibly a number of crude plats of the Scioto and Muskingum valleys as bargaining points with any interested land companies. Parsons’ first loyalty was, however, to the Ohio Company; hence he enthusiastically related his findings to his fellow Associates at Pittsburgh. Captain Jonathan Heart, fellow Associate and commander of Fort Harmar, in return relayed these findings to Colonel Wadsworth:

... He (Parsons) has been low as the falls of the Ohio and is delighted with the country; indeed the richness of the soil, agreeableness of situation and extent of valuable territory ceded to the

17 Hall, Parsons, p. 491.
United States by the late treaty, is scarcely conceivable. 18

Parsons' knowledge of the Muskingum and Scioto valleys coupled with the information which Tupper, Matthews, and Sargant had gathered while surveying the Seven Ranges was a prerequisite for any successful speculation. Enough information had been gathered about soil types and land locations to serve as a basis for the location of a land grant. John Matthews' Journal is the most careful report of the Ohio country's soils and climate to come out of the expedition. 19 Matthews' Journal leaves the impression that his main concern was town sites rather than survey lines. While other surveyors, such as Hutchins', recorded such natural phenomena as timber stands and water resources, Matthews was concerned solely with detailing farm sites and soils specifically suited to certain crops. His Journal is such an astute piece of geographic analysis that it became a veritable blueprint for the Ohio Company's grant. In fact, it later became the basis for a guide-book which the Ohio Company published for prospective investors and settlers; "perhaps no influence exerted equal magnitude in securing

18 Captain Jonathan Heart to Colonel Jeremiah Wadsworth, April, 1786, in ibid., pp. 480-481.

19 Matthews' Journal is to be found in Heart; an analysis of Hutchins' life and work is to be found in Thomas Hutchins, A Typographical Description of Virginia, Pennsylvania, Maryland, and North Carolina, ed. Frederick Charles Hicks (Cleveland, 1904), pp. 7-51.
shareholders in the Ohio Company. 20

Since few of Tupper's papers still survive, little is known of the amount and character of the information he received. However, records show that his surveying activities in and around Mingo Bottom brought him into direct contact with the aggressive squatters. He realized that unless the Ohio Company acted quickly, there would be very little land left for a congressional grant. This would have been a tragedy, for he was exceedingly impressed with the quality of the Ohio lands:

The lands in that quarter are of a much better quality than any other known to the New England people; the climate, seasons, products etc. are in fact equal to the most flattering accounts that have been published of them. 21

Tupper and the surveyors remained in Ohio County, Virginia, until February, 1787, recording the results of their survey. After completing his work, Tupper hurried back to Massachusetts for the March election of the Ohio Company's board of directors. The information he had obtained greatly exceeded that gained during the previous survey, and he was anxious to share it with his fellow associates.

The second meeting of the Ohio Company convened March 8, 1787, in Boston's Brackett Tavern. The revelry which naturally accompanied tavern meetings was heightened by the Company's good fortune. Tupper and Matthews

20 Hulbert, Ohio, p. 119.
21 Cutler, I, 179.
brought back glowing reports of the Eden beyond the Appa-
lachians, and Parsons' report, delivered by proxy, con-
firmed their findings. But, Tupper's report of the
squatter menace added a tone of somber resolve to the
festivities. Many Associates feared that this threat
would seriously hinder the subscription drive. Already
250 shares of company stock had been sold, and it was
reported that there were many affluent New Englanders,
inclined to become adventurers who . . . were . . .
restrained only by the uncertainty of obtaining a
sufficient tract of country collectively for a
great settlement. 22

This uncertainty was only increased by news of the unset-
tled administration of the territory.

It is evident that any purchase would have to be
concluded with utmost dispatch. Accordingly, General
Samuel Parsons, General Rufus Putnam, and the Reverend
Manasseh Cutler were unanimously chosen directors of the
company and given the task of making an immediate appli-
cation to Congress for a private purchase of land in the
Muskingum-Scioto area. 23

Dr. Manasseh Cutler was confined to his home with
an inflammation of the throat and could not attend the
meeting. His influence and money, however, were not
absent. Of the 250 shares subscribed, he obtained over
100, thus securing his appointment to the board of direc-
tors. 24 Tupper, Sargent, Cutler, and Putnam's combined

22Cutler, I, 191-192.
23Hulbert, Ohio, p. 507; Cutler, I, 192.
24Ibid.
shares (423) gave them a controlling share of the economy.

A native of Ipswich, Massachusetts, Dr. Cutler had been trained for the bar, but later joined the ministry. His real calling, however, was politics and economic intrigue. Cutler was renowned as a man of great intellect, sound judgment, and boundless energy, but "in the pursuit of his aims not overly careful of the means used." His rabid interest in science and technology and deftness in financial matters made him comparable to Benjamin Franklin. Every page of his extensive diary bristles with his distinctive personality. It is filled with minute descriptions of natural and scientific phenomena, yet interspersed among its leaves is a running account of every half-penny spent in his life.

Tupper and Putnam had revived the Newburgh scheme in the form of the Ohio Company, but Cutler was destined to shape it according to his own aims. The portions of Cutler's diary which cover the period of the Company's founding are missing, but he later recorded he had long "entertained a high opinion of ye lands in ye Western Country," and when persuaded to attend the Bunch-of-Grapes meeting, he was determined "to join ye association . . . without . . . taking an active part." The role Cutler played at the Bunch-of-Grapes meeting has been lost with his records; but it appears that he had

\[25\]McMasters, History, I, 507.

\[26\]Charles M. Walker, History of Athens County, Ohio (Cincinnati, Ohio, 1869), p. 250.
long been dissatisfied with his ecclesiastical position and was looking for a new profession:

I had suffered exceedingly in ye war, and after it was over, by paper money and ye high price of articles of living. My salary small and family large, for several years, I thought ye people had not done me justice, and I meditated leaving them. Purchasing lands in a new Country appeared to me to be ye only thing I could do to secure a living to myself, and family in that unsettled state of public affairs. 27

If the Ohio venture was to be profitable, it had to be shorn of the utopian, military colonization ideas it had inherited from the Newburgh Association and become a genuinely speculative operation. The Association had originally begun as an interstate organization to secure the bounty lands promised the veterans by Congress. Cutler realized that any system which allowed every penniless veteran to claim as much land as his bounty certificates warranted could not be conducive to the accumulation of capital or to private gain. Thus, he began to encourage the gradual infiltration of the Company by men of "very considerable means" who might provide the capital to float an expanded speculation. To a large extent the capital would come from New England merchant capitalists and large commercial farmers whose operations had been crippled by the post-war depression, and hence were seeking a means to recoup their declining fortunes. This infiltration tactic was anticipated as early as March 16,

27"Ultimatum to his Ipswich Church, 1787," in the Davies' Manasseh Cutler Collections, Ohio and Scioto Company, quoted in Walker, History . . . , p. lvii.
1787:

A large number of very considerable property and respectable characters have assured me that, as almost every kind of business is stagnated here, they would become adventurers in our company, and immediately remove on to the lands, providing they could be purchased on terms as advantageous as those sold by our state.  

The Ohio Company petitioned Congress in the name "of the poor wretched veterans," but by 1787 the Company had become a virtual monopoly of sixteen men of whom Cutler held a plurality of shares. The combined shares to Tupper, Sargent, Putnam, and Cutler gave this inner coterie effective control over all Company policy. It was quite clear that the interests of the "poor veterans" were entirely forgotten.

The Ohio Company had become a virtual creature of the New England interests; now Cutler was determined to populate the Company's prospective lands in the West solely with Yankee stock: the Company would be a sectional organization serving sectional interests. In a letter to Nathan Dane, Cutler indicated that the settlers on the proposed tract of land had to be from the northern rather than the southern states, since it would mean that they would "be men of more robust constitutions, inured to labor, and free from the habits of idleness."  

Cutler believed that the success of the Ohio speculation depended upon the realization of two great goals:

\[\text{28Manasseh Cutler to Nathan Dane, March 16, 1787, in Cutler, I, 945.}\]
\[\text{29Ibid.}\]
first, the Company had to procure land on terms that would be acceptable to the Association; secondly, the Company had to secure a system of territorial government which would protect their property interests by depriving the squatters of self-determination. The realization of both goals demanded the modification or outright abolition of the Ordinances of 1785 and 1787.

The procuring of a large tract of land from Congress could only be accomplished by overturning the provisions of the Ordinance of 1785. The high price which Congress had set upon the Seven Ranges under the Ordinance ($640 per section) tended to hamper "subscriptions for the Company and . . . hitherto prevented many valuable persons from becoming adventurers." At such prices the Ohio Company could not compete with neighboring states which could sell their western lands for a half dollar an acre.

The precise system of surveys outlined by the Ordinance was also an obstacle to the Company's scheme. Cutler hoped the Company might be allowed to survey its own lands, thereby allowing indiscriminate settlement on the purchase. This was contrary to the Ordinance which demanded surveys prior to settlement. In fact,

30 Manasseh Cutler to Winthrop Sargent, March 16, 1787, in Cutler, I, 145.

31 Manasseh Cutler to Nathan Dane, March 16, 1787, in Cutler, I, 146.
this provision was one of the virtues of the act which Cutler had openly lauded: "prior surveys and progressive settlement" was the East's formula for "peace, order, and Good society on the frontier." The key to this apparent contradiction may lie in an opinion he expressed at the Brackett Tavern meeting: "... if Congress should prefer surveying the lands at their own expense, I should not be willing at present to offer more than a half dollar per acre." 

Quite possibly, as was the practice of many land companies, the company survey would be somewhat inaccurate, taking in a little more land than the company had actually purchased. Thus, an accurate government survey would, in the eyes of many speculators, lower the price of the land to be purchased. In the end, the Ohio Company's purchase did take in much more land than the directors had actually bargained for.

The Newburgh plan had provided for the establishment of a state government in conjunction with the land purchase. The same resolve was carried over into the Ohio Company. Cutler naturally wanted to protect the Company's $1,000,000 investment by securing a system of territorial government which would further their interests: "If we venture are all, with our families, in this enterprise, we must know beforehand what kind of foundations we are to build upon." 

Cutler believed it neces-

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\[32\text{Ibid.}; Massachusetts' holdings in Maine were frequently alluded to by the directors as an alternative to purchasing land on the Ohio River.\]

\[33\text{Cutler, I, 342.}\]
sary to displace

the individual and isolated adventurer . . . with
a more organized effort to plant those principles
that forever provide the basis of future govern-
ment and social well-being. 34

No speculator with large tracts of land could survive
long under a government dominated by small, land-hungry
entrepreneurs. But in the end, most of the Ohio settle-
ment was done by individuals or small groups of settlers.
The major organized schemes—the Scioto, the Gallipolis,
and eventually the Ohio Company—were at best moderate
successes.

General Samuel Parsons was at home in Middleton,
Connecticut, when notified of his election to the board
of directors of the Ohio Company. A few days later, the
directors requested that he make a personal application
to Congress for a grant of land on the west bank of the
Ohio. Parsons seemed the perfect candidate for the task:
he was well acquainted with the Ohio Valley, especially
the Muskingum Valley, and he had a strong patron in Con-
gress, William Samuel Johnson, whose assistance would be
invaluable.

Parsons was quick to make good use of Johnson's
influence, and tie his interests to those of the Company.
In a letter dated April 23, 1787, Parsons asked Johnson
to prepare the way for his application by consulting with
"General Varnum, Mr. King, Colonel Carrington, and 'the
President.'" Parsons also hinted that he depended upon

34 Ibid., p. 130.
Johnson and a "Mr. Mitchell" to join the Company when they thought it discreet. The squatter secessionist movements were alluded to as the main reason why Congress should allow the grant.\textsuperscript{35}

Early in May Parsons proceeded to New York to submit his petition to Congress. When he reached city hall, he discovered that the "Monroe Plan" for territorial government was being considered. On May 9 the plan had its second reading after which it was engrossed to be read and passed upon the next day. Parsons immediately placed before Congress his memorial for purchase. It provoked widespread interest among the members of Congress. In the afternoon the complete memorial was submitted to a committee composed of Edward Carrington, Rufus King, Nathan Dane, James Madison, and Egbert Benson.\textsuperscript{36}

The Monroe plan was never called up for its third and final reading, for it was at this juncture that the Ohio Company began to assert direct and decisive influence on the land legislation of the Confederation. Prior to this time the influence of the Newburgh Associates had been indirect, though influential. This influence is amply manifest in the events which led up to the Monroe Plan.

\textsuperscript{35}Samuel Holden Parsons to William Samuel Johnson, April 23, 1787, in Hall, Parsons, pp. 497-498. The Mr. Mitchell mentioned is probably Nathaniel Mitchell, delegate from Delaware.

\textsuperscript{36}Ibid., p. 498.
Until 1784 Jefferson exercised the greatest influence upon the evolution of western land legislation. But in May, 1784, he was assigned to America's ambassadorial post at Versailles. Monroe, his younger colleague from Virginia, stepped into Jefferson's position as mediator of the western interests. But Monroe, less interested in western affairs, was consequently abysmally misinformed about the Ohio country. He was sufficiently interested in the national domain, however, to visit the trans-Ohio area in the fall of 1785. 37 From August to December, 1785, Monroe accompanied the Indian Commissioners to Fort Finney and returned to Virginia by way of Lexington, Kentucky. His experiences with the rebellious Indian tribes at Fort Finney and the equally insurgent squatters (as described by Parsons and the Indian Commissioners) convinced him that the democratic system of western government as embodied in the Ordinance of 1784 was not only inadequate but dangerous. The interests of the Ohio Valley, Monroe maintained, could not be attached to those of the Atlantic slope; therefore, "the formation of many states would not tend to preserve the ascendancy of the East." Not only would the Ordinance overshadow eastern interests, but the "unproductiveness of western soils" would cause the slow development of the country, and consequently the slow formation of the western states them-

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37See text above, p. 117.
selves. Monroe was clearly not a student of western geography.

When he returned to Congress in the spring of 1780, Monroe favored reducing the number of western states to be formed out of the national domain. The Ordinance of 1784 had provided for an unwieldy division of the western territories into ten new states with perfectly rectangular boundaries. Since Jefferson in framing the Ordinance did not take cognizance of the realities of natural geographic boundaries in the West, this provision was most unrealistic.

Monroe's resolve, however, introduced a problem. The congressional resolution of October 10, 1780, which had limited the future western states to an area of 150 square miles was still binding because it had been incorporated into Virginia's deed of cession. After obtaining massive support in Congress, Monroe moved to refer the question to a grand committee. The multitude of western states provided by the Ordinance of 1784 had always been a source of irritation for many congressional federalists. Hence, Monroe had little difficulty mustering enough support for his proposals:

I find the most enlightened members here ... well inclined to the revision of the compact between the U. S. and Virginia respecting the division of

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38 Barrett, p. 33.

39 Ibid., pp. 34-35.
the country beyond the Ohio. 40

His lobbying had its desired effect: on March 24, 1783, a grand committee recommended that the trans-Ohio country be divided into not less than two nor more than five new states, and that Virginia should revise her articles ofcession to fit the recommendation. 41

Monroe's machinations actually perfected the Ordinance of 1784. The only impractical provision of the Ordinance was its division of the western territories into ten pre-existing states which neither fitted the geography of the area nor the needs of the actual settlers. If this resolution had been adopted as an integral part of the Ordinance, there can be no doubt that it would have effectively established the broad outlines for the formation of democratic states on the frontier. Monroe, however, as a federalist, was neither sympathetic with the West's democratic tendencies nor cognizant of its specific problems and needs. His actions "meant more and portended a complete revision of the law for the West." 42

Monroe seemed determined to abolish the Ordinance of 1784 and bring the West under the strict control of the Confederation government. A committee was appointed

40 James Monroe to James Madison, December 19, 1785, quoted in George Bancroft, History of the Formation of the Constitution (New York, 1886), 1, 472.

41 Journals, IV, 664.

42 Barrett, p. 36.
on the motion of Nathan Dane of Massachusetts for the reconsideration of the government provisions of the Ordinance of 1784.\textsuperscript{43} Heading the committee was James Monroe who was assisted by William Samuel Johnson, Rufus King, and Charles Pinckney.\textsuperscript{44} The special needs of the Ohio Company must at least have been recognized if not taken into consideration by the committee in framing the new system of government... James Monroe had, of course, talked at some length with Tupper during his western journey in 1785. Nathan Dane was a boyhood friend and intimate of Manasseh Cutler.\textsuperscript{45} All during March, Cutler had corresponded with Dane and urged him to consider the Ohio Company's place in the new western government. William Samuel Johnson, on the other hand, was always quick to consider the interests of his friend, Samuel Parsons.

The committee's report of May 10, 1786, was a radical departure for a new scheme of government; it gave specific form to the amendment Jacob Read had proposed in the Ordinance of 1784 debates. According to the terms of the report, Congress was to appoint a governor, a council, two judges, a secretary to the council, and other officials for the administration of any territory so designated by

\textsuperscript{43}According to Bancroft, sometime in April for which he cited the \textit{Papers of the Old Congress}, XXX, 85.

\textsuperscript{44}Barrett, p. 36.

\textsuperscript{45}Cutler, I, 8: Cutler apparently befriended Dane while teaching college at a divinity school in Dedham, Massachusetts.
Congress. Common law and chancery jurisdiction were given to the court, and a pre-existing code of laws was to be applied to the new territories. There would be two distinct stages of government in a territory's evolution to statehood. According to the provisions of the Ordinance of 1784, the temporary organization of the district would be made by its inhabitants convening in a democratically elected assembly for that purpose. But the resolution of 1786 specified congressional appointment of officers who would rule the territory unassisted and unhampered by any popularly elected assembly. In the second stage when the combined population of the territory surpassed 20,000 male inhabitants, a legislature would be elected within the territory to which would be added the governor and his council to form a general assembly. The delegate with a half-privilege, as provided for by the Ordinance of 1784, was retained. The prerequisite population for entering the Confederation and the method of dividing the West into states was retained, but no mention was made of slavery. The Monroe resolution effectively overturned the democratic provisions of the Ordinance of 1784, and in its basic outlines, became the basis for the Ordinance of 1787. In this sense, it

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46 See above Chapter II, p.

47 Bancroft, II, 101; Barrett, p. 38: Monroe was rather ill and absent when the provision for slavery came up before the committee. Bancroft believes that Monroe was avoiding difficulties, but Barrett hardly thinks this inference is warranted.
represented a victory for the conservative and anti-squatter elements in Congress.

Monroe then pushed to renew the motion of March 24, 1786, which had diminished the number of new western states. A grand committee considering the topic again reaffirmed the March decision. This touched off a lengthy debate between the southern delegates who favored a maximum number of western states, and the northern delegates who wanted a minimum. There was a great deal of sympathy in the South for the western desire for free navigation of the Mississippi and a goodly array of states. The South also believed that a maximum number of western states would increase the southern vote in Congress since the native Kentuckians and the Ohio squatters were mainly refugees from Virginia and the Old Southwest. The northern states, on the other hand, had western lands of their own, and feared that settlement of the West would draw away their population and diminish their power in Congress. The North regarded the West suitable for speculation but not settlement. Thus the statehood question which had begun as a struggle between two contending economic interests was rapidly becoming a sectional issue.

The cleavage between North and South led to the general failure of the Monroe Plan. Both sections could agree to the general proposition to reduce the total number of western states, but they could not come to any conclusion about the exact number.48  Shortly after this

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48 Bancroft, II, 103.
defeat, Monroe resigned from Congress and his personal influence in the western question waned. Writing to Jefferson in the middle of May, he attributed his resignation to the defeat of his proposals:

This (the plan of government) hath not been decided on, and hath only been postponed in consequence of the inordinate schemes of some men above alluded to, as to the whole policy of affairs in that country. 49

From the East’s viewpoint, the affairs of the trans-Ohio country were becoming increasingly unsettled. The question of free passage of the Mississippi was becoming a burning issue in the West, especially among the inhabitants on the lower stretches of the Ohio.

The geography of the West explains the separatist tendencies of the inhabitants of the trans-Ohio region. The Appalachians prevented any significant commercial intercourse with the eastern seaboard ports. It was actually more profitable for farmers in western Pennsylvania and Kentucky to send their agricultural produce to Philadelphia via New Orleans than it was to ship it directly over the mountains. 50 New Orleans, moreover, was an outpost of the decaying Spanish Empire, and its strategic location gave Spain control of all commercial traffic on the Mississippi. The frontiersmen were thus dependent upon the vacillating course of Spanish-American

49 James Monroe to Thomas Jefferson, May, 1786, quoted in Barrett, p. 40.

relations. Certain eastern interests led by John Jay, however, were willing to relinquish the United States' right to free passage of the Mississippi in favor of commercial advantages for New England. Jay's proposals to Spanish minister Gardoqui in 1786 to surrender for twenty-five years the American claim to free navigation of the River in exchange for commercial privileges in European harbors, valuable only to eastern shipping interests was regarded a significant neglect of western interests.\footnote{\textit{Ibid.}, pp. 17-18.}

This growing unrest was reflected in the strong secessionist sentiments which were sweeping the settlements in the Illinois country. While Congress was considering the plan of territorial government, a petition was presented by the inhabitants of the Kaskaskias area for the organization of an independent government in that district. Their petition was accorded much more respect than those presented by the more rebellious spirits in the Miami-Scioto-Muskingum area. It was referred to a committee consisting of James Monroe, Rufus King, Charles Pinckney, and Melancthon Smith. The committee made its report on August 24, 1786, and ordered:

\begin{quote}
that the Secretary of Congress inform the inhabitants of the Kaskaskias that Congress have under their consideration the plan of a temporary government for the said district, and that its adoption will be no longer protracted than the importance of the Subject and a due regard to their interest may require.\footnote{\textit{Journals}, IV, 688-689.}
\end{quote}

In short, the Kaskaskias was denied the right to form a
state under the provisions of the Ordinance of 1784.

With the absence of Monroe, King, and Kean at various times during the summer of 1786, it became necessary to appoint new men to the territorial committee. William Samuel Johnson succeeded to the chairmanship, and Nathan Dane, Melancthon Smith, and John Henry filled the remaining vacancies.\(^{53}\) With Johnson as chairman, the interests of the Ohio Company were to be reflected in every committee decision. The report which the committee submitted on September 19, 1786, is a case in point. The report was based upon Monroe's proposals but with significant alterations: the requirement for the second stage of government was raised to 5,000 free male adults; and the requirement for admission into the Union was raised to one-third the whole population of the original states.\(^{54}\) The raising of the admission requirement reflected the bias of the New England men on the committee. Monroe in a letter to Jefferson in July indicated that there was a general movement on the part of the "Northern men" to make it exceedingly difficult for any new western state to enter the Union.\(^{55}\) In fact, the actual drafting of the admission provision has traditionally been attributed to Dane. He also attempted to secure property rights in the territory by inserting a strict law of descent and

\(^{53}\)Barrett, pp. 42-43.

\(^{54}\)Ibid.

conveyance of inherited estates into the committee report.56

A period of seven months intervened before Dane's (Monroe's) plan was considered by Congress. In the interim Congress' membership had changed, but the committee of the previous September was on hand to submit its report on April 26, 1787. The second reading took place on May 9, and the report was engrossed for a third reading the next day. It was at this point that Parsons appeared in New York with the Ohio Company's petition.

The third reading of Dane's ordinance was fixed for the tenth of May. But Dane called the order of business that day and gave precedence to the question of adjournment for a short vacation, thereby dismissing Congress before it could consider his own scheme of territorial government. Dane probably postponed the vote out of deference to the Ohio Company's desire to propose the new system of territorial government before it was enacted. From May 11 to July 6 there was no quorum since many members of Congress were also delegates to the new constitutional convention which had recently convened in Philadelphia. Finding it useless to remain in New York, Parsons returned to his estate at Middleton, Connecticut, where he wrote his fellow directors on the state of affairs in Congress.57

56Barrett, p. 43.

57Hall, Parsons, p. 502.
A mild debate had arisen concerning the role that
the Parsons proposal played in the demise of the Dane
plan of territorial government. Hall, the compiler of
the Parsons Papers, maintains that the Parsons memorial
contained no objections to the Dane ordinance as such,
but that it forced Congress to reconsider the “crudeness,
and inadequacy of the plan proposed and suggested broader
views and the need for comprehensive provisions,” 58
thereby ending all further consideration. Jay Barrett,
however, has written that the ordinance was not consid-
ered simply because Congress adjourned on that day and
thereafter could not obtain a quorum. Both arguments
are specious because the Dane ordinance never died; it
was revived when Congress reassembled on July 6 and
became the basis for the Ordinance of 1787.

Upon reaching Middleton, Parsons dispatched a
regular progress report to his fellow directors. It was
a normal business report, studded with the usual facts
and figures, but its contents provoked a controversy
which threatened to destroy the Ohio Company. In his
report Parsons revealed that he applied to Congress for
a land grant on the Scioto River, far to the west of the
area which the Company agreed to. The indignant directors
hurriedly called the Company into assembly and reaffirmed
their request for the original grant agreed to at Brack-
ett’s Tavern:

To have our eastern bounds on the line of the seventh range of townships and our western on the line Congress fixed as to the western boundary of the State of Washington, then to extend northerly, so as to include the quantity of lands which the company shall wish to purchase. . . . we must insist, at least that our eastern line should be bounded on the Muskingum. 59

So strongly did they insist upon this location, that if it could not be obtained, Cutler was ready to give up "the idea of making a purchase as a company." 60

Evidently there was a plot, perpetrated by an unnamed land company, to secure the same lands the Ohio Company desired. William Smith and Archer Hulbert maintain that the promoters of the Hazard Associates Land Company had enrolled Parsons, and possibly Dane, as fifth columnists to relocate the Ohio Company's claim. The directors suspected both Parsons and Dane of foul play, but they were undecided upon the action they should take against the traitors:

We think some caution may be necessary in placing confidence, particularly with respect to members from this commonwealth (Dane?). We likewise think it best as there seems to be ground to suppose General P----s may have views separate from the interest of this company in his proposal for a location, that he should have no information of our desire to have it another place until we have an opportunity to converse with him on the subject. 61

Cutler immediately requested Sargent in New York to contact the more influential members of Congress and

59 Rufus Putnam and Manasseh Cutler to Winthrop Sargent, May 30, 1787, quoted in Cutler, I, 196-197.
60 Ibid., p. 197.
61 Ibid., p. 97.
inform them of the Company's proper location. Concerning the two "fifth columnists," Sergeant was instructed to keep them under constant surveillance.

Parsons was involved in a number of speculative schemes. His first loyalty was to the Ohio Company, but this did not deter him from "adjusting" the Company's claims to complement his other speculative activities. As above, he was involved in the Hazard and Associates Land Company. In a letter to William Samuel Johnson on June 4, 1787, Parsons indicated he was also promoting a speculative effort on Connecticut's lands in the Great Lakes region. In any case, the scandal was great enough to allow the directors to dispose of Parsons and select Manasseh Cutler as their representative to Congress. In Cutler the Company would find a far more discreet lobbyist.

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CHAPTER VI

VICTORY

Cutler was quick to respond to the directors' draft. They had made a very wise choice; few other men were as suited to negotiate with Congress. Such a task required a man who could combine the qualities of tact and hypocrisy; he had at once to appear the defender of the interests of the "poor, wretched Veterans," while at the same time tying the fortunes of the more ambitious members of Congress to the Ohio Company. Cutler was such a man. Under his clerical garb and pious phrases lurked a brilliant and ruthless financial manipulator whose means were never as virtuous as his ends.

From June 24 to July 2 Cutler conferred with General Parsons and Rufus Putnam as to the state of the Congress and the principles upon which he would base the new land proposals. On July 6 he arrived at New York and put up his horse at the sign of the "Plow and Harrow" in the Bowery. Examining his letters of introduction in his portfolio, "I found them so accumulated that I hardly knew which to deliver first." Cutler's way had obviously been prepared weeks earlier by Putnam's diligent corres-

\[1\text{Cutler, I, 229.}\]
pondence with the Company’s friends in Congress. He was received magnanimously by Edward Carrington of Virginia who introduced him to the leading congressional delegates and his petition to Congress. In the late afternoon of July 6 the Ohio Company’s proposal was engrossed and submitted to a committee consisting of Richard H. Lee, Nathan Dane, Melancthon Smith, and John Kean. Mr. Carrington was later appointed chairman of the group.²

Cutler had every reason to be optimistic about the Ohio Company’s future. The summer of 1787 was a good time for eastern speculators to prey upon the Confederation Congress. Powerful federalist forces were already seeking to undermine the very basis of the Confederation government. Already a constitutional convention had convened in Philadelphia, thereby draining off so many members of the old Congress that a quorum did not exist between May and July. The energies and imagination of the Confederation Congress were adversely affected by the sessions of the convention which drew away many of the strong men of North and South: "the old Congress was left a somewhat quiet and peaceable company of men."³ Its most energetic and efficient members were the "Virginia Triumvirate," William Grayson, R. H. Lee, and Edward Carrington, whose influence was so great that they effectively controlled the entire body. Grayson was the temporary president;

²Ibid., p. 230.
³Barrett, pp. 77-78.
Carrington was the chairman of both the committee considering the Ohio Company's purchase and the group considering the form of government for the territories. Hence, it is not surprising that the majority of Cutler's letters of introduction were to members of Congress from Virginia.

The presence of Cutler, who was on intimate terms with these men, had no small influence in enlisting their sympathies in the cause of the Ohio Company's purchase, and "must have extended perforce to the ordinance for its government." The leaders of this group were known as conservative men and believers in strong government; thus the linking of the proposed colony with a system of strong, unrepresentative government seemed to offer the basis for the establishment of a stable society in the West.

The fiscal health of the Confederation was improving, but it was still quite tenuous. Hence, the general effect of the Ohio Company's prospective purchase as a means of liquidating the national debt put the delegates in good humor.

Shay's Rebellion had just been suppressed, but the bitterness it invoked still lingered on further alienating the East from the back-country. The eastern conservatives detested western democratic tendencies, but they feared even more the secession of the western territories from the Union. The East felt that western inter-

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4Ibid., p. 78.
ests were so incompatible with those of the Seaboard that the West's secession to Spain or Britain was an imminent reality. The western territories stood, according to George Washington, "upon a pivot... the touch of a feather would turn them any way."\(^5\)

Cutler was a keen judge of congressional mentality, hence he decided it would be to his advantage to play upon this fear of secession. Accordingly he presented the Ohio Company's venture as the exclusive antidote for the rebelliousness of the frontiersman:

The uneasiness of the Kentucky people with respect to the Mississippi was notorious. A revolt of that country from the Union, if a war with Spain took place, was universally acknowledged to be highly probable; and most certainly a systematic settlement of that country, conducted by men strongly attached to the federal government, and composed of young, robust, hardy and active laborers, who had no ideas of any other than the federal government, I conceive to be an object worthy of some attention.\(^6\)

The eastern interests wished to secure commercial advantages for the eastern ports at the expense of allowing Spain to close the Mississippi, thereby strangling the nascent Ohio-New Orleans trade axis upon which the tenuous money economy of the frontier depended. In its place the eastern merchant capitalists hoped to tie the West to the New England and Middle Atlantic states by transplanting native easterners to supplant the more rebellious frontiersman, and at the same time, binding

\(^5\)Washington, XXVII, 479.

\(^6\)Cutler, I, 230.
and subordinating the economy of the West to the Atlantic Seaboard by a system of canals and portage roads over the Alleghenies. William and Julia Cutler have suggested that Manasseh Cutler's plan to colonize New Englanders in the Ohio region and Washington's plan for a trans-Allegheny canal system were two parts of one grand plan to bind the interests of the West to those of the East. This was undoubtedly at least a secondary motive behind both plans since both men were aware of the other's activities, but there is nothing more than purely circumstantial evidence to suggest any concerted action or attempt to coordinate the two schemes. A much stronger case can, however, be presented for the claim that there was an attempt by the Virginia "Triumvirate" to supplement and coordinate Washington and Cutler's plans for the West. At least for these visionary statesmen, the canal system, the plan of western government, and the Ohio settlement scheme formed one grand project for continental development.

As early as 1785 Putnam had decided that the Associates had to locate their claim somewhere in the region of the Muskingum and Scioto Rivers. Until Cutler's arrival in New York, however, the exact location of the Company's land grant was extremely tentative. The Brackett's Tavern meeting had decided upon a grant which corresponded to the Company's final location, but, as above, Parson's erroneous petition had thrown Congress
into confusion as to Cutler's intentions.

On July 9 Cutler conferred with Thomas Hutchins who was in New York on official business. He had a great deal to do with the final location, "if indeed, his advice was not conclusive." Hutchins advised Cutler to make the Company's location on the Muskingum, but the region he was referring to was the rich bottom land of the upper Muskingum valley, one greatly exposed to Indian attacks. Hutchins' advice was followed, however, to the extent of locating the Company's chief town (later Marietta) on the Muskingum and extending the purchase from there southwestwardly along the Ohio River. The hilly and unattractive lands of the Hochocking and the Raccoon Rivers, which the Company finally chose, were not as fine as the broad and fertile parts of the upper Muskingum, but they offered the protection of Fort Harmar, and the remoteness of any Indian tribes made the grant a sanctuary from Indian attack. The grant would be contiguous to western Virginia, where the Zane family had a number of advanced settlements. The grant was not without promising natural resources; the land was moderately fertile, and there was some evidence of iron and coal in that region. In addition, Cutler believed the grant would be in the center of a future western transportation axis.

According to Washington's canal scheme, the communications

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7 Walker, p. 72.

8 Hutchins, pp. 92-93.
between the Ohio and Lake Erie would be through the Cuyahoga and Muskingum Rivers, up the Great Kanawha, and over the Alleghenies by means of a trans-montane canal system to the southern seaports along the James and Potomac Rivers.  

The importance of the Ohio Company's grant at the center of this projected transportation web was clearly understood by Virginia's delegates. There is no evidence of a concerted agreement whereby Cutler sought to occupy and cultivate the Ohio Valley and Washington worked to provide a short water route to markets, but it is evident that both parties understood the importance of the subject. This understanding was strong enough to strengthen the support of the Ohio scheme by the Virginia Triumvirate who could see the advantage of having Virginia's ports as a terminal for Ohio's agricultural commodities.

On the same day that Cutler conferred with Hutchins, Dane's ordinance for western territorial government was submitted to a new committee. The committee was composed of men whose actions were bound to reflect the interests of the Ohio Company: Mr. Edward Carrington was its chairman, and he was ably assisted by R. H. Lee and Nathan Dane, all friends and allies of the Reverend Manasseh Cutler. Melancthon Smith and John Kean, the other members, were less susceptible to Cutler's influence. Its composition reflects the two central themes of the Confed-

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9 Walker, pp. 70-72; also in Ralph Brown, Historical Geography of the United States (New York, 1948), p. 215.
eration's land legislation. First, Mr. Carrington's chairmanship of both the committee for the land purchase and for the system of territorial government indicated the close interrelationship of the two issues in the minds of Congress. Second, the uneasy balance of three southerners and two northerners on the committee meant that any ordinance for western government and land disposal would have to be reached by a sectional compromise.

On the afternoon of July 9 Cutler attended the first session of the land committee's hearings on the Ohio Company proposals. He soon discovered that a land grant could not be obtained as readily as he had hoped. There was considerable opposition within the committee from the two northern members, Dane and Smith, over the exact terms of the grant. After several hours of fruitless debate, the hearings reached an impasse. Cutler was pessimistic about the outcome of the petition: "Debated on terms, but were so far apart, there appears little prospect of closing a contract."¹⁰

The main opposition paradoxically came from Cutler's friend and fellow New Englander, Nathan Dane. Ever since Parsons' machinations, the Company had suspected Dane's feigned support for their project. Dane had supported the Company's demand for a strong, unrepresentative territorial government, but their request for such an extensive land grant at ridiculously low prices was

¹⁰Cutler, I, 238.
contrary to the interests of a larger and more influential portion of Dane’s Massachusetts’ constituency. New England’s infant industrialism did not approve of a purchase so extensive that it would drain away the best of their surplus labor pool to the West. Moreover, both Massachusetts and New York had large unoccupied areas of land to which they hoped to attract prospective settlers. The Ohio Company’s grant would only provide unwanted competition to the state settlement efforts. Therefore, both Dane and Smith had concrete interests to defend.

Virginia, on the other hand, with its vast expanse of western lands seemed quite disposed to support the Ohio venture. It was directly interested in securing protection for its western frontier. Moreover, the Virginia delegates believed settlement in the Muskingum region would enhance the value of her bounty lands between the Scioto and the Little Miami. The Ohio Company’s proposed purchase satisfied both needs. The Company’s choice of the land lying between the Muskingum and the Scioto covered the entire flank of Virginia’s bounty lands in a south-westerly direction and provided a buffer zone for her settlements around Wheeling.

The impasse in the land committee convinced Cutler he needed more support for his proposals. The most logical place to look for it was among the delegates to the constitutional convention then meeting in Philadelphia. The convention was attended by the most influential
and well-known political figures in the country. Cutler hoped to find in that illustrious group a few individuals who would be interested in speculative activity. Furthermore, since the very object of the convention was a stronger federal union, many delegates would be sympathetic to his scheme for a stronger territorial government.

On the evening of July 9 Cutler packed his bags and made final arrangements for a quick excursion to Philadelphia. After conversing with a number of influential friends, he formulated a strategem to crush the limited opposition of the northerners. He would seek to mobilize two great groups of allies—one at the convention in Philadelphia and the other in the Congress at New York—and establish close ties of interest and communication between the two. In such a vise, no opposition could survive.

The persistence of Cutler to complete the Ohio purchase delayed all congressional attempts to consider an ordinance for territorial government. The Ohio Company's proposal was so attractive that many congressmen desired to draw up a plan of government more suitable to the needs of the purchasers; moreover, there was a general demand on the part of the land purchasers for such a thing. A letter from Nathan Dane to Rufus King indicated the intimate connection which existed between the territorial ordinance and the land purchase:

We found ourselves rather pressed: the Ohio Company appeared to purchase a large tract of Federal lands—about six or seven million acres—and we
wanted to abolish the old system and get a better one for the government of the country and we finally found it necessary to adopt the best system we could get . . . We are in a fair way to fix the terms of the Ohio sale etc. The magnitude of the purchase makes us very cautious about the terms of it, and the security necessary to insure the performance of them.11

Cutler Lobbyed vigorously in the land committee; but his main concern before the Philadelphia trip was the ordinance for the government of the western territories, whereas after that the land purchase occupied his time. His influence in the question of territorial government was immediately decisive. By July 10 Carrington’s committee had drawn up a modified version of the old Monroe-Dane plan. Bowing to Cutler’s influence, Carrington submitted the plan of government to him and requested that he make necessary revisions and suggestions:

As Congress was engaged in settling the form of government for the Federal Territory, for which a bill had been prepared and a copy sent to me with leave to make remarks and propose amendments, I thought this was the most favorable opportunity to go on to Philadelphia.12

Cutler must have drawn up a number of provisions in anticipation of such a request; for it took him but a few hours to make the necessary revisions. He now proceeded to Philadelphia.

A historical debate has arisen over the exact provisions which Cutler inserted in the Ordinance of 1787. The question of an organic law for the West had undoubtedly

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11Quoted in Cutler, I, 351; and Barrett, p. 52.
12Cutler, I, 239-240.
been a subject of discussion between Cutler and the committeemen before the Philadelphia convention, or the ordinance would not have been submitted to him. The problem had arisen from the absence of a record of the amendments Cutler proposed; it is probable, however, that they covered the whole range of the ordinance since his journal indicates that he was in constant consultation with the members of the territorial committee before he received the completed report. Any original provisions suggested by Cutler were indeed few but significant; the basic framework for the strong, unrepresentative territorial government demanded by the Company had already been formulated by Monroe and Dane. Cutler’s main task was to add a few extra provisions necessary to tailor it to the Company’s needs, affirm the report with the Company’s approval, and muster all his influence in favor of its passage.

The following traditional testimony establishes, to a certain extent, Cutler’s claims to the authorship of some important provisions:

Dr. Joseph Story of Salem, Massachusetts wrote to Judge Ephraim Cutler (Manasseh’s son) January 30, 1847 as follows: At a recent professional call at Hamilton (Dr. Cutler’s home) Brother Temple produced large files of Ohio documents, but I had time only for a hasty examination. I saw among these documents the Ordinance of 1787 on a printed sheet. On its margin was written that Mr. Dane requested Dr. Cutler to suggest such provisions as he deemed advisable and that at Dr. Cutler’s instance was inserted what related to religion, education, and slavery. These facts have long been known to me as household words.13

13Ibid., 343.
Ephraim Cutler, while visiting his father in Washington during the congressional term of 1804-1805, was informed that "he (Dr. Cutler) . . . had prepared that part of the ordinance (anti-slavery provision) while he was in New York regulating the purchase of the lands for the Ohio Company."\(^{14}\) In the same letter, his son referred to a conversation with his father regarding the principles of the ordinance and his influence upon its composition; the elder Cutler maintained that a definite plan of government was insisted upon by the Company, and that "he was acting for associates, friends, and neighbors who would not partake in the enterprise unless these principles were unalterably fixed."\(^{15}\)

Cutler's suggestions concerning religion and education were probably original adaptations of similar provisions found in the New England land system; the sixth article prohibiting slavery in the Northwest Territories, on the other hand, had been foreshadowed as early as 1784 in Jefferson's first draft of the Ordinance of 1784. The directors of the Ohio Company favored the insertion of an anti-slavery clause in the ordinance; without such a provision it would be impossible to transfer New England social values, industrial customs, and its system of free labor to the frontier. The sixth article also served as a weapon against the southern squatters in the trans-Ohio lands, many of whom were small slaveholders.

\(^{14}\)Ibid., p. 344.  \(^{15}\)Ibid.
Manasseh Cutler has been lauded by many authors as an early champion of abolition. Such is not the case. He was never an ardent abolitionist in areas which did not affect his interests; as a representative from Massachusetts in the Eighth Congress, he voted against a measure gradually to emancipate the slaves of the National District.\textsuperscript{16}

Upon reading Cutler's suggestions, Nathan Dane struck out the anti-slavery provisions because he felt they would create such a furor among the southern members of Congress that the ordinance would never pass. The New Englanders, however, were adamantly in favor of an anti-slavery clause and their insistence led the southern committee members to reconsider their mild pro-slavery views.

The Ordinance of 1787 was submitted to the committee on July 9; its provisions were approved by Cutler on July 10; it was reported on July 11 and finally passed on July 13. Therefore, from July 9 to 11 most of the committee's work was completed. Except for the anti-slavery provisions, the report was primarily the work of Dane and secondarily of Carrington. The task of drawing up the basic report was left to Dane.\textsuperscript{17} He selected and arranged the general plan of the report from Monroe's plan of 1786. R. H. Lee and Melancthon Smith probably

\textsuperscript{16}Bancroft, I, 472.

\textsuperscript{17}Nathan Dane to Rufus King, July 16, 1787, quoted in Barrett, p. 53: "When I drew up the ordinance... which was passed, a few words excepting, as I originally framed it."
had much to do with the decision about the matter included in the report: "We met several times and at least agreed on some principles, at least Lee, Smith, and myself."18

Years later Dane contended that Carrington "formed no part" of the ordinance. This was only true of the report prior to July 11. On that day the report was submitted to Congress. On its second reading it was definitely altered. Carrington in presenting the amendments which were adopted on July 12 inserted a clause in the second paragraph to confirm the reservation made for the French-Canadian inhabitants of Illinois, amendments relating to the descent of property, and the dependence of government on the diffusion of knowledge.19

Aside from these minor provisions, the Ordinance of 1787 departed radically from the Monroe Plan in only one provision: the prohibition of slavery and involuntary servitude in the Northwest Territories. The anti-slavery provision is not the product of one man or one section; it reflected the combined interests of both New England and the South and as such represented the first of America's great sectional compromises.

As has been indicated, the Ohio Company's agent was particularly anxious to see slavery—an institution exceedingly contrary to New England's cultural and industrial ideals—prohibited from the new territories. Since

18Ibid.

19St. Clair, I, 135.
Congress was in dire need of funds, the southern members were not unresponsive to the Ohio Company's demands. They hoped, however, to gain other benefits for their section in compensation. The various conferences held between Cutler and Carrington between July 6 and 9 were "useful in harmonizing the views of the South and New England" on the slavery question.\(^{20}\) Thus when the anti-slavery provision was proposed on July 12, a quid pro quo between Carrington and Cutler had already been agreed upon. The exact nature of this agreement cannot be totally ascertained.

William H. Smith, the editor of the St. Clair papers, believed that the slavery prohibition and the fugitive slave law in the Ordinance of 1787 were conscious attempts to complement the slave trade and Negro suffrage provisions of the new Federal Constitution which was being formalized in Philadelphia. There is enough positive evidence from which to conclude that there were direct consultations between the old Congress and the Constitutional Convention concerning the slavery issue. A Reminiscence of Governor Edward Coles of Illinois is the basis for this contention:

This brings to my recollection what I was told by Mr. Madison . . . the old Congress held sessions in 1787 in New York, while at the same time, the Convention which framed the constitution of the U.S. was meeting in Philadelphia. Many individuals were members of both bodies and thus were enabled to know what was passing in each—both sitting with

\(^{20}\)Ibid.
closed doors and in secret sessions. The distracting question of slavery was agitating and retarding the labors of both and led to conferences and inter-communications of the members, which resulted in a compromise by which the northern anti-slavery portion of the country agreed to incorporate into the Ordinance and Constitution the provisions to restore fugitive slaves; and this mutual and concurrent action was the cause of the similarity of the provision contained in both and had its influence in creating the great unanimity by which the Ordinance passed and also in making the constitution more acceptable to the slaveholders. 21

The prohibition of the slave trade and the two-fifths representation clause represented a sectional compromise, but it received its significance from the larger sectional compromise of the Ordinance of 1787. A number of ideological and emotional motives explain the southern agreement to the anti-slavery clause. There had been a long tradition of "agrarian liberalism" in Virginia. Many of the more "enlightened" members of the southern aristocracy abhorred the institution of slavery and looked forward to its eventual abolition. Jefferson in his first draft of the Ordinance of 1784 had attempted to banish human bondage from the West, but was defeated.

However, the anti-slavery clause and the fugitive slave law embodied in the Ordinance of 1787 can be traced to a definite economic compromise between New England and and the southern states. The Ohio Company's agent himself or his allies in Congress arrived at an economic quid pro quo sometime between July 5 and 9. The southern delegates hoped the exclusion of slavery from the north bank

21 Ibid., p. 136.
of the Ohio would secure the South's monopoly of tobacco and indigo:

The clause respecting slavery was agreed to by southern members for the purpose of preventing tobacco and indigo from being made on the northwest side of the Ohio as well as for several other political reasons.\textsuperscript{22}

Western agriculture posed a definite threat to the South's traditional monopoly in these vital commodities; Thomas Hutchins in his \textit{Typographical Description}\textsuperscript{23} demonstrated that indigo and tobacco could be grown in the Ohio Valley with relative ease; in fact, a substantial quantity was already being produced there:

\ldots great quantities of tobacco are also raised by the inhabitants of the Illinois both for their own consumption and that of the Indian--but little hitherto has been exported to Europe \ldots Indigo may likewise be successfully cultivated \ldots.\textsuperscript{24}

The cultivation of these crops demanded a ready supply of slave labor or its equivalent; those areas of Illinois producing tobacco were also the areas of a relatively high slave population. The abolition of slavery was equivalent to the prohibition of tobacco cultivation.

The "other political reasons" referred to the Mississippi question; the Southern vote in favor of the anti-slavery clause was "a concession to the Northeast, in order to bring about a more favorable settlement of the Missis-

\textsuperscript{22}William Grayson to James Monroe, August 8, 1787, cited in Barrett, p. 79.

\textsuperscript{23}Hutchins.

\textsuperscript{24}\textit{Ibid.}, pp. 114-115.
sippi Question." A New England settlement in the Northwest might throw the Northeast's support behind any movement in favor of the South's desire to force Spain to grant free American passage on the Mississippi. Likewise, the Ohio Company's settlement would act as a barrier against Indian attack, thereby enhancing the value of Virginia's lands south of the Ohio and her bounty lands between the Scioto and the Little Miami. Finally, a settlement on the north side of the Ohio River would tend the frontier communities on the south bank from seceding to Spain. All these southern compensations, in addition to a fugitive slave law which prevented the Northwest from becoming a haven for escaped slaves, made the anti-slavery provisions less noxious to the southern delegates.

On July 13 the entire ordinance was put to a voice vote: twelve delegates answered in the affirmative and only one--Abraham Yates of New York--held out. He was later to vote against the Ohio Company's grant. Yates was a New York radical vehemently opposed to the undemocratic and centralist provisions of the Ordinance of 1787. He and his family were staunch confederalists; Judge

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25 Cited in Barrett, p. 79.

26 Ibid.

27 The term, "Confederalist," is applied to those individuals who wished to perpetuate and preserve the decentralized system of government established by the Articles of Confederation; as opposed to the "Federalists" who strove to erect a stronger, central government.
Robert Yates left the Philadelphia Convention in disgust, and his brother, Peter Yates, a few months later led the street attack upon the federalists in Albany.\textsuperscript{28}

While the Northwest Ordinance was being considered in New York, Cutler was in Philadelphia mustering support for his land grant proposals. Because of the close cooperation between the Convention and the old Congress, Cutler felt his cause was ill-supported unless he built up a strong following in Philadelphia. The two individuals he most desired to win over to his cause were Elbridge Gerry and Benjamin Franklin. Gerry was an old friend of the Newburgh Association, and Cutler hoped this amity would be extended perforce to the Ohio Company. Franklin, on the other hand, had always been interested in various schemes of Ohio colonization. After the Albany convention of 1780 he had proposed a plan of colonization of the area which compromised the Ohio Company's prospective grant.\textsuperscript{29}

On July 12 Cutler arrived at the Queen's Head Inn, in Philadelphia. In a short time he discovered that a great number of "influential" members of the Convention were conveniently lodged in the same building. Among the notables were Nathaniel Gorham of Massachusetts, James Madison and George Mason of Virginia, Governor Martin

\textsuperscript{28}McMasters, I, 508.

\textsuperscript{29}Franklin's involvement in the various schemes for Ohio colonization is described in Alden.
and Hugh Williamson of North Carolina, John Rutledge and Charles Cotesworth Pinckney of South Carolina, and Alexander Hamilton of New York. Although they had hitherto been strangers, Cutler became acquainted with them through the auspices of Caleb Smith. They spent the evening of July 12 discussing the affairs of state in general and the land purchase in particular.\footnote{Cutler, I, 253-271.} There is no indication in Cutler's journals as to the results of this impromptu conference, but we do know that Alexander Hamilton later became a member and warm advocate of the Ohio Company's cause in Congress.\footnote{John C. Miller, Alexander Hamilton and the Growth of the New Nation (New York, 1959), p. 561.}

Reverend Cutler now began his round of scheduled contacts by dining with Elbridge Gerry. Later in the afternoon of July 13 Gerry arranged for a visit to Benjamin Franklin's residence. Cutler's call on Franklin was motivated by both personal and business considerations. Dr. Cutler was an ardent and accomplished botanist, and hence he was quite anxious to inquire into Franklin's recent findings on that subject. His personal admiration of the venerable statesman-scientist did not, however, interfere with his prime object of securing his support for the Ohio venture.

They found the venerable Franklin—"a short, fat, trunched old man in plain quaker dress"—sitting on the grass under a mulberry tree in his garden conversing with
a small group of relatives and friends. Cutler felt as if he was "going to be introduced to the presence of a European monarch . . .," but Franklin's plebian ways soon put him at ease. They talked in the garden until nightfall. Franklin then took Cutler into his spacious, well-stocked library, where he was delighted with the extensive knowledge he (Franklin) appeared to have of every subject and the brightness of his memory and clearness and vivacity of all his mental faculties.\(^{32}\)

After touching upon a sundry number of topics from botany to the Company's land grant, Cutler returned to the Indian Queen, now on intimate terms with Franklin.

Cutler completed his negotiations with Franklin, Gerry, and others on July 14. Two days later he arrived back at the "Flower and Harrow" in New York. While he was absent, the power structure in Congress had shifted considerably—in one instance to the Company's disfavor. General Arthur St. Clair had replaced Richard Henry Lee as President of Congress. This shift represented a significant lessening of the Virginia "Triumvirate's" position; yet they still held a considerable bloc of power in Congress. St. Clair's election foreboded both good and ill for the Company's future. Although he was a western Pennsylvanian from Westmoreland County, St. Clair was a dedicated "Federalist" and hated the squatter statehood movements with an indescribable passion:

\(^{32}\)Cutler, I, 113.  \(^{33}\)St. Clair, II, 482.
A multitude of indigent and ignorant people are ill qualified to form a constitution and government themselves. . . . They are too far removed from the seat of government to be far impressed with the power of the United States. Their connection with any of them is very slender, many of them having left nothing but creditors behind them, whom they would very willingly forget entirely. Fixed political principles they have none and though at present they seem attached to the General Government, it is in fact but a passing sentiment, easily changed or even removed, and certainly not strong enough to be counted upon as a principle of action. . . . Their government would most probably be democratic in its form and oligarchic in its execution and more troublesome and more opposed to the measures of the United States than even Kentucky.33

St. Clair's hatred for western secessionist tendencies did not necessarily throw him into the Ohio Company's camp. He was a man of considerable integrity who was not to be swayed by any special pressure which might militate against the best interests of Pennsylvania or the Confederation. His distrust of the "men of the western waters" did, however, dispose him to favor the colonization of the Ohio by men "strongly attached to the Union." St. Clair must be courted with care.

On July 19 Cutler called upon the members of Congress at an early hour. During the conversation, they presented him with a copy of the recently enacted Ordinance of 1787. As he had expected, the Ordinance was all the Company had prescribed as a prerequisite for their purchase. All the amendments which Cutler had proposed had been accepted except one; this amendment would have exempted the territory from continental taxation until
it became entitled to full representation in Congress. Cutler was delighted; the first wall had been breached.

Cutler's main task after the passage of the Northwest Ordinance was to secure the passage of the Company's land grant and people the offices of the new territorial government with men friendly to the interests of the Company. In executing both programs, Cutler met heavy opposition. A number of his congressional allies informed him that a substantial number of their colleagues were violently opposed to his speculative purchase. He was not, however, informed of the identity of his enemies. In an effort to discover the identity of his antagonists and the means whereby they might be won over or at least subdued, Cutler turned to William Duer, Arthur Lee's associate on the Board of Treasury. Duer was a gentleman and a politician of dubious virtue; but he was rich, kept a fine house, and was intimate with almost every member of Congress. Duer had access to a network of informers, and therefore could easily ascertain who were for and who were against the plan.

Duer was quite willing to acquiesce to Cutler's wishes; he saw in the Ohio Company purchase a means whereby he might promote his own interests in land speculation. He assured Cutler that William Grayson, R. H. Lee, and Edward Carrington ("the Virginia Triumvirate")

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34 Cutler, I, 293-294.

35 McMasters, I, 509-510.
were his "warm advocates" and that Holton could be trusted. Dane, on the other hand, "had to be watched carefully . . . not withstanding his professions."36 His real enemies, however, were Abraham Clark (New York), Abraham Yates (New York), Dyre Kearny (Delaware), and William Few (Georgia). Cutler branded them as "troublesome fellows," and declared that they "must be attacked by my friends at their lodgings . . . if they can be brought over I shall succeed . . . if they can not, my business is at an end."37 The Ohio Company would soon pay dearly for Duer's disclosure.

Most of Cutler's opposition felt that the Ohio Company grant was too large a concession to such a small group of profiteers. Some, however, opposed the speculation on the principle that any such activity was detrimental to the best interests of the commonwealth. Such a view was taken by Abraham Yates and General William Irvine. Irvine found no objection to the mode of sale as it would alleviate the national debt, but he was opposed to such narrow profiteering:

. . . opposed to pre-emption by any company or any set of men, I think, on sound principles; and I hope to prevent this passing with that tail, however beneficial the body might be without. I have no idea, in making a sale, to bribe a person to get him to take any commodity without another of equal or more value.38

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36Cutler, I, 293-294.
37St. Clair, I, 604-605.
38Ibid.
This mild anti-speculative opposition forced Cutler to align himself with the militarist and monarchist wing of the nascent Federalist Party. The old Newburgh Association had maintained close ties with the Order of Cincinnati, but when its interstate character was destroyed by the Ohio Company, the alliance was severely threatened. Cutler deemed it necessary for the passage of the land grant to re-establish this Federalist-speculative bond. On the evening of July 19 Cutler dined with a collection of nobility—both European and their American imitators, the Order of Cincinnati. General Henry Knox invited him and forth fellow officers under the command of Baron Von Stueben to a fete "in the manner of a prince." The exact topics of conversation touched upon are not recorded, but it is probable that Cutler broached the question of his land grant. In the succeeding weeks he expanded his contacts with this Federalist faction.

Before Cutler could expose his opposition, they pushed through Congress a variation of the land grant ordinance which was totally unacceptable to the Company. Enraged at such shoddy treatment, he threatened to seek a grant from one of the states "who would give incomparable better terms." Cutler collected his temper and discovered a far better course of action. He would feign complete disinterest in pressing his claims any further in the hope that this tactic would force his allies to

39*Cutler, I, 294-296.*
destroy the opposition: "I told them I saw no prospect of a contract, and wished to spend no more time and money on business so unpromising."40

Cutler's friends were dismayed. A crowd of ruffled congressmen hurried to his lodgings to dissuade him of such "folly!" They pleaded with the recalcitrant clergyman to remain in New York for the additional two to three months needed to complete a transaction of such magnitude. Cutler stubbornly repeated his determination to return immediately to Massachusetts. This game of deception might have continued for days if Nathan Dane and Winthrop Sargent had not seen fit to break the deadlock.

Duer, Sargent, and a number of New York speculators had been following Cutler's efforts with intense interest. They like the Ohio Associates nursed the hope of acquiring a large tract of land in the Ohio Valley; but they could enlist few of the influential supporters whom Cutler had been able to draw about his person. The terms of the Ordinance of 1785 were quite generous and well suited to speculation, but the Ohio Company's grant was so lavish that they were loathe to ignore such an easy means of profit. Moreover, the Ordinance of 1787 could be discreetly manipulated to suppress squatter interference with property rights.

Despite their lack of respectable influence, the

40Ibid., 296.
Scioto Association (as Duer and his friends came to be known) could muster a most impressive array of financial power. The office of William Duer in New York was the center of the operation. The American branch of the company had as members: Andrew Craigie, William Constable, Melanchthon Smith, Seth Johnson, and Richard Platt of New York, and Christopher Gore and Samuel Osgood of Boston. The foreign associates included Daniel Parker and Company and Smith, White, and Gray of London; Nathan and Theodore Van Staphorse and Company in Amsterdam; and the Delasserts of Paris.41 Duer and his associates quite simply wanted to link their purchase with that of the Ohio Company and ride to success on Cutler's reputation and influence. Hence, they regarded Cutler as the key to their plan and sought to use his impasse in Congress as a bargaining point.

On the afternoon of July 20, after Cutler's initial defeat in Congress, Colonel Duer approached him with a number of interesting proposals. At first Cutler was a bit suspicious:

Colonel Duer came to me with proposals from a number of principle characters in the city, to extend our contract and take in another company, but that it should be kept a profound secret. He explained the plan they had concerted, and offered me generous conditions if I would accomplish the business for them. The plan struck agreeably. Sargent insisted on my undertaking and both urged me not to think of

giving up the matter so soon.\textsuperscript{42}

The proposal was quite simple. In return for Duer's aid in breaking the congressional deadlock, Cutler would negotiate a joint purchase of land for both the Ohio and Scioto Companies. There was also some indication that they agreed to invest the control of both ventures in some form of a loose, interlocking directorate.

Bolstered by Duer's proposals, Cutler again approached the committee that very afternoon in hopes of completing the purchase without the aid of the Scioto Associates. He now presented the committee with notice of his departure from New York. The congressmen were horrified that such a promising opportunity might slip so easily from their grasp, but they still urged Cutler to consider a second attempt. His feigned indifference to their offer completely undermined the committee's resistance. They were now his children; but, two obstacles remained: Congress and time. The committee's land grant proposal was a hot-house creature which would not last long among Cutler's vigorous opponents in Congress. Even if he were to win the congressional contest, it would be a lengthy struggle. He could ill-afford a protracted battle which might give the squatters an opportunity to recoup their forces. In his search for a quick, bloodless victory, Cutler again turned to the Scioto Company.

Manasseh Cutler hesitated to tie the future of the

\textsuperscript{42}Cutler, I, 296.
Ohio Company to the grandiose scheme of land speculation proposed by the Scioto Associates. Such a plan might have created an uncontrollable land bubble into which the entire Company could have been drawn to its destruction. An additional tract of land would further expand an already glutted land market, thereby lowering land prices even further. But, above all, Cutler’s Puritan temperament recoiled from the very ostentatiousness of the Scioto venture. He had too much of the methodical "Yankee" ethic about him; he still maintained an aloof dignity and self respect that made him shy away from such spectacular machinations. The Reverend preferred a stronger grip on the situation.

The impatient Duer would not wait for the good Reverend to reconcile the pragmatic and ethical aspects of his conscience. He hoped to play upon Cutler’s weakness for social compatibility to break down his resistance. On the evening of July 20, Duer persuaded Cutler to accompany a party composed of himself, and Messrs. Webb, Hammond, and Sargent for an oyster dinner at the Stone House Tavern in rural Brookline (Brooklyn). After a pleasant inspection of a number of old British forts and a view of the harbor, Duer sprung his trap with a cuisine which completely destroyed Cutler’s resistance:

I spent the evening (closeted) with Colonel Duer and agreed to purchase more land if terms can be obtained, for another company which will probably forward the negotiations.43

43 Ibid., I, 269.
Thus the Scioto was born. What had begun as a mere tactical move for Cutler had now entangled the Ohio Company in a speculation so large and noxious it would be a running sore of American politics for years to come.

The crux of the Duer-Cutler agreement was a joint purchase of two tracts of land under the guise of the Ohio Company's negotiations with Congress. On July 21 Cutler informed Congress that if it would grant the terms he asked, the Ohio Company was ready to purchase approximately 5,000,000 acres. The purchase was extended, of course, to include a tract for the Scioto Company. He indicated that such a transaction would discharge $4,000,000 of the national debt and would cure the disordered affairs in Kentucky and the Ohio by flooding the Valley with "robust and industrious men warmly attached to the Government." 44

Duer's influence began to affect Congress. By three o'clock on Monday, July 23, the Congress had exhausted itself in debating the Ohio Company's proposals, and agreed to turn the whole question over to the Board of Treasury to negotiate a specific contract, according to the general principles already specified.

44Ibid., I, 269-299; Attempts have been made to exonerate Cutler's involvement by claiming he was totally ignorant of "what was going on beneath the surface" of the Scioto Company (Hulbert, Records, p. lvii). Quite obviously Cutler did not want to involve himself and his Company with a monster like the Scioto group; but this is not to say that such a shrewd judge of the human character could not at least imagine the purposes of such a notorious group of adventurers.
This was a signal victory for the Company for it put the entire determination of the contract in the friendly hands of Arthur Lee and William Duer. That evening, Cutler dined with Mr. Hellegas, Treasurer of the United States, and Samuel Osgood, President of the Board of Treasury, and received from them a promise to exert all their influence in favor of the Company's proposals.\footnote{Ibid., I, 299-300.}

With the fate of his contract in benevolent hands, Cutler, Grayson, and several members "from the southward who were in favor of the contract," gathered on the evening of July 23 to divide up the territorial offices created by the Northwest Ordinance.\footnote{Ibid., I, 300.} What ensued was the most cynical episode of spoilsmanship in the history of the Confederation. Cutler agreed to drop General Parsons as the Company's gubernatorial candidate for the new territory in favor of the President of the Congress. St. Clair had "neither the taste nor the genius for speculation in land; nor did he consider it consistent with his office," but he shared the Company's virulent hatred of the Ohio squatter and his democratic tendencies and would use his office to suppress any extra-legal statehood movements among such classes.\footnote{St. Clair, II, 482.}

Cutler declined any office himself; but he secured the appointment of General Parsons and Rufus Putnam to the post of Territorial Judges and Sargent as Territorial Secretary. That evening the government of the Northwest
Territory became the creature of the Ohio and Scioto Companies and an instrument for the furtherance of their interests.

On the morning of July 24, Cutler received a summons from the Board of Treasury to appear and negotiate the particulars of the contract; since the contract was much larger than the original proposed by the Company, Cutler took Sargent with him to assume some of the responsibility. The broad terms laid out by Congress and Cutler's persuasive influence among the Board members, enabled him to revise the terms of the contract in favor of more liberal provisions. A few hours later the Board submitted the new contract to Congress for approval.

Cutler had managed to wrest generous terms from a friendly Board of Treasury; but when the land grant ordinance came before Congress on July 26, it encountered heavy opposition. The resistance was centered in a confederalist coterie composed of Dyre Kearny, William Few, Abraham Yates, and William Bingham. Cutler attacked from a hardened position; he had gained the upper hand by supporting President St. Clair's bid for governorship: "Several gentlemen have told me that our matters went much better since St. Clair and his friends have been informed that we have given up Parsons."48

Since eight states were represented and the support of seven were needed if the ordinance were to pass,

48Cutler, I, 300-303.
Cutler would have to coerce the support of every Confederateist but one. The Company's congressmen gave the opposition clique no peace. They were harangued in the streets, in their lodgings, and on the floor of Congress. They were ferreted out of their nocturnal haunts and from behind their coffee house tables. Everywhere they were subjected to a stream of abusive polemic by total strangers. Under such pressure, Yates and Bingham gave way. But Kearney and Few were unmoved, and denounced by many as "stubborn mules." The bill was to come to a vote the next day, and their obstinace blocked its passage.

Cutler's strategy appeared to have failed in the face of Kearney and Few's intransigence. He arose on the morning of July 27 and packed his baggage in anticipation of his return home. Under a pall of depression, he set out on a general tour of the city to bid his new friends and acquaintances farewell. Cutler felt that his opportunity to obtain a contract was at an end. He now would examine the alternative of purchasing state lands in Maine or locating bounty warrants on the United States government lands. Cutler was willing to remain until Congress had definitely rejected the plan, but he hinted darkly that any refusal would mean the destruction of American interests in the West "by the uneasiness of the Kentucky people with respect to the Mississippi question." 49

49 Ibid., I, 303-304.
Just as Cutler had completed his last call and was hurrying past City Hall he noticed excited knots of Congressmen hurrying to an unscheduled session. Edward Carrington, spying the crestfallen clergyman, pulled him aside and whispered that Few's reluctant support had been secured and that one more effort would be made in Congress that morning. Carrington had been informed that R. H. Lee had prepared an hour's speech and was confident that the land ordinance would pass. Cutler was still skeptical, but he decided to wait out the day's session. By three o'clock in the afternoon, word reached him that an ordinance had been passed granting all the Ohio Company had desired. Immediately, Cutler set off to the Treasury with Sargent, made some verbal agreements with the Board, and departed for Boston to inform the directors, leaving the final arrangements in Sargent's hands.

Cutler presented a report of his victorious negotiations to a full meeting of the Ohio Company members in Boston. The report was overwhelmingly approved, and Cutler was congratulated for his efforts. In late October, he returned to New York to complete the formal contract arrangements. He and Major Sargent signed the indented agreements in two distinct contracts although the purchases had been negotiated as one. That evening, Cutler, Colonel Platt, and R. H. Lee adjusted the conflicting claims of the two companies and sealed the conspiracy with an exchange of stocks. Thus was completed the
greatest private contract and the largest successful land speculation made in America to that time.

By the terms of the contract, a tract containing 1,781,760 acres was sold to Cutler, Sargent, and Associates for $500,000 down and an equal sum to be paid when the survey was completed; an option on a tract containing 4,901,480 acres was granted to Cutler and Associates to be paid in six installments. The remaining 3,500,000 acres were turned over to the Scioto Company. The Company had to make a very small down payment, and the Congress allowed a liberal system of time payments. The Ohio Company, however, was compelled to begin immediate payment of the $1,000,000 lent it by Colonel Duer.\textsuperscript{50}

The stock of the Scioto Company was divided into thirty shares. Thirteen were given to Cutler and Sargent for their cooperation in securing the combined land grants; the remaining shares were given to Duer and Samuel Osgood to be sold abroad. Each share, supposedly representing 150,000 acres, was found to represent 163,382,223 acres when the survey was completed. The Company surveyors were wonderfully inaccurate in their calculations.

The Ohio-Scioto purchase virtually suspended the Land Ordinance of 1785 even before it was put into effect. The Company's ordinance decreed corporate ownership for an area which the Ordinance of 1785 had prescribed public landholdings; the Ohio and Scioto Company effectively

\textsuperscript{50}McMasters, I, 513-514; Hulbert, "Scioto," p. 505.
monopolized territory once set aside for public sales. The contract set the precedent for further gifts of public land to private companies. New speculative enterprises—the Symmes Associates and the Gallipolis venture—would soon arise and turn to Congress for land grants along the Ohio.

The purchase drastically undercut the price system established by the Ordinance of 1785. The Ordinance prescribed a minimum of $1.00 an acre; but the same acreage was awarded the Ohio Company for $.66 2/3 to $.08 an acre.\(^5\) If such prices had been offered to the squatter, the whole problem of frontier unrest which plagued the Ohio Valley would have been avoided. Moreover, the Ordinance had prescribed rectangular surveys, but now any such survey was left to the complete discretion of the Ohio Company. In the end, indiscriminate location and scattered settlement were the order of the day.

\(^5\)The preceding statistics are to be found in Treat, *The National Land System*, p. 48.
EPILOGUE

The great Scioto-Ohio land purchase could have only occurred in the waning years of the First Republic. The expiring Confederation was shot through with the aberrations of an organism dying young. In this weakened state, it was attacked on all sides by lobbies which sought to secure special benefits before their ambitions were dispelled by the immunity of a stronger federal union. In this sense, the land purchase and the Ordinance of 1787 were fitting testaments to the death of the First Republic.

The grand scheme of political economy envisioned by Cutler never attained any degree of success. The very nature of the Ohio Company's settlement and its influence upon the territorial government tended to stunt the initially dynamic growth of the trans-Ohio country.

By 1788 Marietta, the Ohio Company's central settlement, was established at the mouth of the Muskingum under the protective guns of Fort Harmar. True to its military heritage, the Company transformed Marietta into an armed camp subjected to a strict military discipline. This military society was conditioned in part by a sense of impending disaster: British agents were spreading disaffection all along the frontier, and an Indian war seemed
frightfully imminent. In a larger sense, however, it sprang from the conviction of the New Englanders that they were conducting a business enterprise which would produce a margin of profit only if the authoritarian structure of corporate organization were emulated. These authoritarian tendencies were enforced by a moral fanaticism one usually finds in New England communal experiments. For several years Marietta was a study in theocracy.

The Ohio Company perpetuated the ideas of a "moral police" in the best New England tradition. The moment Marietta was erected, the stockholders created a "Board of Police" which enacted all community regulations without the consent of the townsmen. There is some evidence, however, which suggests that the Board was not totally unresponsive to the community's desires. Nevertheless, the Board's regulations smacked of military law: a police officer was to regulate the laws passed by the Board for "cleanliness, health, and propriety;" the movements of all settlers were regulated by a system of police checks; no travel beyond the confines of the settlement was permitted without a passport; and weekly drill was prescribed for every able-bodied male.¹ Such military law is the work of soldiers and not lawyers.

There can be no doubt that the Ohio Company was

a benevolent parent to its charges. It extended generous concessions and subsidies to attract the affluent and energetic eastern farmers who could afford to purchase land. The affairs of the Company were, however, controlled by proxy vote, thus allowing absentee determination of the settlement's affairs. The Company also provided transportation, construction, and living allowances for prospective settlers. The industrial arts were not ignored; liberal subsidies were provided for capital and internal improvements. These investments had a certain "nationalizing influence." Not only did they stimulate a flow of eastern capital into the new colony, but they also compelled the Company to secure federal appropriations for "internal improvements" on their land. The settlers, however, paid for the Company's paternal care with a corresponding loss of personal political freedom.

The Ohio-Scioto Companies' ownership of this vast tract did not result in the best use of the land resources entrusted to them. Speculator ownership caused a widespread dispersion of population and placed heavy tax burdens upon farmers whose improved lands could be more heavily assessed than the speculators' unimproved lands. The maladjustment of tax rates coupled with the high land prices charged by the Company retarded settlement in that

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2Hulbert, Records, p. xxix.

area of Ohio. The cheaper lands opened up in Ohio by 1809 induced many immigrants to pass up eastern Ohio altogether; and many who had originally settled there sold out or forfeited their lands and moved west. 4

A great deal of harm was also done by the absentee character of the Ohio Company's landholdings. Of the 817 shareholders, less than one-third migrated to the Ohio country. 5 Even Cutler remained in Massachusetts as much as his affairs would permit. The percentage of absenteeism among the Scioto Associates, on the other hand, was nearly absolute. Not only did absenteeism lead to a vicious pattern of tenancy, but the absentee landlord tended to look upon the whole settlement as a purely commercial rather than a social venture. The land companies were loathe to pay local taxes and resisted tax levies for public projects. They looked upon their own private improvements as sufficient compensation for government taxation. Hence, heavy interest penalties and tax titles did not hinder their operations. Since the Company was in fact in charge of the territorial government, generous "compensations" were extended to local governments and complaining national officials, thereby allowing the Company to abdicate its position as chief taxpayer in the Territory. As a result of these machinations, territorial taxes usually rose, even in periods

4Buley, p. 25.

5Hulbert, Records, I, xlv.
of depression, adding to the fixed costs of the farmer whose real wages were declining. 6

The whole tax-real wage-tenantry vortex induced in the tenant an apathetic attitude toward farm practices which depleted the soil. The exhaustion of the land, the growth of tenancy, the upward spiral of fixed costs in the face of declining real wages led to further squatting on unoccupied Company lands. In the end, the unfortunate Arthur St. Clair, Territorial Governor, had to bear the misery of Dr. Cutler’s grand scheme. In 1796 and 1798 he continually drove of the United States and Company lands; but in 1800, he announced that so few wealthy proprietors held so many men debtors and tenants that “the independence of elections were endangered by bribery and threats of foreclosure.” 7 Squatting was the only alternative to starvation for many pioneers. The records present a picture of the territory as a welter of small communities in which there are a few men of wealth living in luxury and others down to the squatter living in the most abject poverty and primitive stage of existence. 8

The domination of the territorial offices by shareholders and directors of the two companies had a correspondingly ill-effect upon the organization and maintenance of territorial government. Considering that

7Laws of the Northwest Territory, p. xxxiv.
8Ibid., p. xxxv.
the three territorial judges—Samuel Holden Parsons, James M. Varnum, and John Cleve Symmes—were all trained and practiced lawyers (one had actually held a judicial office), their legislation and judicial ethics were abominable: the ten laws first passed were without enacting clauses, "or divisions into sections, are often bold statements rather than exact phraseology and are sometimes remarkable in their definitions and wordings." As at Marietta, the judges in their attempt to erect a system of "moral police," enacted a collection of pious, blue-laws without penalties attached. Profanity and "idle comments" were prohibited, as was Sabbath-breaking whether abstinence from church services or servile labor.

In the criminal codes adopted, punishments were unnecessarily cruel and savage: the pillory and the whipping post were integral parts of the retributive justice of the Territory. Laws for imprisonment for debt were also adopted from eastern law codes. St. Clair urged their mitigation, but the fact that funds for debtor prisons were prescribed indicates that these laws were actually carried out. Arthur St. Clair was a man of highest integrity and moral worth. He was both a conservative and a humanitarian. Hence he was increasingly disturbed by the unjust and positively illegal conduct of the Ohio-Scioto

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9 Ibid., p. xxvii.

men in the territorial government. Above all, these officials were attempting to undercut the troublesome Governor's power and establish a magistracy in his stead. At first the Governor acquiesced to their suspension of the territorial laws in favor of martial law; writing to the judges in 1788, he stated his views:

I suspect we are overpassing the line of our duties in forming new laws in any case; and when we do, the necessity of the case can be our only justification. The Ordinance of Congress empowers us to adopt and publish such laws of the original states ... In departing from that rule, we certainly expose ourselves to censure from Congress and besides, there may be some doubt as to the validity of such laws as we adopt and publish under any other; and it may not be unworthy your consideration whether, upon such an exception being taken before you in your judicial capacity, you would not be obliged to decide against the law and declare it a nullity.\[11\]

The judges justified this illegal conduct with a long argument concerning the difficulty of finding laws in the mature states to fit the raw frontier territory. St. Clair later indicated that the chief difficulty was the judges' refusal to acquaint themselves with the proper law codes, and their rejection of the Pennsylvania code he presented them.\[12\]

The judiciary even went so far toward complete political usurpation as to dispute the Governor's right of veto. They alleged he merely had a voice with them in the selection of laws. St. Clair, throughout the remainder of his administration, struggled to maintain

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11St. Clair, II, 72-78.
12Ibid., II, 69, 334.
the integrity of his office. His struggle, however, extends beyond the scope of this work.

A study of the territorial government-land disposal controversy between 1781 and 1788 could lead to Hobbes's conclusion that all human life is "nasty, brutish, and short." The struggle between the speculator and the squatter was one marked by deceit, brutality, callousness to human life and property, hypocrisy and venality on both sides. The conditions of the frontier rubbed raw the political and economic struggles which in more civilized regions is discreetly masked by normal social conventions and legal processes. The frontier was totally lacking these, and hence brought forth the worst in human social conflicts.

The victory initially went to the speculators and their conservative allies in Congress, but it was neither permanent nor fruitful. The obstreperous squatter was too hardy a breed to be deterred by anything short of outright extermination. Moreover, he provided a significant contribution to the territory's development. From the squatters and other early settlers, valuable aid in founding and protecting new communities was gained by the inexperienced and late-comers. Eventually the land companies and the territorial government were forced to recognize the validity of the squatter's existence. The Symmes Associates, the Cincinnati Associates, yes even the Ohio Company eventually gave land to a limited number who
would settle on their grant.\textsuperscript{13} Even in the halls of Congress, their worth was occasionally recognized. Congressman Thomas Scott of Washington, Pennsylvania, summed up their achievements in a speech given to his fellow delegates on July 13, 1789:

\begin{quote}
In a wilderness upon the frontiers, between the savages and the least populated of the civilized parts of the U. S. requires men of enterprising, violent; nay, discontented and turbulent spirits. Such always are our first settlers in the ruthless and savage wilds; they serve as pioneers to clear the way for the more laborious and careful farmer. These characters are already in that country by thousands and their number is daily increasing
\end{quote}

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\begin{footnotes}
\item[13] Barnhart, p. 131.
\item[14] Quoted in \textit{ibid.}
\end{footnotes}
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