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# THE EDUCATIONAL SIGNIFICANCE OF THE EARLY FEDERAL LAND ORDINANCES

BY

HOWARD CROMWELL TAYLOR

SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS  
FOR THE DEGREE OF DOCTOR OF PHILOSOPHY  
IN THE FACULTY OF PHILOSOPHY  
COLUMBIA UNIVERSITY



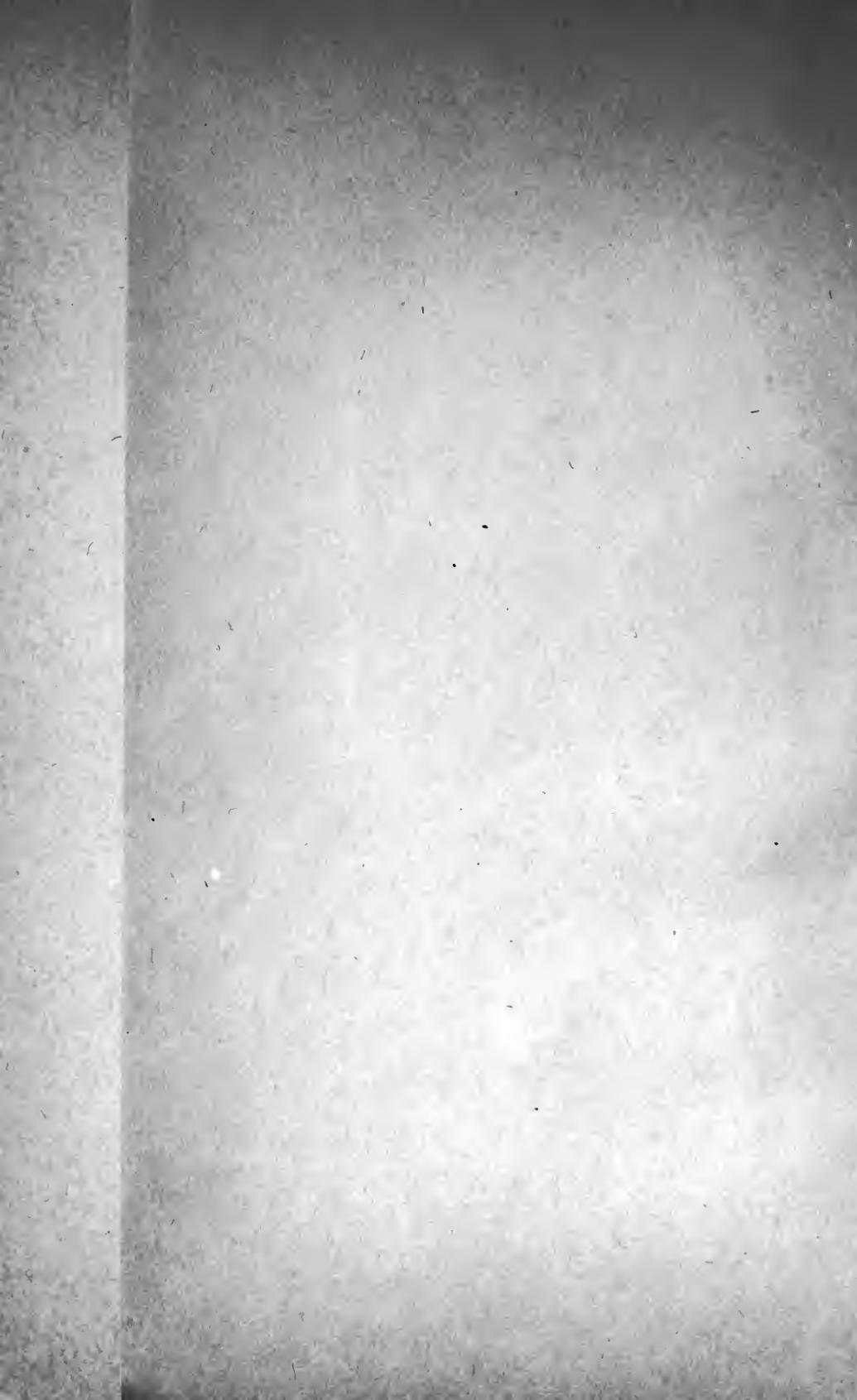
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H. C. T.

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UNIV. OF  
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## CHAPTER I

### THE ECONOMIC AND POLITICAL IMPORTANCE OF THE NORTHWEST

THE purpose of this study is to discover the educational significance of the early federal land ordinances and to show how these ordinances affected subsequent legislation with reference to education and the development of the public school system in this country. The problem suggests two less comprehensive but more definite questions: (1) To what extent were these early ordinances the work of land speculators? (2) Did the advocates of these measures have any broad or clearly defined educational policy in view?

In order to understand the early land ordinances it is necessary to review briefly some of the historical background with reference to the West and Northwest of the colonial period. Possession of these lands, in so far as France and England were concerned, was determined by the Seven Years' War. From that time on, the settlement and government of this territory was one of the important public questions. Some of the leading men of the time were personally interested in these western lands and projects of settlement in the frontier country. The correspondence of Washington and Crawford throws some light on the question.<sup>1</sup>

William Crawford lived in Pennsylvania, near the Virginia line beyond the mountains. For fourteen years, 1767-1781, he and Washington exchanged letters, largely concerning the land held by Washington in the West. The correspondence shows that Washington had employed Crawford to seek out quietly large bodies of good land along the Kanawha and Ohio rivers. In all, Washington accumulated more than thirty-two thousand acres. In September, 1767, he wrote Crawford that he would join him, as promised, in trying to secure land beyond the Proclamation Line of 1763, because he felt sure that that measure was only a blind to quiet the Indians and would soon be repealed.<sup>2</sup> This prolonged correspondence between Washington and Crawford

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<sup>1</sup> *Washington-Crawford Letters.*

<sup>2</sup> *Ibid.*

## *2 Educational Significance of Early Federal Land Ordinances*

relates almost exclusively to the details of locating and surveying the best lands available and to means of holding these lands against squatters. Washington's holdings in the western country were valued by him at approximately one hundred thousand dollars. He knew the West well and had great faith in its future. It is not surprising that he was greatly interested in the various plans of settlement and government of this region.

In 1774 Washington tried to form a company to develop the connection between the Potomac and Ohio rivers.<sup>3</sup> At that time, the city of Baltimore opposed the plan because it was feared that it would divert the western trade from Baltimore. Before this plan took any definite shape the war began and the scheme was abandoned for about ten years. With the surrender of claims to the western lands by the various states, especially the Virginia land cession of March 1, 1784, interest in opening an easy path for travel from tide-water to the Ohio country was revived. Two of the terms of this cession are of special importance.<sup>4</sup> One is the provision that these lands should be laid out into states, which should be admitted to the Union on equal terms with the original states. The other is the provision which reserved land for the soldiers who had conquered the Northwest. Undoubtedly, both of these provisions had their influence in the subsequent legislation with reference to the political development of the West and in the solution of the problem of paying the soldiers of the Revolution.

The fundamental problem at this time, however, was an economic one, in so far as the relation of the western country to the Union was concerned. It was generally felt that before any plan of political organization of the West could be put into operation it was necessary to bind the back-country to the sea-board by economic ties. Certainly the national leaders were aware of this necessity. In the same month that Virginia ceded her western lands to the Union Jefferson and Washington were in correspondence concerning the development of a water connection by way of the Potomac and Ohio rivers. Thus was Washington's plan of 1774 revived.

In a letter, dated March 15, 1784, Jefferson urged Washington to undertake this work of development. He said: ". . . I

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<sup>3</sup> Sparks: *Writings of Washington*, IX, p. 31.

<sup>4</sup> *Journals of Congress*, IX, pp. 67 ff.

am confident that would you either alone or jointly with any persons you think proper be willing to direct this business, it would remove the only objection the weight of which I apprehend."<sup>5</sup> And farther on in the same letter, he said: ". . . When you view me as not owning, nor ever having a prospect of owning one inch of land on any water either of the Potowmac [sic] or Ohio, it will tend to apologize for the trouble I have given you of this long letter, by showing that my zeal in this business is public and pure."<sup>6</sup> It was Jefferson's opinion that Virginia should not undertake to hold more territory than she could govern well, and, for this reason, he believed that the western boundary of the state should not extend beyond the mouth of the Kanawha.<sup>6</sup>

It appears that Washington was in full accord with Jefferson with reference to what should be the policy of Virginia as regards the development of the western territory. In reply to Jefferson's letter, just quoted above, Washington wrote on March 29, 1784, in part as follows: "My opinion coincides perfectly with yours respecting the practicability of an easy and short communication between the waters of the Ohio and the Potomac, of the advantages of that communication and the preferences it has over all others, and of the policy there would be in this state and Maryland to adopt and render it facile."<sup>7</sup> While Washington also believed that it would be wise for Virginia to relinquish her claims to all lands beyond the meridian of the mouth of the Kanawha he expressed some doubt as to the popularity of such a policy and was of the opinion that it would meet with some opposition. In this connection he said: ". . . I am mistaken if our chief magistrate will coincide with us in this opinion."<sup>7</sup>

As the months went by interest in the western question developed. Governor Harrison and the General Assembly were realizing that some definite action should be taken at once. Harrison and Washington had some discussion of the problem. On the tenth of October, 1784, Washington wrote Governor Harrison of Virginia as follows: "I need not remark to you, Sir, that the flanks and rear of the United States are possessed by other powers, and formidable ones, too; nor how necessary it is to apply the cement of interest to bind all parts of the Union in indissoluble

<sup>5</sup> *Old South Leaflets*, VI, No. 127, p. 14.

<sup>6</sup> *Ibid.*, p. 15.

<sup>7</sup> Sparks: *Writings of Washington*, IX, pp. 31 ff.

bonds, especially that part which lies immediately west of us, with the middle states.”<sup>8</sup> In this same letter Washington expressed the opinion that “the touch of a feather” would turn the people in the West in any direction. He favored immediate internal improvements to bind the Ohio Valley to the United States and recommended to Governor Harrison the appointment of a commission to survey the James and Potomac rivers from tide-water to their sources. He showed in detail the great advantages in distance, topography, and political conditions Virginia had at that time, pointing out especially the fact that the British still held the important posts at Detroit, Niagara, and Oswego, which cut off New York from connection with the West. Washington further suggested in his letter to Governor Harrison that the State of Virginia encourage private corporations to develop the navigation of the James and Potomac rivers.

When the efforts of France to have the western boundary of the United States fixed at the Alleghany Mountains in 1783 and the subsequent plots and conspiracies to alienate the West from the Union, fostered by France and Spain, are taken into account, Washington’s fear that the West might be lost unless strenuous and immediate steps were taken to hold it was, beyond question, well founded. The strong positions on the north held by Great Britain made it easily possible for British influence to control and dominate the economic development of the Northwest unless a direct and accessible connection between the Ohio country and the Atlantic sea-board was established.

The suggestion of Washington’s as regards the encouragement of private corporations to develop the James and Potomac rivers was followed. The James River Company was incorporated by an act of the Virginia General Assembly, January 5, 1785, with a capital stock of five hundred shares at \$200 a share.<sup>9</sup> On the day before, January 4, 1785, the Potomack Company was incorporated with a capital stock of five hundred shares at \$444 4/9 a share.<sup>10</sup> By an act of the General Assembly, Washington was given fifty shares of stock in the Potomack Company and one hundred shares of stock in the James River Company.<sup>11</sup> In a letter to Washington, informing him of this action, Governor

<sup>8</sup> Sparks: *Writings of Washington*, IX, pp. 58–68.

<sup>9</sup> Hening: *Statutes at Large*, XI, p. 450.

<sup>10</sup> *Ibid.*, p. 510.

<sup>11</sup> *Ibid.*, p. 525.

Harrison said: "As this compliment is intended by your country in commemoration of your assiduous cares to promote her interest, I hope you will have no scruples in accepting the present, and there-by gratifying their most earnest wishes."<sup>12</sup>

Washington was much perplexed by this gift. In his letter of reply to Governor Harrison, January 23, 1785, he said: "No circumstance has happened to me since I left the walks of public life, which has so much embarrassed me."<sup>13</sup> He asked the Governor to advise him as to whether he should accept the gift. In the letter he said: "I will receive the full and frank opinions of my friends with thankfulness."<sup>14</sup>

Washington became actively associated with these projects of internal improvement and gave much of his thought and time to them and though a large share-holder in these development companies, due to the action of the General Assembly, Washington's interest was not selfish. He believed this work of opening up the West to be of utmost importance. His attitude in the matter is clearly revealed in his correspondence. He wrote to Edmund Randolph, July 30, 1785, as follows: "Although it is not my intention to derive any pecuniary advantage from the generous gift of the Assembly of this State, in consequence of its gratuitous gift of shares in the navigation of each of the rivers Potomac and James; yet as I consider these undertakings of vast political and commercial importance to the States of the Atlantic, especially to those nearest the center of the Union, and adjoining the western territory, I can let no act of mine impede the progress of the work. I have therefore come to the determination to hold the shares, which the treasurer was directed to subscribe for on my account, in trust for the use and benefit of the public; unless I should be able to discover, before the meeting of the Assembly, that it would be agreeable to it to have the product of the tolls arising from these shares applied as a fund, on which to establish two charity schools, one on each river, for the education and support of the children of the poor in this country, particularly the children of those men of this description who have fallen in the defence of the rights and liberties of it."<sup>15</sup> The closing paragraph of this letter throws some light on the public interest in this mat-

<sup>12</sup> Sparks: IX, p. 83.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*, p. 86.

<sup>15</sup> *Ibid.*, pp. 116-17.

## *6 Educational Significance of Early Federal Land Ordinances*

ter of opening up a waterway into the Ohio country. To quote: "Perceiving by the advertisements of Messrs. Cabell, Buchanan, and Southall, that half the sum required by the Act, for opening and extending the navigation of the James River, is subscribed, and the twentieth of next month appointed for the subscribers to meet at Richmond, I take the liberty of giving you a power to act for me on this occasion. I would (having the accomplishment of this navigation much at heart) have attended in person, but the president and directors of the Potomac Company, by their own appointment, are to commence the survey of this river in the early part of next month; for which purpose I leave home tomorrow."<sup>16</sup>

While the companies were being organized for the development of the navigation of the Potomac and James rivers the state legislatures of Virginia and Maryland voted appropriations to build jointly a road from the highest point of navigation on the Potomac to the river Cheat or Monongahela and these two states jointly applied to the legislature of Pennsylvania for permission to build a road from Fort Cumberland to Youghiogany.<sup>17</sup> The Virginia General Assembly also voted to open up the overland connection between the highest point of navigation on the James River and the headwaters of the Kanawha River.<sup>17</sup> Thus it appears that the feeling of the economic importance of the West was becoming general and public sentiment was finding expression in legislative enactments in the states most vitally interested in the West.

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<sup>16</sup> Sparks: IX, p. 117.

<sup>17</sup> *Ibid.*, p. 91.

## CHAPTER II

### EARLY ATTEMPTS TO FRAME AN ORDINANCE FOR THE NORTHWEST

NOT only were the states of Virginia and Maryland actively interested in the economic development of the West, but Congress more or less keenly felt the economic and political importance of the Ohio Valley. With all of its inefficiency and impotence and lack of strong, constructive leadership, Congress did some very necessary and effective work in laying the foundation for the Northwest Ordinance of 1787, the greatest monument to the Congress for its service to the nation.

A commission was appointed by Congress to extinguish Indian claims to the national lands by treaties with the Indians. The Treaty of Fort Stanwix practically eliminated the Six Nations as contenders for possession of the Northwest. This treaty was of especial importance because of the great strength of the Six Nations and also because of their strategic position at the very gateway to the great Northwest. Washington wrote to Richard Henry Lee, then president of Congress, and expressed great satisfaction at the liberal cession of lands that had been gained by the treaty. He gave voice to the hope that the Western Indians would follow the example of the Six Nations and make as favorable terms with the commission then on their way to Fort Pitt to treat with them. In this same letter,<sup>1</sup> December 14, 1784, Washington called Lee's attention to the movement under way in Virginia and Maryland for the development of the James and Potomac rivers as highways to the West, and in this connection he said: "Would it not, at the same time, be worthy of the wisdom and attention of Congress to have the western waters well explored, the navigation of them fully ascertained and accurately laid down and a complete and perfect map made of the country; at least as far westerly as the Miamies? . . . Would there be any impropriety, do you think, Sir, in reserving for special sale all mines, minerals, and salt springs, in the general grants of land from the United States? The public, instead of the few knowing ones,

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<sup>1</sup>Sparks: IX, pp. 79-81.

might in that case receive the benefits which would proceed from the sale of them." Few men saw as clearly as Washington the great importance of working out a definite policy of organization and disposal of the western lands by Congress. Concerning this he wrote to Lee as follows: "To hit upon a happy medium price for western lands, for the prevention of monopoly on one hand and not discouraging useful settlers on the other, will no doubt require consideration; but ought not, in my opinion, to employ too much time before the terms are announced. The spirit of emigration is great."

After the Treaty of 1783, the pressure of the westward movement had greatly increased. Not only Washington, but members of Congress and especially the people in the West felt the need of some political organization of the territory beyond the mountains. Sentiment in favor of nationalizing all western land was becoming general. In 1781, Virginia, following the suggestion of the New York Legislature,<sup>2</sup> opened the way for the solution of the vexing problem of conflicting state claims to western lands by the cession of her lands in the Northwest to the national government. Later the terms of this act of cession were so modified as to retain the Virginia Military Reserve, over which the State of Virginia was to exercise no political control. (The deed as finally executed is in the Journals of Congress for March 1, 1784.<sup>3</sup>)

The terms on which this cession was made are of great importance because they very definitely influenced the policy of the national government in dealing with the lands acquired in the Northwest, and by thus setting a precedent, materially affected the general policy of the government in the organization of the public domain into territories and states. In brief outline the important terms of the cession are as follows: (1) The land was to be laid out in states, with the size roughly designated. This provision was subsequently modified at the request of Congress. (2) The states formed were to have a republican form of government and were to be admitted to the Union. (3) The United States was to reimburse Virginia for the conquest of the Northwest. (4) The French-Canadian citizens within the bounds of the cession were to be secure in their rights. (5) Not more than one hundred fifty thousand acres were reserved for George R.

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<sup>2</sup> New York offered to cede her western lands in 1780.

<sup>3</sup> *Journals of the Continental Congress*, IV, pp. 67 ff.

Clark and his officers and soldiers. The shape of this reserve was definitely stated. (6) The United States was to grant other military lands if those south of the Ohio River proved insufficient to meet the legal claims of the soldiers of the Revolution against the State of Virginia. The location of such lands was roughly specified. (7) All other land was to be for a common fund for all the states.

Massachusetts and other states followed the example of Virginia and surrendered their claims to the Northwest. With the extinguishment of the state claims to the Northwest, the necessity of Congressional action in dealing with this territory became all the more urgent. In the same month that the Virginia cession finally became effective a committee in Congress, composed of Jefferson, Chase of Maryland, and Howell of Rhode Island, reported the Ordinance of 1784 for the organization and government of the newly acquired territory. It was so drawn as to make effective the conditions stipulated in the Virginia cession. This ordinance did not mention education. The original draft contained a clause prohibiting slavery after 1800, but this was stricken out by amendment to the ordinance, as revised by the committee, and reported in April, 1784.<sup>4</sup> The chief importance of this Ordinance of 1784 is in the fact that it nationalized the Northwest. While it was legally in effect until 1787, it was practically a dead letter because no adequate provision was made for the sale of land to actual settlers.

It evidently was thought by the committee which framed the Ordinance of 1784, that Congress would make the necessary provisions for the disposal of the lands. Jefferson wrote Madison, April 25, 1784: "The minuter circumstances of selling the ungranted lands will be provided in an ordinance already prepared but not reported."<sup>5</sup> Such an ordinance was eventually reported by a committee of which Jefferson was chairman, but failed of passage, six states voting against it.<sup>6</sup> The following year, May 20, 1785, there was enacted the well-known land ordinance which provided for the survey and sale of the western lands. It contained this provision: "There shall be reserved the Lot No. 16, of every township, for the maintenance of public schools, within

<sup>4</sup> *Old South Leaflets*, VI, No. 127.

<sup>5</sup> *Univ. of Nebraska Sem. Papers*: Jay A. Barrett: *Evolution of the Ordinance of 1787*, p. 27; Bancroft: *Hist. of Formation of Constitution*, I, p. 356.

<sup>6</sup> Randall: *Life of Jefferson*, I, p. 400.

the said township."<sup>7</sup> The original draft of the ordinance as presented on April 26, 1785, provided for townships seven miles square. It was so amended, May 20, 1785, as to provide for townships six miles square, thus instituting the plan of congressional survey that has been followed to the present time.<sup>8</sup> Congress made provision that these lands thus surveyed should be sold in square mile tracts and by townships.<sup>9</sup>

Washington had no high opinion of this plan of sale. He wrote to William Grayson, in Congress, August 22, 1785, criticising the disposition of Congress not to exercise the little authority they possessed. He said in part: "Instance your late ordinance respecting the disposal of the western lands, in which no state with the smallest propriety could have obtruded an interference. No doubt but the information of Congress from the back country is better than mine, respecting the operations of this ordinance; but I have understood from some sensible people, that, besides running they know not where to purchase, the lands are of so versatile a nature that, to the end of time, they will not, by those who are acquainted therewith, be purchased either in townships or by square miles."<sup>10</sup> Washington referred here to the curious compromise in the ordinance, due to the conflict between the New England township idea and the southern preference for a smaller unit. The ordinance provided that alternate townships should be sub-divided into "lots" or sections of six hundred forty acres—a square mile—and sold by sections. Thus one half of the townships were to be sold entire and the other half were to be sold in tracts of square miles.

Washington had stated to Hugh Williamson, in Congress, a few months earlier, his ideas concerning a plan for the disposal of western lands. The occasion for this expression on the part of Washington was the Treaty of Fort Stanwix which quieted the claims of the Six Nations to the Northwest. He wrote Williamson, March 15, 1785, as follows: "I thank you, Sir, for your account of the last Indian treaty. I had received a similar one before, but do not comprehend by which line our northern limits are to be fixed. Two things seem naturally to result from this

<sup>7</sup> *Journals of American Congress*, IV, pp. 520-22. See Appendix A.

<sup>8</sup> *History of North America*, IX: Geer: *Louisiana Purchase and Westward Movement*, pp. 58-75.

<sup>9</sup> *Journals of American Congress*, IV, pp. 520-22. See Appendix A.

<sup>10</sup> Sparks: IX, p. 126.

agreement with the Indians; the terms on which the ceded lands are to be disposed of, and the mode of settling them. The first, in my opinion, ought not to be delayed: and the second ought not to be too diffusive. Compact and progressive seating will give strength to the Union, admit law, and good government, and federal aids at an early period. Sparse settlements in several new states, or a large territory of one, will have the directly contrary effects; and while it opens a large field to land-jobbers and speculators, who are prowling about like wolves in many shapes, will injure the real occupiers and useful citizens and consequently the public interest.

"If a tract of country, of convenient size for a new state, contiguous to the present settlements on the Ohio, is laid off, and a certain proportion of the land seated, or at least granted before any other state is marked out, and no land is to be obtained beyond the limits of it, we shall I conceive, reap great political advantages from such a line of conduct, and without it we may be involved in much trouble and perplexity before any new state will be well organized or contribute anything to the support of the Union."<sup>11</sup> While there is nothing original in these ideas of Washington's, they embody one of the sanest points of view developed as regards the sale of western lands. The Ordinance of 1785 was a compromise measure, and like nearly all compromises, was by no means perfect.

New England influence had great weight with the committee that framed the ordinance and with Congress in its passage. Tradition and precedent added weight to the influence of New England. The colonial township surveys and the custom of "township planting" of New England had proved more successful than the southern plan of "indiscriminate locations," with the inevitable over-lapping of surveys. When Grayson's committee first reported the ordinance, Rufus King, a leading member of the committee, sent a draft of it to Colonel Timothy Pickering and wrote him: "You will find thereby, that your ideas have had great weight with the Committee who reported the ordinance."<sup>12</sup> On May 8, King again wrote to Pickering that they had been forced to "give up the plan of townships so as to admit the sale of one half of the townships in lots of a square mile."<sup>13</sup> After the

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<sup>11</sup> Sparks: IX, pp. 105-06.

<sup>12</sup> Octavius Pickering: *The Life of Timothy Pickering*, I, p. 511.

<sup>13</sup> *Ibid.*, p. 514.

## 12 Educational Significance of Early Federal Land Ordinances

final passage of the ordinance, King wrote to Pickering: "All parties who have advocated particular modes of disposing of this western territory have relinquished some things they wished, and the ordinance is a compromise of opinions."<sup>14</sup>

The conflicting ideas in the committee concerning the ordinance were clearly set forth by Grayson, the chairman of the committee. He wrote Washington as follows: "Some gentlemen looked upon it as a matter of revenue only, and that it was true policy to get the money without parting with inhabitants to populate the country, and thereby preventing the land in original states from depreciating. Others (I think) were afraid of interference with the lands now at market in the individual states. Part of the Eastern gentlemen wish to have the land sold in such a manner as to suit their own people, of whom I believe there will be great numbers, particularly from Connecticut. But others are apprehensive of the consequences which may result from the new states taking their position in the confederacy. They, perhaps, wish that this event may be delayed as long as possible."<sup>15</sup>

The advocates of the Ordinance of 1785 presented strong arguments in its support. It was pointed out that congressional surveys would disclose a great deal of valuable information concerning the western lands; and would preclude "controversy on account of bounds to the latest ages." It was also urged that surveys into squares were the least expensive because, in many cases, only two sides of the square would be run. Sale by auction was defended on the ground that it gave equal opportunity to those not on the land. The sale by townships was advocated because it would make an appeal to the prospective settlers from the New England States. Especial emphasis was laid upon the provision which dedicated section sixteen in each township to public education. The chief advantage of this provision, according to its advocates, was that it would promote compact settlement.<sup>16</sup> As regards this point, Grayson said: ". . . The idea of a township, with the temptation of a support for religion and education, holds forth an inducement for the purpose of purchasing and settling together; that the southern mode would defeat this end by intruding the idea of indiscriminate locations and settlements,

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<sup>14</sup> Octavius Pickering: *The Life of Timothy Pickering*, I, p. 516.

<sup>15</sup> Bancroft: I, p. 425; Treat: *The National Land System*, pp. 32-33.

<sup>16</sup> Treat: p. 31.

which would have a tendency to destroy all these inducements to emigration which are derived from friendships, religion and relative connections."<sup>17</sup> There seems to have been no clear consciousness on the part of the committee or of Congress of the full significance of this educational provision. Apparently, it was viewed only as a selling point for the disposal of the western lands in compact settlements. The thought of laying a permanent foundation for a public school system seems not to have entered into the discussion of the matter.

One point urged in favor of the Ordinance of 1785 was the ease and simplicity with which title to land could be obtained. As one of the advocates of the measure at the time expressed it: "The present plan excludes all the formalities of warrants, entries, locations, returns, and caveats, as the first and last process is a deed."<sup>18</sup> The importance of this feature of the ordinance can scarcely be over-emphasized. It was a marked improvement on the clumsy and inaccurate methods then prevalent in Virginia and throughout the South. It set a precedent that has been generally followed and which has done much to encourage the sale of public lands.

Grayson pointed out another argument in favor of the ordinance, which probably had great weight in bringing about its final passage. It was the fact "that if the plan should be found by experience to be wrong, it could easily be altered by reducing the quantities and multiplying the surveys."<sup>19</sup>

The problem of fixing the price of the western lands was one of the most difficult. On the one hand the price had to be low enough to be within the reach of the poorer classes, who were the most likely to move into the West, and at the same time be high enough to discourage speculators and land jobbers from buying and holding the best lands. The difficulty was met in the Ordinance of 1785 by the requirement that the lands be sold at public auction, "provided, that none of the lands, within the said territory, be sold under the price of one dollar the acre, to be paid in specie, or loan office certificates, reduced to specie value, by the scale of depreciation, or certificates of liquidated debts of the United States, including interest, besides the expense of the

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<sup>17</sup> Bancroft: I, p. 425; Treat: p. 31.

<sup>18</sup> Treat: p. 32.

<sup>19</sup> *Ibid.*

survey and other charges thereon, which are hereby rated at thirty-six dollars the township, in specie, or certificates as aforesaid, and so in the same proportion for a fractional part of a township, or of a lot, to be paid at the time of the sales; on failure of which payment, the said lands shall again be offered for sale."<sup>20</sup> It was believed that the poorer classes, especially in New England, would unite to purchase a township. It was also thought that the high initial cost would prevent speculation, but, if in spite of this high cost, a speculator should buy lands, it would increase the revenue of the land office which was by no means undesirable. As a matter of fact, the high price not only effectively discouraged speculators, but also kept legitimate settlers from taking up the lands. This proved to be the weakest point in the Ordinance of 1785, and because of this weakness, the ordinance was of little or no immediate usefulness in the development of the West.

The general policy for the survey and sale of the public domain was sound, and due credit should be given to the framers of the ordinance and to the Congress which made it effective. The Ordinance of 1785 is the foundation on which has been built the national land system of the United States. In its influence upon subsequent events it stands second to no act of the Continental Congress except, perhaps, the Ordinance of 1787. The Ordinance of 1785 was a land ordinance and its influence has been chiefly upon land policies and legislation. Education was a minor consideration in the ordinance and the mention of education in it was merely incident to the sale of land under the plan embodied in the ordinance. Regardless of the intentions of the committee who framed the educational provision, or of the Congress which permitted that provision to stand while striking out the similar provision for the support of religion, that provision which reserved "the lot No. 16, of every township, for the maintenance of public schools, within the said township," set a precedent the influence of which has been far-reaching in the development of the policy of dedicating public lands to public education.

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<sup>20</sup> *Journals of American Congress*, IV, pp. 520-22. The ordinance is reprinted as Appendix A.

## CHAPTER III

### THE OHIO COMPANY

THE Ohio Company, organized in 1786, was composed largely of New England officers and soldiers of the continental army. The purpose of this company is set forth in the articles of agreement which were adopted in the organization of the company. The preamble reads as follows: "The design of this association is to raise a fund in continental certificates for the sole purpose and to be appropriated to the entire use of purchasing lands in the western territory belonging to the United States, for the benefit of the company and to promote a settlement in that country."<sup>1</sup>

The history of the Ohio Company begins in the year 1776. Its origin can be definitely traced to the resolutions of Congress of that year, which granted land to certain officers and soldiers of the continental army. These grants were supplemented by further grants by Congress in 1780. The connection between these early resolutions and the Ohio Company is found in (1) the plans evolved during the year 1783 to pay the indebtedness to the army, (2) the Officers' Petition, and (3) the Ordinance of 1785.

On January 6, 1783, a group of army officers addressed a petition to Congress,<sup>2</sup> asking that something be done to relieve the distress in the army by the adjustment of all dues. As Congress took no definite action on this petition, later in this same year, Colonel Timothy Pickering, General Rufus Putnam and other officers developed a plan by which the debt to the army was to be paid in western lands as provided for in the resolutions of Congress of 1776 and 1780. Pickering wrote to Hodgdon, April 7, 1783, as follows: "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. Enclosed is a rough draft of some propositions respecting it, which are generally approved of. They are in the hands of General Huntington and General Putnam for consideration, amendment,

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<sup>1</sup> Cutler: *Life of Rev. Manasseh Cutler*, I, p. 181.

<sup>2</sup> Bancroft: I, pp. 77-81; copied from *Journals of Congress*, IV, p. 206.

and addition. . . . As soon as the plan is well digested, it is intended to lay it before an assembly of the officers, and to learn the inclination of the soldiers. If it takes, an application will then be made to Congress for the grant and all things depending on them."<sup>3</sup> This draft which Pickering sent to Hodgdon, had the following title: "Propositions for Settling a New State by Such Officers and Soldiers of the Federal Army as Shall Associate for that Purpose," and contained fifteen propositions.<sup>4</sup> The most important of these were the second, which provided that land should "be assigned to the army to fulfill the engagements of the United States by the resolutions of the 16th of September, 1776, August 13th and September 30th, 1780"; the third, which provided for additional grants to those making actual settlement within one year; the seventh, which provided that "all surplus lands shall be the common property of the state and disposed of for the common good; as for laying out roads, building bridges, erecting public buildings, establishing schools and academies, defraying the expenses of government, and other public uses"; the eleventh, which was: "That a Constitution for the new state be formed by the members of the association previous to their commencing the settlement, two thirds of the associates present at a meeting duly notified for that purpose agreeing therein. The total exclusion of slavery from the state to form an essential and irrevocable part of the constitution"; and the thirteenth, which provided: "That the State, so constituted, shall be admitted into the confederacy of the United States, and entitled to all the benefits of the Union, in common with the other members thereof."

These propositions embodied a definite plan for the formation of a new state, to be admitted to the Union on an equality with the original states. It is evident that those who approved these propositions were determined to fix the form of government under which they were to live before moving into the new state. This is shown in the provision for the adoption of an anti-slavery state constitution before commencing an actual settlement. It is to be noted, also, that the policy of using money derived from the sale of public lands for the establishment of public schools was a definite part of this plan.

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<sup>3</sup> Barrett: *Evolution of the Ordinance of 1787*, p. 7, note 1, copied from Pickering: *Life of Pickering*, I, p. 457.

<sup>4</sup> Cutler: I, pp. 156-59, printed in full.

While the army officers were at work trying to devise some plan for the settlement of claims of the army against the government, Congress was not indifferent to this problem. Theodoric Bland and Hamilton both wrote Washington for advice on this matter. April 4, 1783, Washington wrote Bland at great length.<sup>5</sup> He said in part: "I fix it as an indispensable measure that, previous to the disbanding the army, all their accounts be liquidated and settled." He urged that Congress provide for at least one month's pay before the army was disbanded. In closing, Washington said: "Upon the whole, you will be able to collect from the foregoing sentiments what are the expectations of the army, that they will involve complete settlement and partial payment, previous to any dispersion." Acting upon Washington's advice, on June 5, 1783, Bland, seconded by Hamilton, introduced an ordinance<sup>6</sup> in Congress, for the payment of the army debt in western lands. The chief points in this ordinance were: (1) "in lieu of the commutation for the half pay of the army, and in lieu of the arrearages due to the officers and soldiers," thirty acres of land in the Ohio country be granted for each dollar due, over and above the bounties promised in the resolutions of 1776; (2) the territory to be laid off in districts not exceeding two degrees of latitude and three degrees of longitude, and each district to be laid off in townships, the surveys at the expense of Congress; (3) each of the districts shall, when it contains 20,000 male inhabitants, become a state in the Union on an equality with the original states; (4) "out of every one hundred thousand acres so granted there shall be reserved as a domain for the use of the United States ten thousand acres, each of which ten thousand acres shall remain forever a common property of the United States, unalienable but by the consent of the United States in Congress assembled; the rents, shares, profits, and produce of which lands, when any shall arise, to be appropriated to the payment of the civil list of the United States, the erecting of frontier forts, the founding of seminaries of learning, and the surplus after such purposes (if any) to be appropriated to the building and equipping a navy, and to no other use or purpose whatever"; (5) "lands so granted to the officers and soldiers shall be free of all taxes and quit-rents for the space of seven years from the passing this ordinance."

<sup>5</sup> Bancroft: I, pp. 302-07.

<sup>6</sup> *Ibid.*, 312-14.

In Bland's motion, the effectiveness of this ordinance was made contingent upon the acceptance of the Virginia Cession and the approval of the ordinance by the army. It never went into effect, but it is of some importance because it contained the provisions for the formation of states and for the use of funds derived from public lands for public purposes, especially for founding schools. It is also significant for what it did not contain. No mention is made of the form of state government to be set up or of slavery. Historically this is known as the "Financiers' Plan." It was broader than the plan of the New England officers who wanted to fix upon the new states, which they purposed to establish, the institutions of New England. The purpose of the "Financiers' Plan" was to make a settlement with the whole army. The omission of provisions concerning slavery and the form of state government was probably not unintentional. Any provision concerning these two questions was likely to produce controversy and some dissatisfaction. It is not unreasonable to suppose that those who framed this ordinance believed it wise to leave them untouched, and thus postpone their settlement to a later day. The chief purpose of this ordinance was to reduce the public debt; to influence the political or institutional development of the West was not its purpose. It therefore contained only those provisions that were likely to meet with general approval and be attractive to the army creditors of the United States.

In both the "Army Plan" and the "Financiers' Plan" there was a provision for the use of public lands for the establishment of schools. It seems that this was coming to be a generally accepted policy. The connections in which these provisions for public education occur are rather significant. In the "Army Plan" it was stipulated that "all surplus lands shall be the common property of the state and disposed of for the common good; as for laying out roads, building bridges, erecting public buildings, establishing schools and academies, defraying the expenses of government, and other public uses."<sup>7</sup> Thus the establishment of schools and academies was classed with the building of highways and bridges, the erection of public buildings, and any other usual public expense. Evidently the use of public lands for educational purposes was not considered revolutionary. In the "Financiers' Plan" the provision for "founding of seminaries of learning" was

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<sup>7</sup> Cutler: I, p. 157.

part of a broader provision for the use of revenue from public lands for the payment of the civil list of the United States, erecting frontier forts, and building and equipping a navy.<sup>8</sup> The civil list, frontier forts and seminaries of learning were given precedence over the navy. Here again education was included with usual and necessary expenses of government.

There is one important difference between the "Army Plan" and the "Financiers' Plan" as regards the public domain. In the "Army Plan" all surplus lands were to be the common property of the state. The "Financiers' Plan" provided that out of every hundred thousand acres so granted there should be reserved as a domain for the use of the United States ten thousand acres, which should "remain forever the common property of the United States, unalienable but by the consent of the United States in Congress assembled."<sup>9</sup> The one put the support of public education from public lands under state control, the other placed the control with the national government. This difference is not surprising in the light of the fact that the "Army Plan" was drawn up by those who expected to become citizens of the states formed under the plan, while the "Financiers' Plan" was the work of those whose chief concern was the interests of the national government.

Neither of these plans became operative, but they were important steps in the process of developing a means to carry out the promises of land grants to the army, made by Congress in the resolutions of 1776 and 1780, and to liquidate the national debt through the sale of western lands. The failure of these plans to produce action in Congress moved some of the army officers to make further attempts to secure the formation of a new state in the Northwest. General Putnam, who had been active in promoting the "Army Plan," was a leader in this new attempt. The so-called "Officers' Petition" was drafted and signed by two hundred eighty-five officers of the Continental line. This petition was not long, and contained no very definite plans for the government of the state to be formed or for the disposal of public lands for public purposes. It simply asked that Congress mark out a tract or Territory, in the Ohio country just west of Pennsylvania, subsequently to be admitted as a state into the Union, and locate therein the lands promised to the army by the resolution of

<sup>8</sup> Bancroft: I, p. 313.

<sup>9</sup> *Ibid.*

September 20, 1776 and subsequent resolves, and that provision be made for further grant of lands to such of the army as wished to become adventurers in the new government.<sup>10</sup>

General Putnam sent this petition to Washington, June 16, 1783, with the request that he send it, with his endorsement to the President of Congress. As has been pointed out, the petition was silent as regards the details of government or the method of survey and disposal of the lands. The petitioners, however, had very definite notions about these matters. In his letter to Washington, General Putnam said: "But I hasten to mention some of the expectations which the petitioners have respecting the conditions on which they hope to obtain the lands—this was not proper to mention in the body of the petition."<sup>11</sup> Chief among these "expectations," which Putnam mentioned, were that the land be surveyed into townships, six miles square, and that Congress take necessary steps to prevent land monopoly. The only reference to education was incidental, and it seems to have been taken as a matter of course that reservations would be made for schools and other purposes. Putnam said: "The whole tract is supposed to contain about 17,418,240 acres, and will admit of 756 townships of six miles square, allowing to each township 3,040 for the ministry, schools, waste lands, rivers, ponds, and highways; then each township will contain, of settlers' land, 20,000 acres, and in the whole 15,120,000 acres."<sup>12</sup>

On June 17, 1783, Washington sent the Officers' Petition and a copy of Putnam's letter to the President of Congress, along with a letter of endorsement.<sup>13</sup> He urged that Congress act favorably on the petition on the ground that the army men would make an ideal frontier population. He characterized the plan as the "most rational and practicable scheme which can be adopted by a great proportion of the officers and soldiers of our army."

Notwithstanding the reasonableness of the petition and its strong endorsement by Washington, Congress failed to act upon it. Nearly a year later, June 2, 1784, Washington wrote Putnam<sup>14</sup> that he had urged the matter on many members of Congress and all had seemed favorably inclined, but had made the excuse that

<sup>10</sup> Bancroft: I, pp. 314-15.

<sup>11</sup> Cutler: I, p. 170. The letter is printed in full.

<sup>12</sup> *Ibid.*, p. 171.

<sup>13</sup> Bancroft: I, pp. 315-17.

<sup>14</sup> This letter is printed in full in Cutler: I, pp. 176-77.

Congress could not cede the land because it did not belong to the United States. He added that since that excuse had been made, Congress had accepted the Virginia cession and had resolved to lay off ten new states.<sup>15</sup> Here the matter rested for nearly two years, to be revived by the formation of the Ohio Company.

The army had been disbanded in June, 1783, and the officers and soldiers were dispersed. General Putnam was appointed one of the surveyors to survey the first seven ranges, as provided for in the Ordinance of 1785. He resigned this position and made a contract with Massachusetts to survey ten townships in Maine. General Benjamin Tupper, who had signed the Officers' Petition, was then appointed, in Putnam's place, to assist in the survey in Ohio. Putnam was not favorably impressed with Maine. He is reported as saying of it: "That country in general is not fit for cultivation, and when this idea is connected with the climate, a man ought to consider himself curst even in this world, who is doomed to inhabit there as a cultivator of the lands only."<sup>16</sup> Tupper returned from the Northwest in 1785 and reported that: "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."<sup>17</sup>

Tupper and Putnam decided to revive the scheme for a settlement of army men in the Northwest. To this end they issued, January 10, 1786, a circular with the title "Information." It was addressed to "all officers and soldiers who have served in the late war, and who are by a late ordinance of the honorable Congress to receive certain tracts of land in the Ohio country, and also all other good citizens who wish to become adventurers in that delightful region."<sup>18</sup> This circular proposed the formation of a company, composed primarily of Massachusetts people, to make a settlement in the Ohio country. In order to form the company, it was proposed that all those interested should meet in their respective counties, February 15, and elect delegates to meet in Boston on March 1, 1786. Such meetings were held and the delegates met at the appointed time. Those present were Winthrop Sargent, John Mills, Manasseh Cutler, John Brooks, Thomas Cushing,

<sup>15</sup> Washington referred to the Ordinance of April 23, 1784.

<sup>16</sup> Cutler: I, p. 179.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*, pp. 179-80; printed in full.

## 22 *Educational Significance of Early Federal Land Ordinances*

Benjamin Tupper, Crocker Sampson, Rufus Putnam, John Patterson, Jelaliel Woodbridge, and Abraham Williams. Of these eleven, five had signed the Officers' Petition. A committee composed of Putnam, Cutler, Brooks, Sargent, and Cushing, was appointed to draft articles of agreement. The committee reported thirteen articles of agreement,<sup>19</sup> which were adopted March 3, 1786, and the Ohio Company was thereby created. These articles may be summarized as follows: Articles of Agreement Entered into by the Subscribers for Constituting an Association by the Name of The Ohio Company:

The design of this association is to raise a fund in continental certificates for the sole purpose and to be appropriated to the entire use of purchasing lands in the western territory belonging to the United States, for the benefit of the Company, and to promote a settlement in that country.

Article 1. The fund not to exceed \$1,000,000 in continental specie certificates, each share \$1,000.00 in continental certificates and ten dollars in gold or silver.

Article 2. The purchase shall be made in one of the proposed states, northwest of the Ohio river, under the terms of the Ordinance of 1785, or any other terms as good.

Article 3. There shall be five directors, a treasurer, and secretary.

Article 4. Holders of twenty shares shall constitute one grand division of the company and elect an agent to act for them.

Article 5. The subscribers shall draw by lot for their lands.

Article 6. No one shall hold more than five or less than one share.

Article 7. The directors shall manage the affairs of the company.

Article 8. The agents shall appoint the directors, treasurer, and secretary.

Article 9. The treasurer shall be under bond.

Article 10. The directors shall be under bond and shall divide the lands by lot, among the agents, within three months after the purchase.

Article 11. The company shall proceed with the undertaking, even though all the capital stock is not subscribed.

Article 12. The directors shall seek to obtain an ordinance of incorporation from Congress, or an act of incorporation in one of the states.

Article 13. All votes may be in person, or by proxy, in proportion to the interest represented.

Subscription books were opened and the company met with considerable success almost at once. On April 20, 1786, Dr. Cutler wrote to Major Sargent: "The present prospects for obtaining subscriptions in this part of the country so much

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<sup>19</sup> Walker: *History of Athens County, Ohio*, pp. 48-50. The Articles are printed in full in Cutler: I, pp. 184-86.

exceed my most sanguine expectations, that I think we ought to be cautious about admitting adventurers from the southward."<sup>20</sup>

By the following March only two hundred fifty shares were subscribed for, subscriptions having been retarded because of the doubt that had arisen as to the ability of the company to obtain sufficient land for a large collective settlement. A meeting of the company was called at Boston, March 8, 1787, and three Directors, General Parsons, General Putnam and Dr. Cutler, were appointed to apply to Congress for the private purchase of lands.<sup>21</sup> Parsons and Putnam were in charge of the negotiations with Congress. On March 16, 1787, Dr. Cutler wrote to Major Sargent: "The high price at which Congress have set their lands . . . operate much against subscriptions for the Company. . . . A large number of very considerable property . . . have assured me that, as almost every kind of business is stagnated here, they would become adventurers . . . and remove on to the lands, provided they could be purchased on terms as advantageous as those sold by this state. . . . But if Congress should prefer surveying the lands at their own expense, I should not be willing, at present, to offer more than half a dollar per acre."<sup>22</sup> Under the same date, he wrote a letter<sup>23</sup> to Nathan Dane, a member of Congress from Massachusetts, in which he expressed the hope that Congress would make a private sale to the Ohio Company, notwithstanding the land ordinance of 1785. He pointed out the fact that the high price at which Congress held the lands in the West operated against their sale in competition with the cheaper state lands. Either Dr. Cutler was unduly impressed with the superiority of New Englanders to all other Americans or he was playing upon the sectional pride of Mr. Dane, when he wrote the following: "An immediate and great settlement must be an object of consequence in the view of Congress, and settlers from the northern states in which this company is made up, are undoubtedly preferable to those from the southern states. They will be men of more robust constitutions, inured to labor, and free from the habits of idleness. . . . Many of the subscribers are men of very considerable property and respectable characters, who intend (for the Company will admit no other) to

<sup>20</sup> Cutler: I, p. 189.

<sup>21</sup> *Ibid.*, pp. 191-92.

<sup>22</sup> *Ibid.*, p. 193.

<sup>23</sup> *Ibid.*, pp. 194-95.

become residents in that country." In closing, Cutler very shrewdly and gently brought political pressure to bear on Mr. Dane. He said: "We should be happy in obtaining your influence in favor of the Company, and have the fullest confidence of your readiness to second the wishes of so large a number of the inhabitants of the New England States, so far as it is consistent with the general interest of the Union."

General Parsons had presented a memorial to Congress for the purchase of lands for the Company. Evidently he acted without the full coöperation of General Putnam and Dr. Cutler. In a letter to Major Sargent, dated May 30, 1787, they said, speaking for the company: "We cannot, on any consideration, accede to the location proposed by him (General Parsons) to Congress, as it must defeat us in many of our most important views."<sup>24</sup> It also appears from this letter that they entertained some doubt as to the attitude of the Massachusetts delegates in Congress towards the Ohio Company, and also as to singleness of motives of General Parsons. They said: "We think some caution may be necessary in placing confidence, particularly with respect to members from this commonwealth. . . . We likewise think it best, as there seems to be ground to suppose General Parsons 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 in another place until we have opportunity to converse with him on the subject."<sup>25</sup>

With the affairs of the Company moving slowly, and not always in the right direction, it was decided to send Dr. Cutler to New York to carry on the negotiations with Congress. He arrived there on Thursday, July 5, 1787, with letters of introduction to the leading members of Congress, government officials, citizens of New York and Philadelphia. Dr. Cutler began work at once seeing members of Congress and getting his papers in order preparatory to making application to Congress for the purchase of lands.<sup>26</sup> Tuesday, July 10, he dined with Colonel Duer, secretary of the Board of Treasury. Among the guests were Samuel Osgood, president of the Board of Treasury and Major Sargent, of the Ohio Company. In his diary for this day Dr. Cutler

<sup>24</sup> Cutler: I, p. 196.

<sup>25</sup> *Ibid.*, pp. 196-97.

<sup>26</sup> *Ibid.*, p. 229-30.

recorded: "As Congress was now 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 the leave to make remarks and propose amendments, and which I had taken the liberty to remark upon, and to propose several amendments, I thought this the most favorable opportunity to go on to Philadelphia."<sup>27</sup> He set out the next day for Philadelphia, where he remained a short time. He was back in New York the following Tuesday, July 17, and the next morning called upon General St. Clair, president of Congress, and was in conference with the committee, which was in charge of the petition of the Ohio Company. He ate dinner with Mr. Hillegas, treasurer of the United States.<sup>28</sup> Thursday, July 19, Dr. Cutler called on members of Congress and was given a copy of the Ordinance of 1787, which had been passed during his absence at Philadelphia. Concerning this he recorded in his diary: "Was furnished with the Ordinance establishing a Government in the Western federal Territory. It is in a degree new modeled. The amendments I proposed have all been made except one, and that is better qualified. It was, that we should not be subject to Continental taxation until we were entitled to a full representation in Congress. This could not be fully obtained, for it was considered in Congress as offering a premium to emigrants. They have granted us representation, with right of debating, but not of voting, upon our being first subject to taxation."<sup>29</sup> The question of these amendments suggested by Dr. Cutler, has provoked considerable discussion. Their probable content and significance will be taken up in the next chapter.

Dr. Cutler found that a strong opposition to his proposition had developed during his absence. It is not improbable that the good Doctor revised his opinion, expressed to Dane, as to the relative merits of the citizens of the northern states and the men "from the southward." He found that the strongest advocates of the Ohio Company were Grayson, R. H. Lee, and Carrington, the delegates from Virginia, while among those who gave him anxiety were the delegates from Massachusetts. On this point Cutler made the following record: "As there are a number in Congress decidedly opposed to my terms of negotiation, and some

<sup>27</sup> Cutler: I, p. 242. The ordinance submitted to Cutler for criticism was the Ordinance of 1787.

<sup>28</sup> *Ibid.*, p. 292.

<sup>29</sup> *Ibid.*, p. 293.

to any contract, I wish now to ascertain the number for and against, and who they are, and must then, if possible, bring the opponents over. This I have mentioned to Colonel Duer, who has promised to assist me. Grayson, R. H. Lee, and Carrington are certainly my warm advocates. Holton, I think, may be trusted. Dane must be carefully watched, notwithstanding his professions. Clarke, Bingham, Yates, Kearney, and Few are troublesome fellows.<sup>30</sup> They must be attacked by my friends at their lodgings. If they can be brought over, I shall succeed; if not, my business is at an end."<sup>31</sup>

This same day, July 19, Congress passed an ordinance authorizing a sale to the Ohio Company, but on terms which were wholly unsatisfactory to the Company. Dr. Cutler informed the committee that he could purchase lands from some of the states on much better terms and preferred to do so, and thereupon proposed to give up the attempt to buy of Congress and to leave New York. He wrote in his diary, Friday, July 20: "They appeared to be very sorry no better terms were offered, and insisted on my not thinking of leaving Congress until another attempt was made. . . . They assured me I had many friends in Congress who would make every exertion in my favor; that it was an object of great magnitude, and (I) must not expect to accomplish it in less than two or three months. . . . Colonel Duer came to me with proposals from a number of the principal 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 generous conditions, if I would accomplish the business for them. The plan struck me agreeably. . . . I was convinced it best for me to hold up the idea of giving up a contract with Congress. . . . This appeared to have the effect I wished. The Committee were mortified, and did not seem to know what to say, but still urged another attempt. . . . Promised Duer to consider his proposals. . . . 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."<sup>32</sup>

Cutler was correct in his expectation that the business of the

<sup>30</sup> Holton and Dane, Mass.; Clarke, N. J.; Bingham, Pa.; Yates, N. Y.; Kearney, Del.; Few, Ga.

<sup>31</sup> Cutler: I, pp. 293-94.

<sup>32</sup> *Ibid.*, pp. 294-96.

Ohio Company would progress more rapidly after his agreement with Colonel Duer. The next day several members of Congress called upon him and informed him that Congress was much more favorable to his proposition, since they had learned that he was inclined to cease his efforts with Congress. Cutler still affected indifference and talked a great deal about the advantages of making the purchase from one of the states. He finally told the members of Congress that if Congress would accede to the terms he had proposed, he would extend the purchase to the tenth township from the Ohio and to the Scioto River inclusively, thereby enabling Congress to pay about four million dollars of the national debt.<sup>33</sup> This was on Saturday. Cutler, Duer, Sargent, and their friends in Congress made personal efforts to win over those in opposition to making the sale to the Company. The following Monday, July 23, the proposition was debated in Congress and a better ordinance passed, empowering the Board of Treasury to make a contract.<sup>34</sup> The conditions of this ordinance were not wholly acceptable to Cutler and his associates, so they asked Congress, through the Board of Treasury to make the desired changes. Monday night, Cutler was in conference with Grayson and other "members of Congress from the southward who were in favor of a contract." The entry in Cutler's diary concerning this conference throws much light on the whole situation: "Having found it impossible to support General Parsons as a candidate for Governor after the interest that General St. Clair had secured, and suspecting that this might be some impediment in the way—for my endeavors to make interest for him were well known—and the arrangement of civil officers being on the carpet, I embraced this opportunity frankly to declare that, for my own part, and ventured to engage for Major Sargent, that if General Parsons could have the appointment of the first Judge, and Sargent Secretary, we should be satisfied, and I heartily wished his Excellency General St. Clair might be the Governor, and that I would solicit the eastern members to favor such an arrangement."<sup>35</sup> It was suggested that Cutler be appointed one of the Judges, but, to the surprise of the members of Congress, he declined to be considered for any office. However, in the interests of the Ohio Company,

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<sup>33</sup> Cutler: I, p. 296.<sup>34</sup> *Ibid.*, p. 297.<sup>35</sup> *Ibid.*, p. 298.

he suggested that General Putnam be named as one of the Judges. It is evident that the members of the Ohio Company were as vitally interested in the political organization of the Northwest as they were in the terms on which they purchased their lands.

On Thursday Cutler spent some time with General St. Clair, who appeared very friendly, but told Cutler he must expect opposition to his request for further changes in the conditions of sale. St. Clair assured him, however, that he would use his influence to have his terms accepted.<sup>36</sup> Cutler recorded in his diary for that day: "I was now fully convinced that it was good policy to give up Parsons, and openly to appear solicitous that St. Clair might be appointed governor. Several gentlemen have told me that our matters went on much better since St. Clair and his friends had been informed that we had given up Parsons and that I had solicited the eastern members in favor of his appointment."<sup>37</sup> St. Clair's biographer<sup>38</sup> has denied the implication that General St. Clair was induced to change his attitude towards the Ohio Company by the promise of political support from New England. General William Irvine, a member of Congress and a close personal friend of St. Clair's, wrote a letter from New York to General Richard Butler, July 19, 1787, in which he said: "The President<sup>39</sup> and myself arrived here last Tuesday morning, in time to take our seats the same day, and make up, at the same time, nine states. The inclosed Ordinance<sup>40</sup> had passed two days before. Who the officers of that government will be I have not heard nor inquired."<sup>41</sup> Beyond question, it seems strange that a close friend of St. Clair's should not have heard of a movement on foot to make him Governor of the Northwest Territory. Of course it is possible that the sentiment in favor of St. Clair developed between the nineteenth and twenty-third of July, the day on which Cutler said the appointment of the civil officers was "on the carpet."

Regardless of the causes, the opposition to Cutler's terms was overcome. Even Kearney, whom Cutler characterized as "that stubborn mule of a Kearney,"<sup>42</sup> was won over. Duer, Sargent,

<sup>36</sup> Cutler: I, p. 301.

<sup>37</sup> *Ibid.*, p. 301.

<sup>38</sup> W. H. Green in *The St. Clair Papers*, I, pp. 126-29.

<sup>39</sup> General St. Clair was President of Congress.

<sup>40</sup> Northwest Ordinance of 1787.

<sup>41</sup> Green: *St. Clair Papers*, I, p. 604.

<sup>42</sup> Cutler: I, p. 301.

and Cutler decided to make one final attempt to get favorable action in Congress, and in case of failure to abandon efforts until the delegates from Connecticut, Rhode Island, and Maryland could be induced to attend Congress. On Friday, July 27, Cutler packed his baggage, paid his respects to the members of Congress, and told them he had little hope of obtaining a contract, but would await the action of Congress that day before leaving.<sup>43</sup> At half past three, he was informed that Congress had passed another ordinance, meeting every demand of the Ohio Company, and had authorized the Board of Treasury to close the contract. In his diary for that day Cutler recorded: "By this Ordinance we obtained the grant of near 5,000,000 of acres of land, amounting to three millions and a half of dollars, one million and a half of acres for the Ohio Company, and the remainder for a private speculation, in which many of the principal characters in America are concerned. Without connecting this speculation, similar terms and advantages could not have been obtained for the Ohio Company. Cutler left New York at once. The contract of the Ohio Company with the Board of Treasury for 1,500,000 acres was signed by Cutler and Sargent October 27, 1787.<sup>44</sup> On the same day they signed another contract for the Scioto Company with the Board, under which the Company was given the option to purchase between 3,500,000 and 5,000,000 acres.

During the short period that Dr. Cutler was laboring with Congress two measures of far-reaching importance were passed. One was the Ordinance for the Government of the Territory of the United States Northwest of the River Ohio, of July 13, 1787, and the other was the Ordinance of July 27, which authorized the contract with the Ohio Company and fixed the conditions of the sale. The next two chapters will show the significance of these measures for public education.

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<sup>43</sup> Cutler: I, p. 303.

<sup>44</sup> Treat: p. 50.

## CHAPTER IV

### THE ORDINANCE OF 1787 AND THE NATIONAL LAND POLICY

THE purpose of the ordinance of July 13, 1787, was to establish a government in the Northwest Territory. It was not, strictly speaking, a land ordinance, but it has become so inseparably associated, historically, with the ordinances for the sale of the federal lands in the Northwest that no discussion of the land ordinances would be complete without showing the relation of this governmental ordinance to the development of the federal land policy.

The most essential point of contact between the land ordinances and this ordinance for the establishment of a government in the Northwest is to be found in the fact that the ordinance for government contained certain fundamental principles which were deemed, by Americans generally, to be absolutely necessary to human happiness and freedom. Without the incorporation of these fundamental principles of government into the organic law of the western territory no land ordinance, however attractive its terms, could have been very successful in furthering the sale of lands and promoting settlement in the back country. Among the governmental principles that had become generally accepted by 1787 there were two of special significance. One was that the unoccupied federal lands should be organized into states that should eventually be admitted into the Union on an equality with the original states of the Union. The other principle was that federal lands should be used for the support of education. These points have already been brought out more or less clearly in the preceding chapters, but a brief review of the development of these principles will not be out of place here.

It appears from the Journals of Congress, in a report of the Committee on Lands, May 1, 1782, that Great Britain had contemplated the formation of a separate colony west of the Alleghany Mountains at the time of the establishment of the Proclamation Line of 1763. The Committee report contained the following with reference to the Virginia claims: "It appeared that,

in the year 1763, a very large part thereof was separated and appointed for a distinct government and colony by the King of Great Britain with the knowledge and approbation of the government of Virginia."<sup>1</sup> The Quebec Act of 1774 was further evidence of the intention of Great Britain to separate, governmentally, the country west of the Alleghany Mountains from the sea-board colonies. The reasons for this policy of Great Britain's are of no consequence here.

After the break with England the idea of forming states in the back country continued to grow. In 1779, Maryland had taken her stand for nationalizing all the unsettled western lands and the establishment of "free, convenient, and independent governments, in such manner and at such times"<sup>2</sup> as the wisdom of Congress should direct. The following year Congress resolved, October 10, that the lands ceded to the Union by the States should be "settled and formed into distinct republican states," which should "become members of the federal union, and have the same rights of sovereignty, freedom, and independence, as the other states."<sup>3</sup> About two years later, May 1, 1782, a committee on lands, to whom had been referred the state land cessions and petitions of the early land companies, included in their report the following resolution: "Resolved, That whenever the United States in Congress assembled, shall find it for the good of the Union to permit new settlements on unappropriated lands, they will erect a new state or states, to be taken into the federal union, in such manner that no one state so erected shall exceed the quantity of 130 miles square, and the same shall be laid out into Townships of the quantity of about six miles square."<sup>4</sup> On the recommendation of this committee Congress further resolved to make good all reasonable engagements for lands to the officers and soldiers as soon as such state or states were erected.

During the winter of 1782-83 the "Army Plan" and the "Financiers' Plan" were developed. Both of these plans contained as an essential feature the provision for the formation of a new state. The thirteenth of the following September a committee in Congress made the following report, with reference to

<sup>1</sup> *Journal of the Continental Congress*, XXII, p. 227.

<sup>2</sup> *Ibid.*, XIV, p. 622.

<sup>3</sup> *Ibid.*, XVIII, p. 915.

<sup>4</sup> *Ibid.*, XXIII, p. 231.

Virginia cession, which was adopted: "That the territory so ceded should be laid out and formed into states containing a suitable extent of territory, not 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 rights of sovereignty, freedom, and independence, as the other states."<sup>5</sup> The language here is almost identical with that of the motion carried in Congress, September 6, 1780,<sup>6</sup> and with the resolution of October 10, 1780.<sup>7</sup> The Virginia resolutions for the cession of lands northwest of the Ohio, made January 2, 1781,<sup>8</sup> and the final deed of cession, accepted by Congress, March 1, 1784,<sup>9</sup> contained this same provision.

The next important measure in which was incorporated the principle of forming new states out of the federal lands was the ordinance of April 23, 1784. As was shown in an earlier chapter, the enactment of this ordinance made necessary a better plan for the sale of western lands. The next attempt of any consequence to meet this need was the enactment of the land ordinance of May 20, 1785. There was nothing in this ordinance concerning the formation of states, but the absence of such provision may be explained by the fact that the ordinance of 1784 had provided for the formation of states, that should be admitted into the Union on an equality with the original states. This ordinance was in effect in 1785, and the land ordinance of May 20, of that year was passed to supplement the ordinance of the previous year for the government of the unoccupied federal territory.<sup>10</sup>

From 1785 to 1787 various minor attempts were made to change the provisions of government in the ordinance of 1784. These attempts finally culminated in the famous Ordinance of July 13, 1787. Just what the forces were which produced this ordinance will be shown after a brief review of the development of the principle that public lands should be used for the support of education.

The origin of the system of land grants for education has been

<sup>5</sup> Cutler: I, p. 337, citing the *Jour. of Cont. Cong.*

<sup>6</sup> *Jour. of Cont. Cong.*, XVII, p. 808.

<sup>7</sup> *Ibid.*, XVIII, p. 915.

<sup>8</sup> Hening: *Statutes at Large*, X, p. 564-67.

<sup>9</sup> *Ibid.*, XI, p. 571-75.

<sup>10</sup> Barrett: *Evolution of the Ordinance of 1787*, p. 27.

traced by some<sup>11</sup> back to the mediæval church foundations in England. If all the facts were known, it is not impossible that the beginnings of land grants for schools would be found in ancient times. Church schools supported wholly or in part by the revenue from church lands were old and well established institutions in the days of Henry VIII.<sup>12</sup> The connection between these mediæval foundations and system of land grants for education, which developed in America, is somewhat remote. It is probable that the land foundations for church schools in England served as a precedent in the early colonial period; but the differences between these foundations in England and the system which developed in America are so great that it is doubtful that any vital connection existed. The policy of making land grants for education in colonial times was almost exclusively a New England policy and seems to have developed with the custom of "township planting." The few charity schools that were founded in Virginia and other southern colonies were perhaps more closely connected, historically, with the English foundations for education than were the early New England land grants for schools. The abundance of land and the scarcity of other means of support are probably sufficient explanations for the early New England land grants for education. Almost from the very foundation of the Massachusetts Bay Colony the General Court of the colony, as well as the towns, made land grants for the support of schools.<sup>13</sup> By 1783 the policy of making land grants for education was established throughout New England and in New York.

In the southern colonies the idea was prevalent that public schools were charity institutions for paupers and dependents. Washington gave expression to this common sentiment when he declared to Randolph his intention to use the income from his shares in the companies for the navigation of the James and Potomac rivers to create a fund "on which to establish two charity schools, one on each river, for the education and support of the children of the poor in this country, particularly the children of those men of this description who have fallen in the defence of the rights and liberties of it."<sup>14</sup>

In 1671, the Lands Commissioners had inquired of Governor

<sup>11</sup> Schafer: *The Origin of the System of Land Grants for Education*, pp. 7-10.

<sup>12</sup> See Leach: *English Schools at the Reformation*.

<sup>13</sup> Schafer: *loc. cit.* Schafer cites the original colonial and town records.

<sup>14</sup> Sparks: IX, p. 116.

Berkeley, of Virginia as to what course was taken "about the instructing of the people, within your government, in the Christian religion."<sup>15</sup> Berkeley's memorable reply has made him notorious in history. It was: ". . . I thank God, there are no free schools nor printing, and I hope we shall not have these hundred years; for learning has brought disobedience, and heresy, and sects into the world, and printing has divulged them, and libels against the best government. God keep us from both!"<sup>16</sup> As far as free schools were concerned, the good Governor's devout hope was practically realized. In 1771 free public schools were unknown in Virginia except for charity.

It may be well to add in this connection that public sentiment in Virginia in 1771 was not opposed to education as Berkeley had been a century before. There is at least one case on record in which Virginia adopted the policy of making land grants for education. In 1780 the General Assembly reserved eight thousand acres of lands in the county of Kentucky "for the purpose of a publick school, or seminary of learning, to be erected within the said county."<sup>17</sup> It thus appears that land grants for education were common in the northern colonies and not wholly unknown in the South by the close of the Revolutionary War.

In the "Army Plan" for the payment of the debt to the officers and soldiers this principle of land grants for schools was found.<sup>18</sup> It is interesting to note that this plan, so largely the work of New Englanders, did not contain any provision for land grants for the support of religion. From the earliest times in New England the support of education had been almost invariably associated with the support of the ministry, but in the "Army Plan" the school lost its historic companion and became associated with highways, bridges and public buildings. Although, under the more devout leadership of Dr. Cutler, New Englanders in the Ohio Company again advocated land grants for the support of religion along with those for the support of education, it is possible that the omission from the "Army Plan" of a provision for the support of religion but fore-shadowed the inevitable separation of church and state-supported schools in a democracy founded upon the principle of separation of church and state.

<sup>15</sup> Hening: *Statutes at Large*, II, p. 517.

<sup>16</sup> *Ibid.*, II, p. 517.

<sup>17</sup> *Ibid.*, X, p. 287.

<sup>18</sup> Pickering: *Life of Timothy Pickering*, I, p. 548.

The "Financiers' Plan" of 1783 contained the provision for land grants for the support of "seminaries of learning."<sup>19</sup> Neither religion nor slavery was mentioned in this plan. This plan was presented by Bland, of Virginia, and the phrase "seminaries of learning" is the same that had been used in the Virginia grant for education in Kentucky in 1780. On the face of it this seems to be a provision for the support of higher or secondary education, but it is difficult to know whether those who advocated this measure were consciously discriminating against lower schools or not. It is probable that the expression "seminaries of learning" was used to cover education in general, without any definite idea as to the nature of the particular schools to be established. As the plan was not adopted, what would have happened if a "seminary of learning" had undertaken to do elementary or grammar school work will never be known. However, it is doubtful if such procedure would have ever been questioned.

The next important step in the development of the policy of land grants for education was in connection with the Officers' Petition of June 16, 1783. The petition itself was silent on this point, but Putnam's letter to Washington, which was sent to Congress with the petition, referred to allowances in each township "for the ministry, schools, waste lands, rivers, ponds, and high-ways."<sup>20</sup> Putnam and the other petitioners did not think it necessary to urge Congress to make land grants for education. It was taken for granted that Congress would do so.

The Ordinance of April 23, 1784,<sup>21</sup> was an ordinance for the government of the federal territory, and therefore contained nothing as regards the disposal of the lands. That question was to be dealt with in a separate ordinance.<sup>22</sup> A committee which was composed of Jefferson, of Virginia; Williamson, of North Carolina; Howell, of Rhode Island; Gerry, of Massachusetts; and Read, of South Carolina;<sup>23</sup> reported a land ordinance, May 7, 1784.<sup>24</sup> Three weeks later Congress voted to postpone action on the committee report and nothing was done with it until the following year.<sup>25</sup>

<sup>19</sup> Bancroft: I, p. 313.

<sup>20</sup> Cutler: I, p. 171.

<sup>21</sup> *Old South Leaflets*, V. 6, No. 127.

<sup>22</sup> Bancroft: I, p. 356.

<sup>23</sup> Treat: p. 26, citing *Jour. of Am. Cong.*, IV, p. 416.

<sup>24</sup> Bancroft: I, p. 158.

<sup>25</sup> Treat: p. 27.

There was no provision, in this ordinance reported by Jefferson's committee, for grants for education or religion. Gerry, the Massachusetts member of the committee, sent a draft of the proposed ordinance to Timothy Pickering. Gerry was not in Congress when the ordinance was up for discussion in March, 1785, so Pickering sent his criticism of the ordinance to Rufus King, one of the delegates from Massachusetts. Pickering's chief objection to the ordinance was that it did not provide for grants for education and religion.<sup>26</sup> The only importance of this ordinance reported in 1784, is that it was the one serious plan for the sale of unoccupied federal lands which did not contain a provision for land grants for education. This ordinance was never voted upon by Congress. After much debate it was referred to a new committee, composed of one member from each state, which under the leadership of Grayson,<sup>27</sup> of Virginia, completely revised the ordinance. The report of this committee, after amendment, became the Ordinance of May 20, 1785.

Pickering's influence with the committee was shown especially in the provisions for land grants for education and religion in the reported ordinance.<sup>28</sup> As has been pointed out in another connection the provision for religion was stricken out by amendment on the grounds that it connected the church with the state.<sup>29</sup> There was no objection to the provision for land grants for education. Bancroft says: "The reservation for the support of schools, received a general welcome."<sup>30</sup> This welcome may be explained, not only on the grounds that these grants would assist materially in the sale of the lands, but also by the fact that land grants for the support of schools had come to be a generally accepted policy in 1785.

There remains but one other point for discussion in this review of the development of the policy of granting lands for the support of schools. That is the early attitude of the Ohio Company to-

<sup>26</sup> Pickering: *Life of Pickering*, I, p. 506.

<sup>27</sup> Bancroft: I, p. 180.

<sup>28</sup> See page 11 for Pickering's influence; also see Pickering: I, p. 511.

<sup>29</sup> Bancroft: I, p. 181. On this point Treat says: "The question was put, Shall the words stand? Five states favored retention, two opposed, two were divided, and three were not sufficiently represented to cast a vote. As seven states did not support the motion, it was lost, and the words stricken out, although seventeen of the members present favored and only six opposed. If the question had been put in a different way: Shall the words be stricken out? it could not have carried." Treat: p. 36. See also, Cutler: I, p. 124.

<sup>30</sup> Bancroft: I, p. 181.

wards such grants. The Articles of Agreement, adopted for the creation of the company, contained no definite statement of the conditions on which the company would purchase lands. It seems that the expectation was that the purchase would be made on the terms of the Ordinance of May 20, 1785. The second of the Articles of Agreement stated that the funds of the company should be "applied to the purchase of lands in some one of the proposed states north-westerly of the river Ohio, as soon as those lands are surveyed and exposed for sale by the Commissioners of Congress, according to the ordinance of that honorable body, passed the twentieth of May, 1785, or on any other plan that may be adopted by Congress, not less advantageous to the company."<sup>31</sup> In 1786 the Ordinance of 1785, which contained no provision for the support of religion, was satisfactory to the Ohio Company, but when the opportunity came to make a more favorable contract with Congress, the directors of the company secured the grant of, not only section sixteen in each township for schools, but also the grant of every section twenty-nine for religion and two whole townships for a university. The significance of this contract of the Ohio Company with the Board of Treasury will be treated at length in the sixth chapter.

From the foregoing brief review it may be seen that the idea of forming states in the unoccupied federal territory and the policy of making federal land grants for education had become established principles by 1787. These principles were given the force of law in the governmental ordinance of 1784 and in the land ordinance of 1785. Both were in effect in July, 1787, when the Ordinance for the Government of the Northwest Territory was enacted and when the contract with the Ohio Company was authorized by Congress. The next problem is to show briefly what forces were at work to produce this new ordinance for the government of the Northwest and how that ordinance was related to the policy of granting lands for the support of education.'

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<sup>31</sup> Cutler: I, p. 181.

## CHAPTER V

### THE EDUCATIONAL SIGNIFICANCE OF THE ORDINANCE OF 1787

The work of revising the Ordinance of 1784, which was for the government of the western territory, began in March of 1785 when Rufus King moved to commit a proposition to prohibit slavery in the states that were to be formed under the Ordinance of 1784.<sup>1</sup> This motion carried and the proposition was thus committed to the Committee of the Whole House. Here the proposition rested, never to be called up again in Congress.

The following year, 1786, Congress again took up the question of enacting a new ordinance for the government of the western territory. Monroe wrote to Jefferson, May 11, 1786, as follows: "In my last I mentioned to you that the propriety of the acts of Congress founded on the condition of the acts of cession from the states, fixing the limits of the states westward, was questioned. A proposition, or rather a report, is before Congress, recommending it to Virginia and Massachusetts to revise their acts as to that condition, so as to leave it to the United States to make what division of the same future circumstances may make necessary, subject to this provision: 'that the said territory be divided into not less than two and not more than five states.' The plan of a temporary government, to be instituted by Congress and preserved over such district until they shall be admitted into Congress, is also reported."<sup>2</sup> Monroe was chairman of the committee which made the report on the form of government. The other members of the committee were Johnson, of Connecticut, King, of Massachusetts, and Kean and Pinckney, of South Carolina.<sup>3</sup> The report of this committee was made May 10, 1786.

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<sup>1</sup> Force: "The Ordinance of 1787 and Its History," in *St. Clair Papers*, II, pp. 605 ff., and in Cutler: II, Append. D., pp. 410 ff. See also Pickering: I, pp. 512-13.

<sup>2</sup> Bancroft: I, pp. 502-03. Monroe was the leader in the movement to reduce the number of states to be formed in the federal territory. See Barrett: pp. 33 ff.

<sup>3</sup> Bancroft: II, p. 100; *St. Clair Papers*, II, p. 607; Cutler: II, Append. D., p. 410.

The plan was to institute a system of colonial government similar to that which had prevailed in America under British rule, with the addition of the provision "that, when such districts shall contain the number of the least numerous of the 'thirteen original states for the time being,' they shall be admitted into the confederacy."<sup>4</sup>

No final action was taken on this report by Congress. Members of the committee failed to return to Congress, so a new committee, composed of Johnson, of Connecticut; Pinckney, of South Carolina; Smith, of New York; Dane, of Massachusetts; Henry, of Maryland; was appointed to propose a plan of government for the federal territory.<sup>5</sup> It should be noted that none of the men who had been the leaders in dealing with the problem of forming a government in the federal territory was a member of this committee. The majority of the committee were from the North, and no Virginian was a member. On April 26, 1787, this committee reported an ordinance for the government of the Western Territory. It was read the second time, debated, and amended, on May 9. The following day was set for the final reading.<sup>6</sup> On the tenth of May, 1787, the final reading of this ordinance was postponed. This ordinance provided a detailed plan of government for the Western Territory. It is remarkable for what it did not contain. It contained no anti-slavery provision; it was silent on religious liberty, rights of conscience, the promotion of morality and education; it contained no articles of compact.

On the other hand it gave the governor, appointed by Congress, power to prorogue and dissolve the General Assembly at his discretion; the inhabitants were subject to taxation to pay the federal debts and to maintain the federal government. The provision that a new state should be admitted to the union whenever it should "have free inhabitants as many as are equal in number to the one-thirteenth part of the citizens of the original states, to be computed from the last enumeration" made it increasingly

<sup>4</sup> Bancroft: I, p. 502, Monroe's letter to Jefferson, May 11, 1786. This letter outlined the plan of government proposed.

<sup>5</sup> Force: "The Ordinance of 1787," in *St. Clair Papers*, II, p. 607, and in Cutler: II, p. 412.

<sup>6</sup> This ordinance is printed in full in Force's *History of the Ordinance of 1787*, in the *St. Clair Papers*, II, and in Cutler, II, also in *Western Law Journal*, V, pp. 529 ff.; in Winsor: *Narrative and Crit. Hist. of Amer.*, VII, p. 537; in Sato: *Land Question*, pp. 92 ff.; in Donaldson: *Public Domain*, pp. 150 ff.

difficult for a new state to gain admission to the union.<sup>7</sup> This provision was evidently born of the New England fear and jealousy of the potential power of large western states that were to be formed. This proposed ordinance seems to have suffered greatly for the lack of the influence of the great leaders who had been active in dealing with the western question. It scarcely seems possible that such a narrow and inadequate measure could ever have become law. It was indeed fortunate that the motion to postpone prevailed on the tenth of May, 1787.

The ordinance for the government of the Western Territory was not revived until July 9, 1787. On that day it was referred to a new committee, Carrington and R. H. Lee, of Virginia; Dane, of Massachusetts; Kean, of South Carolina; and Smith, of New York. The majority of this committee were from the South and Carrington was chairman. This committee framed the Ordinance of 1787, which became law on July 13, of that year.<sup>8</sup> In brief outline the important provisions of this ordinance were as follows: (1) estates of those dying intestate should be distributed equally among the children of the deceased, and where there were no children, equally among the next of kin; (2) the governor should be appointed by Congress for a term of three years; (3) the secretary should be appointed by Congress for a term of four years; (4) there should be a court of three judges, appointed to serve during good behavior; (5) the law-making power should be vested in the governor and the judges, subject to Congressional veto, until the organization of the General Assembly, which should thereupon assume the law-making power; (6) a General Assembly, composed of the governor, legislative council, and a House of Representatives, should be formed as soon as there were five thousand

<sup>7</sup> The text of the ordinance is not clear on this provision. If the clause "to be computed from the last enumeration" meant the last enumeration before the enactment of the ordinance, then the population requirement for admission was definitely fixed and not unduly difficult. If this clause meant the last enumeration before the admission of any state, the requirement became increasingly difficult. Bancroft accepted this second interpretation and showed that Ohio could not have been admitted until after 1820, Indiana after 1850, Illinois after 1860, Michigan after 1880, and Wisconsin probably never. See Bancroft: II, p. 104. Force and his followers included this provision in the ordinance as it went to final reading. Bancroft said it was stricken out by amendment. See Bancroft: II, p. 105.

<sup>8</sup> The text of the ordinance may be found in *U. S. Statutes at Large*, I, pp. 51-53; Chase: *Statutes of Ohio and Northwest Territory*, I, pp. 66-69; Donaldson: *Public Domain*, pp. 153-56; Force: *History of the Ordinance of 1787*, in *St. Clair Papers*, II, pp. 612-18; Cutler: II, pp. 419-27; Barrett: pp. 81-89.

free males of age within the district; (7) there should be a representative, elected for two years, in the House for each five hundred free males; (8) the legislative council should consist of five members, whose term of office was five years, who should be appointed by Congress from among ten persons nominated by the House of Representatives; (9) high property and residence qualifications for voters and office holders; (10) the articles of compact which were: (a) a guarantee of religious liberty; (b) a guarantee of the benefits of the writ of habeas corpus, trial by jury, common law rights, property rights, and the non-impairment of private contracts; (c) religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged, and a guarantee of good faith towards the Indians; (d) the territory should forever remain a part of the United States, the inhabitants pay their just part of the expenses of the federal government with taxes levied by the General Assemblies or State Legislatures within the territory, the navigable waters should remain free; (e) there should be not less than three nor more than five states formed within the territory, and a state should be admitted into the union on an equality with the original states as soon as it should contain sixty thousand free inhabitants; (f) the prohibition of slavery with the provision for the return of fugitive slaves; (11) the repeal of the Ordinance of April 23, 1784.

The Ordinance of 1787 was much more comprehensive and thoroughgoing than any ordinance of government which had preceded it. It contained certain fundamental principles that have made it justly celebrated as an essential part of the broad and sure foundation on which has been erected the American nation. But as far as the greater part of this ordinance is concerned, it had no connection with the development of the policy of land grants for education, except in that it established a form of territorial government which led to the rapid settlement of the unoccupied lands and thereby made effective and useful the land grants for public education. The third of the Articles of Compact contained the only specific reference to education, and that was couched in most general terms: "Religion, morality, and knowledge, being necessary to good government and the happiness of mankind; schools and the means of education shall forever be encouraged."

There has been so much said and written in a spirit of controversy with reference to the influences which produced the Ordinance of 1787, that it is somewhat difficult to determine, with any great degree of accuracy, its true significance. The provision in the ordinance concerning the encouragement of education cannot be correctly understood except as it is considered in its relation to other fundamental principles in the ordinance. A brief analysis of some of the evidence as regards the influences which produced the ordinance will assist in its proper interpretation from the viewpoint of education.

Among the earliest claimants of special credit in connection with the Ordinance of 1787 was Nathan Dane, of Massachusetts. Three days after the ordinance became law Dane said in a letter to Rufus King: "When I drew the ordinance (which passed, a few words excepted as I originally formed it) I had no idea the states would agree to the sixth article, prohibiting slavery, as only Massachusetts, of the eastern states, was present, and therefore omitted it in the draft; but, finding the house favorably disposed on this subject, after we had completed the other parts I moved the article, which was agreed to without opposition. We are in a fair way to fix the terms of our Ohio sale, etc."<sup>9</sup> It would appear

<sup>9</sup> Bancroft II, pp. 430-31. A letter from Nathan Dane to Rufus King, New York, 16 July, 1787. As this letter of Dane's throws much light on the passage of the ordinance it is herewith given as printed in Bancroft. "Dear Sir: I am obliged to you for yours of the eleventh instant. With pleasure I communicate to you what we are doing in Congress—not so much from a consciousness that what we do is well done as from a desire that you may be acquainted with our proceedings. We have been much engaged in business for ten or twelve days past, for a part of which we have had eight states. There appears to be a disposition to do business, and the arrival of R. H. Lee is of considerable importance. I think his character serves, at least in some degree, to check the public habits and lax mode of thinking of some of his countrymen. We have been employed about several objects, the principal of which have been the government enclosed and the Ohio purchase; the former, you will see, is completed, and the latter will probably be completed tomorrow. We tried one day to patch up M's p system of W. government; started new ideas and committed the whole to Carrington, Dane, R. H. Lee, Smith, and Kean. We met several times, and at last agreed on some principles; at least Lee, Smith, and myself. We found ourselves rather pressed. The Ohio Company appeared to purchase a large tract of federal lands—about six or seven millions of 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. All agreed to the enclosed plan except A. Yates. He appeared in this case, as in most others, not to understand the subject at all. I think the number of free inhabitants—60,000—which are requisite for the admission of a new state into the confederacy is too small; but, having divided the whole territory into three states this number appears to me to be less important. Each state, in the common course of things, must become important soon after it shall have that number of inhabitants. The eastern

from this letter that Dane "admitted" that he was largely responsible for the Ordinance of 1787. Some writers have been led to believe that Dane claimed to be the author of the ordinance.<sup>10</sup> Dane later stated that he never "claimed originality, except in regard to the clause against impairing contracts, and perhaps the Indian article, part of the third article, including also, religion, morality, knowledge, schools, etc."<sup>11</sup> Dane was a leading member of the committee which framed the ordinance, presented in Congress April 26, 1787, which on May 9, was amended and ordered to final reading. As has been pointed out that ordinance contained few of the important and far-reaching provisions of the Ordinance of 1787. In view of this fact and other evidence which will be presented in other connections, it is difficult to conclude that Dane's influence on the Ordinance of 1787 was of any great consequence.

Force, in his history of the Ordinance of 1787, gave Carrington

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state of the three will probably be the first and more important than the rest, and will no doubt be settled chiefly by eastern people; and there is, I think, full an equal chance of its adopting eastern politics. When I drew the ordinance (which passed, a few words excepted, as I originally formed it), I had no idea the states would agree to the sixth article, prohibiting slavery, as only Massachusetts, of the eastern states, was present, and therefore omitted it in the draft; but finding the house favorably disposed on this subject, after we had completed the other parts I moved the article, which was agreed to without opposition. We are in a fair way to fix the terms of our Ohio sale, etc. We have been upon it three days steadily. The magnitude of the purchase makes us very cautious about the terms of it, and the security necessary to ensure the performance of it.

"(The preceding extract was communicated to the New York Tribune, 31 Jan., 1855, by Charles King. Its authenticity is vouched for by Charles R. King, the present custodian of the original.)"

<sup>10</sup> Poole: *The Ordinance of 1787*. See also *North American Review*, CXXII, pp. 259-60. Poole said that the Ordinance of 1787 was an essential part of the plan of the Ohio Company. The fact that Dr. Cutler was in conference three times within twenty-four hours with the committee which reported the ordinance led Poole to believe that Cutler was responsible for the most important provisions of the ordinance, and that he went to New York with the outline of a scheme of government which had been approved by the Ohio Company. Poole discredited Dane's claims because he had been on the committee which reported the earlier ordinance that lacked the most important provisions of the ordinance as finally enacted. Dane's interest in the development of Maine also convinced Poole that he was not active in framing the ordinance for the Northwest Territory. The mere fact that the ordinance was satisfactory to Dr. Cutler and the Ohio Company was strong evidence to Poole that they were responsible for it. He did not undertake to explain why Congress passed the ordinance without a state dissenting.

<sup>11</sup> Barrett: p. 65 n. 2, citing a letter of Dane's to Webster from Mass. Hist. Soc. Proc. 1867-69, p. 479. Barrett says that Dane did not mean to claim originality for the provisions concerning religion, morality, knowledge and schools.

credit for much of the ordinance.<sup>12</sup> He said: "The reader, on comparing this<sup>13</sup> with the plans previously reported by Mr. Jefferson and Mr. Johnson, will see that most of the principles 'on which its wisdom and fame rest' were first presented by Mr. Carrington."<sup>14</sup> There is little reason to doubt that Carrington's influence on the ordinance was great. Certainly Dr. Cutler considered him of much greater consequence than Dane. But it is futile to try to show that Carrington or Dane or any other one man was the author of the Ordinance of 1787, or of any great part of it. There is scarcely a new idea in the ordinance. Earlier ordinances, colonial charters, state constitutions, and even the Magna Charta itself, furnished precedents from which could be gathered all of the fundamental principles contained in it. The attempts to attribute authorship to particular individuals have frequently been born either of sectional pride and prejudice or of the spirit of controversy. It is generally agreed to-day that the ordinance was the culmination of a process of development. Sufficient evidence has been submitted to show that this is unquestionably true as regards the principles of establishing in the federal territory independent states, to be admitted into the union on an equality with the original states and of encouraging religion and education. In the same manner it could be shown that the other fundamental principles of the ordinance had gradually developed,<sup>15</sup> but such an undertaking is not within the scope of this work.

There is considerable evidence to show that the final form which was given to the Ordinance of 1787 was due to influence and pressure which was brought to bear upon Congress by the Ohio Company. The evidence is about as follows:

The Army Plan of 1783 had contained the principles of establishing a state, encouragement of education, and total exclusion of slavery. Putnam's letter in connection with the Officers' Petition of 1783 also suggested the support of education, while the petition itself contained the idea of establishing a new state.

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<sup>12</sup> It would be interesting to know if Dane included Carrington among those Virginians, whose "public habits and lax mode of thinking" would be checked by the presence of R. H. Lee.

<sup>13</sup> The original ordinance with the amendments made July 12, 1787.

<sup>14</sup> Force: "The Ordinance of 1787, and Its History," in *St. Clair Papers* II, p. 412. Also in Cutler: II, p. 419.

<sup>15</sup> Jefferson, Grayson, King and Lee have also been credited with the authorship of all or part of the ordinance. See Dunn: *Indiana*, pp. 177 ff.

<sup>16</sup> For a full treatment of this point see Barrett: Chaps. 9 and 10.

Many of the men who were responsible for the Army Plan and who signed the Officers' Petition became members of the Ohio Company.

The grandchildren of Dr. Cutler, in their *Life of Rev. Manasseh Cutler*, have compiled what they termed "traditional testimony" to show Dr. Cutler's influence on the Ordinance of 1787. There is no way in which to corroborate this "traditional testimony" directly. It is indirectly supported by Cutler's diary and other evidence. It is here given for what it is worth.

"Dr. Joseph Torrey, of Salem, Mass., wrote to Judge Ephraim Cutler, Jan. 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 relates to religion, education, and slavery. These facts have long been known to me as household words.'"<sup>16</sup>

It is rather curious that these are the provisions with which Dane connected his own name. On one occasion Dane intimated that he took the provision concerning morality and education from the laws of Massachusetts.<sup>17</sup> In Dr. Cutler's diary is recorded the fact that the ordinance was submitted to him for amendment and that, as a result of his amendments, it was "in a degree new-modeled."

The second bit of "traditional testimony" is as follows:

"Hon. Daniel Webster solicited and obtained the examination of Dr. Cutler's journal. Subsequently, Temple Cutler wrote to his brother Ephraim: 'Webster is now convinced that the man whose foresight suggested some of these articles was our Father.'"<sup>18</sup>

In 1830, during the debate on the Foote Resolution in the United States Senate, Webster delivered an eloquent eulogy of Dane because of his great service rendered in connection with the Ordinance of 1787. In view of this fact it would be interesting to know just when Webster examined Dr. Cutler's journal. The

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<sup>16</sup> Cutler: I, p. 343.

<sup>17</sup> King: *Ohio*, p. 407.

<sup>18</sup> Cutler: I, p. 343.

quotation given above seems to indicate that before the examination Webster had believed that some one other than Dr. Cutler deserved the credit for the ordinance, but after reading the journal, his convictions were completely altered. If this interpretation is correct, Webster unquestionably saw Cutler's journal after he had eulogized Dane.

The last of the "traditional testimony" is as follows:

"Ephraim Cutler has left the following written statement of his recollections: 'I visited my Father at Washington during the last session he attended Congress (1804-5). . . . We were in conversation relative to the political concerns of Ohio, the ruling parties, and the effect of the (Ohio) Constitution in the promotion of the general interests, when he observed that he was informed that I had prepared that portion of the Ohio Constitution which contained the part of the Ordinance of 1787, which prohibited slavery. He wished to know if it was a fact. On my assuring him that it was, he observed that he thought it a singular coincidence, as he himself had prepared that part of the ordinance while he was in New York negotiating the purchase of the land for the Ohio Company, I had not then seen the Journal he kept while he was in New York at that time.' In another written memoranda Judge Cutler refers to the conversation with his father, and states as the reason why this prohibition of slavery, as well as the recognition of religion, morality, and knowledge, as foundations of civil government, were incorporated into the ordinance, and provision made in the land purchase for their support, arose from the fact that 'he was acting for associates, friends, and neighbors, who would not embark in the enterprise, unless these principles were unalterably fixed.'"<sup>19</sup>

Of course the original purpose of this "traditional testimony" was to support the claim that Dr. Cutler was the author of the provisions of the ordinance enumerated by Ephraim Cutler. Such a consideration is immaterial in this work. The chief concern here is to find the relationship which existed between the Ordinance of 1787 and land grants for education. Ephraim Cutler recorded that Dr. Cutler inserted certain provisions in the ordinance, including the provision for the encouragement of schools and means of education, because he was acting for associates, friends, and neighbors, who would not embark in the

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<sup>19</sup> Cutler: I, pp. 343-44.

enterprise, unless these principles were unalterably fixed. Yet the Ohio Company was organized to purchase lands under the terms of the Ordinance of 1785 or on any other terms "not less advantageous to the company"<sup>20</sup> at the time when the Ordinance of 1784 for the establishment of a government in the Western Territory was in effect. At that time slavery was not prohibited in the Ohio country and no provision was made for the support of religion. It therefore appears that Dr. Cutler's associates in the Ohio Company, for whom he was acting, had determined not to "embark in the enterprise, unless these principles were unalterably fixed," subsequent to the organization of the Ohio Company. This inconsistency may be more apparent than real. It is possible that the sentiment in the Ohio Company in favor of these provisions might have grown to such proportions between March 1, 1786, and July, 1787, that they were really indispensable to the success of the company. It certainly is not improbable that Dr. Cutler, who was familiar with the strong convictions of his associates as regards these principles, honestly believed them to be indispensable when the new ordinance for the government of the Northwest was pending in July, 1787. Without doubt he exerted his influence as representative of the Ohio Company to have these incorporated into the Ordinance of 1787. It is a matter of record that the contract for the purchase of lands by the Ohio Company contained the most liberal grants for education and religion that had ever been made. This was done, notwithstanding the fact that such a contract was contrary to the Land Ordinance of 1785, which was the law at the time.

That there was a vital connection between the Ordinance of 1787 and the contract with the Ohio Company is not only strongly suggested by foregoing evidence from the Cutler records, but is practically proved by other evidence. Richard Henry Lee wrote Washington, under date of July 15, 1787, as follows: "I have the honor to enclose to you an ordinance that we have just passed in Congress, for establishing a temporary government beyond the Ohio, as a measure preparatory to the sale of lands. It seemed necessary for the security of property among uninformed and perhaps licentious people, as the greater part of those who go there are, that a strong-toned government should exist and the

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<sup>20</sup> Part of Art. 2 of the Art. of Agreement of the Ohio Co. Cutler: I, p. 181.

rights of property be clearly defined."<sup>21</sup> Lee's estimate of the worth of the New Englander as a pioneer was slightly lower than Cutler's rating of settlers from the southern states.<sup>22</sup> It is not unlikely that some members of Congress would have disagreed with Lee on this point, but in so far as his statement that the Ordinance of 1787 was enacted "as a measure preparatory to the sale of lands" is concerned, it probably expressed the general sentiment of Congress. Lee was a warm friend of Dr. Cutler's, an influential member of the committee which framed the Ordinance of 1787, and a strong supporter in Congress of the Ohio Company's proposition to purchase land. No man was in a better position to know all the facts. The only sale of lands of any consequence that was under consideration by Congress at the time was the proposed sale to the Ohio Company. Lee's assertion that the ordinance was a preparatory measure to the sale of lands certainly referred to the Ohio Company's proposition. His statement offers a satisfactory explanation for the speed with which the ordinance was drafted and brought to a final vote.<sup>23</sup>

In addition to Lee's letter there is Dane's letter to King, under date of July 16, 1787,<sup>24</sup> which further indicates that the enactment of the Ordinance of 1787 was largely due to the pressure brought to bear by the proposed purchase of lands by the Ohio Company. The following extracts from Dane's letter clearly show this: "We have been employed about several objects—the principal ones of which have been the Government<sup>25</sup> enclosed, and the Ohio Purchase. The former you will see is completed, and the latter will probably be completed to-morrow. We tried one day to patch up M.'s p system of W. government. Started new ideas, and committed the whole to Carrington, Dane, R. H. Lee, Smith, and Kean. We met several times, and at last agreed on some principles, at least Lee, Smith, and myself. We found ourselves rather pressed.<sup>26</sup> The Ohio Company appeared to purchase a large tract

<sup>21</sup> Cutler: I, p. 367.

<sup>22</sup> In a letter to Dane, Mar. 16, 1787, Cutler said: "Settlers from the northern states, in which this company is made up, are undoubtedly preferable to those from the southern states. They will be men of more robust constitutions, inclined to labor, and free from habits of idleness." Cutler: I, p. 194.

<sup>23</sup> The ordinance was referred to the committee on July 9, was then drafted, reported, debated, amended, and pushed to final enactment on July 13, 1787.

<sup>24</sup> The letter is printed on page 42, footnote 9.

<sup>25</sup> The Ordinance of 1787.

<sup>26</sup> In Cutler: I, pp. 371-72 this letter is printed with a semicolon in place of the period. Other minor differences will be found in Cutler's reprint also. The

of federal lands—about six or seven millions of 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. . . . I had no idea the states would agree to the sixth article, prohibiting slavery, as only Massachusetts, of the eastern states, was present,—but, . . . after we had completed the other parts I moved the article, which was agreed to without opposition. We are in a fair way to fix the terms of our Ohio sale, etc. We have been upon it three days steadily." Beyond question the ordinance for government and the sale of lands to the Ohio Company were inseparably associated in Dane's mind. The whole tone of his letter is one of haste and work done under pressure. From such an expression as "we tried one day to patch up M's<sup>27</sup> p system of W. Government" it would seem that the committee scarcely realized the full significance of the work they were doing. An ordinance for the government of the western territory had been a serious problem for years. Several committees had spent months trying to solve it. There was little probability that a good ordinance could be "patched up" in an afternoon. Yet as a matter of fact the committee's work was done in less than five days. This certainly bears out Dane's statement that the committee was "rather pressed."

Dane was not a master of style and his writing frequently lacked coherence. But the sentence: "The Ohio Company appeared to purchase a large tract of federal lands—about six or seven millions of 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" may not be as incoherent as it at first seems. The appearance of the Ohio Company made a new system of government for the Ohio country very desirable and the urgency of the case made it necessary to propose the best ordinance that Congress could agree upon and

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quotation given is copied from Bancroft: II, pp. 430-31. Both Cutler and Bancroft cite the *New York Tribune* as a source. The reason for using Bancroft's text is that it is printed in the appendix, without comment or special purpose, while the letter is used in Cutler's Life in the chapter dealing with Dr. Cutler's influence on the Ordinance of 1787, in which the attempt is made to prove the close relationship between the ordinance and the Ohio Company contract. The text there used is slightly more favorable for that purpose than that given by Bancroft.

<sup>27</sup> Doubtless referred to the plan submitted by Monroe's committee the year before. Cutler has: M. S. P. systems, etc.

enact. Dane, himself, was not wholly satisfied with the ease with which new states could be formed under the ordinance, but hoped the influence of the Ohio Company would lead the first state established to adopt New England politics.

On many points the testimony of Dane might well be questioned, but where there is so much which corroborates him, it is not unreasonable to accept his statements at full value. Dane said the sixth article of compact, which prohibited slavery, was added, on his motion, after the rest of the ordinance had been approved by Congress. There is little or no reason to believe that Dane was the author of this article, or even that he acted on his own initiative in introducing the article as an amendment, nevertheless the context of the ordinance bears out his statement that it was not a part of the original draft. The organization of territorial general assemblies and the admission of new states into the union were contingent upon certain fixed numbers of *free* male inhabitants. These provisions clearly took into account the possibility of slavery being introduced into the Northwest. The ordinance was thus framed so that if the sixth article failed of passage, slaves could not be counted for purposes of representation. If the article was adopted, it could be added without necessitating further amendment to the articles previously adopted.

Dane was surprised that the anti-slavery provision met with favor in Congress, which was controlled by the South at the time. There are two factors which help to explain this attitude of the South. One was the anxiety on the part of the southern leaders, Carrington, Grayson and Lee, to reduce the federal debt and further the development of the country by making the sale to the Ohio Company, which made them disposed to prohibit slavery in the Northwest, as a special inducement to the members of the Ohio Company. Carrington wrote Madison on July 25, 1787, as follows: "We are trying to do something with our western territory to make it useful to the purposes for which the United States were vested with it. You have seen in the papers the scheme for the temporary as well as perpetual government of it. A practical measure for the sale of it, or rather by means of it, to redeem the domestic debt, remains still to be agreed upon, and I fear the difficulties which have always stood in the way of this great object are not yet to be surmounted. Colonel Lee joins Grayson and myself with great zeal, but what will be the issue of our efforts I

know not."<sup>28</sup> After the sale to the Ohio Company had been authorized Carrington wrote a letter to Monroe, August 7, 1787, in which, after outlining the terms of the sale, he said: "This I hold a great bargain for the U. S., as the land goes good and bad together, and it will be a means of introducing into the country, in the first instance, a description of men who will fix the character and politics throughout the whole territory, and will probably endure to the latest period of time. This company is formed of the best men in Connecticut and Massachusetts, and they will move out immediately. I am about to join them with a few shares; what think you of such an adventure?"<sup>29</sup>

The next day, August 8, Grayson wrote Monroe a lengthy account of the Ordinance of 1787 and of the contract with the Ohio Company. A brief quotation from this letter will disclose the second factor that induced the South to support the anti-slavery provision. Grayson said: "The clause respecting slavery was agreed to by the 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."<sup>30</sup> Here indeed is light on the attitude of the South. Grayson then outlined the terms of the sale to the Ohio Company and pointed out that the proposed settlements would greatly increase the value of Virginia's lands in the West. He remarked that other companies were being formed and that eventually such sales would probably extend to the Mississippi. Grayson certainly looked upon the Ordinance of 1787 as a means to promote the sale of federal lands and the development of the back country.

Due to the absence of General St. Clair, Grayson was the presiding officer in Congress when the ordinance was debated and passed, Carrington was the chairman of the committee which framed the ordinance, and Lee was an influential member both of the committee and of Congress. These three outstanding leaders were in full agreement that the main purpose of the Ordinance of 1787 was to further the sale of lands, particularly to the Ohio Company. In fact the general agreement of all the evidence thus far

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<sup>28</sup> Bancroft: II, p. 436.

<sup>29</sup> Bancroft: II, p. 436-37. Compare this liberal view of Carrington's towards New Englanders with Lee's, and also with the expressed views of Dane and Cutler towards southerners.

<sup>30</sup> Bancroft: II, p. 437. The letter is printed in full. Many southern statesmen had consistently favored the prohibition of slavery in the Northwest.

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submitted shows clearly that the Ordinance of 1787 was enacted primarily as a measure preparatory to the sale of western lands. It is equally clear that the provision for education in the ordinance was one of the special inducements which encouraged the purchase of lands and settlement in the Northwest Territory.

It is neither possible nor necessary to prove that Dr. Cutler or his associates originated the provisions in the ordinance concerning property, inheritance, future government, prohibition of slavery, encouragement of religion and particularly of education. These had all been discussed both in and out of Congress for years and many of them had become accepted principles of government. The important fact is that the ordinance was framed and passed with the knowledge and approval of the representatives of the Ohio Company and they were unwilling to purchase lands without the enactment of such a safe-guarding ordinance. Beyond question the Ordinance of 1787 and the sale of the lands by contract were closely associated in the minds of members of Congress. With the passage of the ordinance Congress at once took up the business of fixing the terms of a contract with the Ohio Company. After two weeks of maneuvering in which politics and a financial deal with a member of the Board of Treasury played no small part, Cutler secured for the company the terms he had dictated to Congress.

The full importance of the Ordinance of 1787 as an instrument of government was not appreciated at the time, either by the public or by the members of Congress. It received scant notice in the leading papers of the day. Neither the *New York Packet* nor the *New York Daily Advertiser* even so much as mentioned the ordinance. It was printed without a word of comment in the *Pennsylvania Gazette*, of Philadelphia, on July 25, 1787.<sup>31</sup> Public interest was centered at that time on the Constitutional Convention then in session at Philadelphia and the papers were giving much space to its proceedings. The doings at New York of the discredited Continental Congress were of no interest. The real worth of the Ordinance of 1787 was not appreciated until after it was in actual operation. Its fame was greatly increased in the heated debates in subsequent years of sectional strife. To the

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<sup>31</sup> These statements concerning contemporary newspapers are based upon the examination of the files of these papers for June, July, and August, 1787, in the Public Library of New York City.

men who voted for the enactment of the Ordinance of 1787, doubtless many of its provisions were too vaguely general to have much meaning. Yet no provision, with the possible exception of that which prohibited slavery, has exerted a more profound influence on the life of the nation, than this: "Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." This sentence was the cornerstone in the foundation of the free public school system which has supplanted the private and quasi-public academies and colleges and made possible the development of an educated and useful citizenship in a rapidly growing and expanding democratic society. It established a precedent that has been an inspiration and a source of strength to the advocates of public education, even to the present time. No other one thing has contributed as much to the development of the national policy of public education as has this provision in the Northwest Ordinance of 1787.<sup>32</sup>

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<sup>32</sup> For a brief summary of the educational significance of the Ordinance of 1787 in the Northwest, see Moore: *The Northwest Under Three Flags*, pp. 328-29.

## CHAPTER VI

### THE LAND SALES OF 1787 AND 1788

THE Ordinance of 1785 was still in effect in 1787, but it had failed to promote land sales, largely because of the restive state of the Indians, the slowness of the surveys, and the cumbersome provision of the ordinance for sales in each of the thirteen states. On the twenty-first of April, 1787, Congress changed this provision of the ordinance and provided for the sale of lands at the seat of the federal government, as soon as the land for the soldiers was drawn in the states.<sup>1</sup> Congress further amended the ordinance by providing that lands might be sold on credit, the terms being that one-third of the purchase price should be paid at the time of purchase and the balance within three months. The provision that no lands should be offered for sale until the first seven ranges were surveyed was also changed so that sales could be made immediately, although the survey of only four ranges had been completed. But even with these amendments the Ordinance of 1785 did not greatly increase the sale of lands. The Indians were still uneasy or even hostile and the organization of large companies such as the Ohio Company and the proposed private sales by contract tended to discourage the buying of lands at the public sales. The important sales of these years, 1787-1788, were not those made under the provisions of the Ordinance of 1785, but those private sales made by contract, after the enactment of the Ordinance of 1787.

The Ordinance of 1787 was an ordinance for government and contained no provisions respecting the sales of lands. The ordinance has become associated with the land question because of its connection with the purchase of the Ohio Company and also because of the means which were subsequently adopted for fulfilling the requirements of the article in the ordinance concerning the encouragement of schools and the means of education. These requirements were stated in the most general terms. The article simply stated that "religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools

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<sup>1</sup> *Jour. of Congress*, IV, p. 739. See also Treat: p. 44.

and the means of education shall be encouraged."<sup>2</sup> The encouragement of schools and the means of education was thus made mandatory, but by whom or by what means such encouragement was to be given was not made clear in the ordinance. As this provision was a part of the Articles of Compact "between the original States and the people and states in the said territory,"<sup>3</sup> the presumption is that the obligation rested equally upon both parties to the compact and the means for its fulfillment were left to the discretion of these parties. The national government chose to meet this obligation by the continuation of the policy of making land grants for education.

Congress had already reserved for the maintenance of public schools section sixteen in every township in the Northwest, surveyed under the Ordinance of 1785. The slow progress of the survey made the completion of the first seven ranges far distant and the completion of the second seven ranges seemed to lie in a dim and remote future. Therefore, after General Parsons presented the memorial of the Ohio Company for the purchase of lands lying west of the first seven ranges and extending along the Ohio to the Scioto river, Congress came to interpret the Ordinance of 1785 as applying primarily to the first seven ranges. Under these circumstances it was deemed advisable, especially by the purchasers of lands west of the first seven ranges, that definite provisions be made for the encouragement of education in that part of the Northwest Territory.

The relation of the Ordinance of 1787 to the ordinance authorizing the contract with the Ohio Company has already been explained. It was expected by the agents of the company, Cutler and Sargent, that the general provision concerning education in the ordinance for government would be supplemented by the terms of the contract for the lands. Cutler submitted to Congress the terms on which the Ohio Company would purchase lands. These included the reservation of every section sixteen for education, every section twenty-nine for religion, and two complete townships for a university. These last two provisions were the ones which created in Congress such strong opposition to the Ohio

<sup>2</sup> Article III of the Articles of Compact.

<sup>3</sup> It is curious that Webster so valiantly and successfully attacked this same fallacy in the State Rights doctrine and at the same time attempted to immortalize Dane as author of the Ordinance of 1787.

Company.<sup>4</sup> Cutler was on the point of giving up the attempt to make the contract when he was approached by Colonel Duer, Secretary of the Board of Treasury, with the proposition to extend the purchase of the Ohio Company to include approximately five millions of acres of land for another company,<sup>5</sup> in which were associated many of the "principal characters of America." Cutler said that Duer enjoined him to profound secrecy and offered "generous conditions" if Cutler would "accomplish the business" for the company.<sup>6</sup> Cutler promised to undertake this additional purchase and thenceforth the Ohio Company met with less opposition. Congress enacted the ordinance authorizing the sale on the terms which Cutler and Sargent had dictated. In his diary Dr. Cutler has left the record that "without connecting this speculation, similar terms and advantages could not have been obtained for the Ohio Company."<sup>7</sup> Cutler's grandchildren undertook to explain this agreement between Cutler and Duer. The following quotation is their interpretation of the transaction:

"The injunction of secrecy was as to the fact of the increased amount of land being obtained for a separate company. The "generous conditions" were, that if Dr. Cutler would secure, for the entire amount of lands asked for, the support of the members of Congress who had declared in favor of the Ohio Company grant, Colonel Duer and his friends would undertake, with Cutler's assistance, to obtain enough additional votes to pass the ordinance for the purchase of the entire tract upon exactly the terms stated in the Ohio Company's petition. This included the grants of land for the establishment of a university and the support of the university, which, next to the accomplishment of the purchase itself, were the objects most desired by Dr. Cutler."

"Colonel Duer also agreed that Cutler and Sargent should have for themselves, and such of their friends among the prominent men in the Ohio Company as they chose to interest, one-half interest in the proposed right of purchase, the sale of which he and his friends would undertake to manage."<sup>8</sup>

Dr. Cutler's diary throws no definite light on those "generous conditions" beyond the fact that they were offered. His grand-

<sup>4</sup> See Treat: p. 51.

<sup>5</sup> The Scioto Company.

<sup>6</sup> Cutler: I, p. 295.

<sup>7</sup> *Ibid.*, p. 305.

<sup>8</sup> *Ibid.*, pp. 494-95.

children cite no authority as a basis for their interpretation of those conditions. Apparently their conclusions were drawn from the circumstantial evidence of the events that followed the agreement between Cutler and Duer. On this basis the conclusions seem to be wholly within reason. Certainly the facts, so far as known, leave little doubt that the interests of the Ohio Company were materially furthered by connecting them with the larger land speculation of the Scioto Company. The terms which Cutler proposed to Congress were granted in every detail, and in so far as education is concerned, the ordinance which authorized the sale of lands on these terms was of much greater importance than the ordinance for the government of the Northwest Territory.

This ordinance, as passed in Congress, July 23, 1787, authorized the Board of Treasury to contract with any person or persons for a tract of land which should be bounded: on the south by the Ohio river from the mouth of the Scioto to the western boundary of the seventh range of townships, surveyed under the Ordinance of 1785; thence north along this western boundary to the northern boundary of the tenth township from the Ohio river; thence due west to the Scioto; thence south along the Scioto to the beginning. The terms authorized were as follows:<sup>9</sup>

1. The exterior lines were to be run by the United States and plots furnished to the Board of Treasury and to the purchasers.
2. The purchasers were, within seven years after the completion of the exterior lines, to lay off the whole tract into townships and lots according to the Ordinance of 1785, and make complete returns to the Board of Treasury.
3. Section sixteen in each township was to be given perpetually for the maintenance of public schools within the townships, as provided in the Ordinance of 1785.
4. Section twenty-nine of each township was to be given perpetually for the purposes of religion.
5. Sections eight, eleven, and twenty-six were to be reserved for the future disposition of Congress.
6. Not more than two complete townships were to be given perpetually for the purposes of a university, to be laid off by the purchasers, as near the center as possible, the same to be of good land, to be applied to the intended object by the legislature of the state.

<sup>9</sup> Printed in full in Cutler: II, pp. 427-29.

7. The price was to be not less than one dollar per acre, not including the reservations and gifts, payable in specie, loan office certificates, reduced to specie value, or certificates of the liquidated debt of the United States.

8. One-third of a dollar per acre was allowed as a reduction for bad lands and incidental charges.

9. Military bounty rights could be offered in payment for the lands up to one-seventh of the total purchase price.

10. Five hundred thousand dollars were to be paid at the time of signing the contract, and the balance when the exterior lines were run by the United States.

11. The purchasers were to give good security for the unpaid balance.

12. The grant was to be made when the full purchase price was paid.

Such were the terms of the ordinance as passed on July 23, 1787. On July 26,<sup>10</sup> Cutler and Sargent accepted these terms on condition that the following amendments were made:

1. The requirement of subordinate surveys by the purchasers was not to be enforced in case of Indian interference.

2. One half million dollars should be paid when the contract was signed, a second half million when the exterior lines were run, and the balance in six equal payments, computed from the day of the second payment.

3. The lands for the university should be near the center of the first million and a half of acres purchased, in order to hasten its establishment.

4. Upon making the second payment, the purchasers should receive a deed to as much land as they had then paid for, the term of further deeds to be agreed upon by the purchasers and the Board of Treasury.

5. The lands should be considered as "good and sufficient security" for the deferred payments, as required in the ordinance.

The Board of Treasury, to whom these amendments and conditions were submitted by Cutler and Sargent, referred them to Congress. The next day, July 27, 1787, Congress agreed to these terms, with the further stipulation that the six equal deferred payments should be made half-yearly with interest from the

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<sup>10</sup> Letter of Cutler and Sargent to the Board of Treasury, from *Journals of Congress*, IV, Appendix, p. 17. Reprinted in full in Cutler: II, pp. 429-30.

completion of the exterior survey.<sup>11</sup> Three months later, October 27, Cutler and Sargent made two contracts on these terms, one for the Ohio Company for 1,500,000 acres and the other for the Scioto Company for about 5,000,000 acres. The price fixed in the ordinance was one dollar per acre, but the deductions for bad lands reduced this to two-thirds of a dollar. Certificates of indebtedness, which were acceptable for the purchase of lands, were worth about twelve cents on the dollar at the time of these sales, and as a consequence, the actual price agreed upon was about nine cents per acre.<sup>12</sup>

The methods which were used to secure the enactment of the ordinance authorizing these contracts and the ordinance itself have been seriously questioned in recent years. Beyond question the provisions of the ordinance were not in complete harmony with the system of surveys and sales which was established by the Ordinance of 1785. It has been said that these sales by contract made necessary the suspension of the Ordinance of 1785.<sup>13</sup> In a measure this was true. However, these private contracts did not affect the application of the Ordinance of 1785 to the first seven ranges. There is no doubt that the favorable terms which the Ohio Company was able to offer under their contract seriously interfered with the public sales of the lands lying within the first four ranges, but there was no suspension of the Ordinance of 1785.

As has already been pointed out, Congress had come to believe that the Ordinance of 1785 applied primarily to the first seven ranges in the Northwest Territory. It should be noted, however, that the ordinance which authorized the private sales recognized

<sup>11</sup> Cutler: II, p. 430.

<sup>12</sup> For fuller treatment of this point see Geer: *Louisiana Purchase and the Westward Movement* in *History of North America*, VIII, p. 97. Also Treat: pp. 50 ff.

<sup>13</sup> Speaking of the application of the Ohio Company for the private purchase of lands, Treat says: "Under ordinary circumstances such a proposal would doubtless have been rejected, for it called for the virtual suspension of the Land Ordinance even before it had been tried; it sought the corporate ownership of an immense area instead of the small holdings encouraged by the ordinance; and by offering fifty cents an acre it would impair the approaching sale of the four ranges. But these were no ordinary times." Treat: p. 48.

It should be noted that the nominal price paid in the contract, as finally drawn, was one dollar per acre, the minimum price established in the Ordinance of 1785. It is worth noting also that while the Ohio Company proposed to purchase a vast tract of land, the articles of agreement which created the company safeguarded against land monopoly and provided for the immediate subdivision of the tract into small individual holdings. The Scioto Company and its intentions were a "profound secret to Congress."

the validity of the Ordinance of 1785.<sup>14</sup> In so far as the method of sale was concerned the ordinances were in opposition; as regards the price of the lands they were substantially in agreement, because it was scarcely probable that more than the minimum price of one dollar per acre could have been obtained at public auction for so large a tract of land. The system of surveys was practically the same. With respect to special gifts and reservations the ordinance authorizing the sales by contract was supplementary to the Ordinance of 1785 rather than in opposition to it. The reservation of the sixteenth sections for schools was a provision of both ordinances, but in the later ordinance two complete townships were also given for the support of a university. The reservation of the twenty-ninth sections for the support of religion, which had been stricken from the Ordinance of 1785 by a legislative accident, was made a part of the later ordinance.<sup>15</sup> But in the light of all the facts this is merely a point of difference rather than a point of opposition between the two ordinances. It is reasonable to conclude that Congress, neither in intention nor in fact, violated or suspended the Ordinance of 1785 in the act which authorized the contracts for the sale of large tracts of land lying west of the first seven ranges in the Northwest Territory.

The fact that Cutler and Sargent made two contracts with the Board of Treasury, one for the Ohio Company and the other for the Scioto Company, has already been stated. A brief sketch of the Scioto Company and its relation to the Ohio Company is not out of place here. The contract with the Ohio Company was for the purchase of 1,500,000 acres. Colonel Duer made a loan of \$143,000 to the Ohio Company to enable it to make the first payment.<sup>16</sup> The other contract, which was for the Scioto Company, was in the name of Cutler and Sargent, "for themselves and associates." It was not a contract for the outright purchase of

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<sup>14</sup> In Cutler: I, p. 364, the position is taken that "the contract for sale of a large tract of the lands to the Ohio Company was made in direct violation of the Ordinance of May 20, 1785, although that ordinance was in force at the time and remained so until July 9, 1788." This view is evidently based on a misapprehension of many of the important facts involved.

<sup>15</sup> This gift of section 29 for religious purposes is found only in the contracts of Cutler and Sargent and of J. C. Symmes for the Symmes Purchase. For a discussion of this point see Treat: pp. 28 ff.

<sup>16</sup> In Cutler: I, p. 497, is this statement: "As a consideration to the Ohio Company for permitting the contract (for the Scioto Company) to be made under cover of its petition, Colonel Duer advanced to it \$143,000 in securities to enable it to complete the first payment to the Board of Treasury. . . ."

lands, but an option to purchase a tract of land, lying north of the Ohio Company's tract, estimated at 3,500,000 acres, but which later proved to contain approximately 5,000,000 acres.

Cutler and Sargent transferred their option to purchase to Colonel Duer and his associates. The ownership of this option was then divided into thirty shares; Duer held thirteen for himself and associates, Cutler and Sargent held thirteen, and the four remaining shares were held jointly and were to be sold in Europe. It was thought that these four shares would have a ready sale among the foreign holders of the depreciated securities of the United States.

Joel Barlow was sent to France in May, 1788. There he met William Playfair, whom Barlow characterized as "an Englishman of a bold and enterprising spirit" with "a good imagination." Together they issued a "Prospectus for an establishment on the Rivers Ohio and Scioto." It was based upon a report of Hutchins, the Geographer of the United States, and upon Dr. Cutler's "Explanation of the Map which delineates that part of the Federal Lands comprehended between Pennsylvania, the rivers Ohio, Scioto, and Lake Erie," a pamphlet which had been printed at Salem in 1787. Playfair's imagination seems to have assisted materially in making the prospectus attractive. With the aid of this prospectus Barlow and Playfair succeeded in selling practically all of the lands controlled by the original option to the Company of the Scioto, which was organized in Paris for the purpose.

The checkered and disastrous career of the Scioto Company is of no importance here.<sup>17</sup> Playfair collected all of the money and, for some unexplained reason, refused to turn it over to Colonel Duer who represented all of the holders of the option; hence no payments could be made to the United States. Barlow and Playfair sent a band of settlers to America, but, through error, had given them deeds to lands owned by the Ohio Company. The mismanagement of the Scioto Company connected with the panic of 1792, wrought the ruin of Colonel Duer and many of his associates, including Colonel Richard Platt, who was also treasurer of the Ohio Company. To relieve the distress of the French immigrants Congress finally, in March, 1795, made a special grant of 24,000 acres in what became Scioto County, Ohio.

<sup>17</sup> For the history of the Scioto Company see Cutler: I, Chap. 2. A History of the Scioto Purchase by E. C. Dawes. See also, Treat: pp. 58-59.

When the facts concerning the secret agreement between Cutler and Duer became known some of the members of the Ohio Company charged that Cutler and Sargent had transferred, without consideration, the property of the Ohio Company when they surrendered their option to Colonel Duer and his associates. Cutler easily disproved this charge. But at best the whole transaction presents a curious and somewhat sad spectacle.

Colonel Duer, as secretary of the Board of Treasury, was the agent of the United States. Cutler and Sargent were openly the agents of the Ohio Company, but secretly the agents of Duer and his associates. In the grant of the option to Cutler and Sargent by the Board of Treasury Duer was, to all intents and purposes, making a contract with himself. Then there is Carrington's statement, referring to the Ohio Company: "This company is formed of the best men in Connecticut and Massachusetts, and they will move out immediately. I am about to join them with a few shares."<sup>18</sup> There is no evidence that Carrington knew of the secret deal between Cutler and Duer or that he was influenced in favor of authorizing the contract with the Ohio Company by the prospect of becoming a share-holder in the venture. No thought of impropriety seems to have come to him on this score. It is not improbable that other members of Congress were offered the opportunity to become share-holders in the company to which they granted such favorable terms. It may be that they were numbered among the "principal characters in America." Without doubt many facts connected with the passage of the ordinance which authorized the private sales, and with the contracts between the Board of Treasury and Cutler and Sargent would be condemned to-day as disgraceful or even corrupt. But the men who participated in those transactions should be judged by the standards of their time and not by the dictates of the public conscience of the present. However, the concern here is not with how the contracts were obtained, but with their effects upon education. Before drawing any conclusions as regards this point a brief account will be given of a third private land sale.

In August, 1787,<sup>19</sup> John Cleve Symmes petitioned for a purchase of one million acres of lands lying between the Great and Little Miami rivers, on terms similar to those granted to Cutler and

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<sup>18</sup> Carrington to Monroe, Aug. 7, 1787. In Bancroft: II, p. 437.

<sup>19</sup> Cutler: I, p. 403.

Sargent. Symmes asked for only one township for an academy instead of the two townships given to Cutler and Sargent for a university. On the twenty-ninth of August Congress authorized the Board of Treasury to make the sale.<sup>20</sup> In October, 1787, Congress resolved to give no more lands for seminaries or academies in connection with private contracts unless the purchases were as large as that of the Ohio Company, and in some state other than Ohio.<sup>21</sup> Almost a year later, October 15, 1788, Symmes signed a contract for one million acres on the east side of the Great Miami River. The terms of his contract were similar to those granted Cutler and Sargent, but Symmes received no grant for an academy.<sup>22</sup> Symmes proceeded to sell lands under contract, but for some unexplained reason, he also sold lands lying beyond his purchase. Four years later, April 12, 1792,<sup>23</sup> Congress cleared the title to these lands by extending Symmes's contract to include them. On May 5, 1792,<sup>24</sup> Congress made further concessions to Symmes by permitting him to receive a patent to all the lands for which he had paid and by making a donation of one township for an academy. This last concession was made because of the enlargement of the contract. In this way was renewed the policy of making special land grants for higher and secondary education which had been inaugurated in the contracts with Cutler and Sargent.

Symmes again made sales beyond the limits of his purchase and for several years petitioned Congress to permit him to complete his original purchase for one million acres. Congress refused these petitions because the lands were then selling for at least two dollars an acre, while Symmes's contract called for only sixty-six and two-thirds cents an acre.<sup>25</sup>

By these private sales to Symmes and to the Ohio and Scioto Companies Congress had expected to dispose of more than six

<sup>20</sup> *Jour. of American Congress*, IV, Appendix, p. 18.

<sup>21</sup> *Ibid.*, p. 802.

<sup>22</sup> For a complete outline of the history of the Symmes purchase see the report of the Attorney General of the United States in American State Papers, *Public Lands*, I, No. 72. The following documents also relate to this purchase: I., Nos. 23, 33, 34, 55, 70.

<sup>23</sup> *Annals of Congress*, 1791-93, III, p. 1357.

<sup>24</sup> *Ibid.*, p. 1374.

<sup>25</sup> There is nothing to show that Symmes intentionally sold lands which he had not purchased. He seems to have been confused by the fact that his contract called for 1,000,000 acres, within certain boundaries, but when the lines were run it was found that the boundaries contained approximately 600,000 acres.

millions of acres of land. The difficulties into which Symmes fell and the failure of the Scioto Company, which also so involved the Ohio Company that it was forced to ask for special concessions and a reduction in its contract, decreased the actual sales to less than 1,300,000 acres, and Congress made donations of more than 100,000 acres to the Ohio and Scioto Companies, largely to protect the actual settlers. As a business venture these sales by contract were unsuccessful, but the United States was compensated for the financial loss by the development of the Northwest which was carried on by the settlers on the lands thus sold.

The great importance of these private contracts was in their influence upon the national policy of land grants for special purposes. The grant of every section twenty-nine for the support of religion was a provision of these contracts, and the history of these grants and of the forces which led Congress finally to abandon this policy of making such gifts is not without interest, but is out of place here. The influence of these contracts in shaping the national policy of supporting public education by land grants is of even greater interest and importance. As will be shown in another connection, during the decade just after the adoption of the Constitution there was grave danger that the new government would abandon this policy which had been established by the Congress of the Confederation. It was at that time that the influence of these contracts was exerted in the firm reestablishment of the policy of federal land grants for education. In the proper place the means by which this influence was brought to bear will be explained. It is sufficient here to summarize briefly the provisions in these contracts which were of significance for public education.

The two educational provisions in the contracts were (1) that every section sixteen should be given perpetually for the maintenance of public schools within the township, (2) that not more than two complete townships, near the center of the first million and a half of acres, should be given perpetually for the purposes of a university. The first of these was but a restatement of the provision of the Ordinance of 1785.<sup>26</sup> The Ordinance of 1785 had

<sup>26</sup> The clause in the contract reads as follows: "The lot No. 16, in each township or fractional part of a township, to be given perpetually for the purposes contained in the said ordinance." That is, the Ordinance of May 20, 1785. For the text of this contract see Cutler: II, 427-30 or *Jour. of American Congress*, IV, Appendix, pp. 17 ff.

failed to promote the establishment of schools because it had not greatly encouraged the sale and settlement of the western lands. The contracts, especially that with the Ohio Company, led to immediate, permanent and compact settlements and the early establishment of schools. Thus the practical demonstration of the worth of the principle of federal land grants for education was due to this private sale of lands by contract.

The second educational provision of the contracts was, in some respects, more important than the first for the reason that it was the first instance in which federal aid was given distinctly to higher education. Such terms as "schools," "public schools," "academy," "seminaries of learning," had been used indiscriminately for years, but in the contracts with Cutler and Sargent there appeared the term "university." Among the concessions which Congress made to Symmes in 1792 was the grant of one complete township as a definite gift for the support of higher education.<sup>27</sup> The grants for higher education provided in these contracts were the only ones made by the Continental Congress. It was not until after 1800 that this policy was revived and the great importance of these early grants, which then served as a precedent, was manifest.

In many respects the principle of granting a large tract of land for the support of a university was far in advance of the older principle of granting one section in each township for the maintenance of public schools within the township. The sphere of usefulness of the university would necessarily extend far beyond its immediate environment and its influence would be felt throughout the territory or state. The policy of granting each section sixteen for the support of education within the township was an expression of New England principles of local government. Its adoption in the Northwest Territory extended the New England town school system and assisted in fixing upon the West the district school with its virtues and all of its attending evils. The struggle to perpetuate these virtues and to overcome these evils belongs to a much later period in the history of education in the United States. The great contribution which the early contracts for the private sale of lands made to the development of the policy of federal land grants for public education was that they led to the

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<sup>27</sup> In 1787 Symmes had petitioned for a grant of one complete township for an "academy."

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demonstration of the practicability of the policy by the actual establishment of schools through the aid of such grants. In later years these concrete examples of the worth of this system were of far more weight in argument than any theory which could be brought against it.

## CHAPTER VII

### THE EDUCATIONAL WORK OF THE EARLY SETTLERS

IT is a well-established fact that the promoters of the Ohio Company and other large land speculators were in favor of land grants for the support of both common schools and higher education. In some cases the zeal for learning on the part of the speculators may have been due to their desire to make their lands as attractive as possible to prospective buyers. This is perhaps true in the case of the promoters of the Scioto Company. Yet there can be no question but that the members of the Ohio Company, especially those who were planning to settle in the Ohio country, were deeply interested in education and looked forward to the establishment of adequate schools and colleges in the Northwest as a result of the generous land grants for the support of education which were secured by the terms of the contract between the Ohio Company and the government.

In general, the New Englanders who settled in the Northwest were in favor of the establishment of schools. This is certainly true of the better class of New Englanders, from which came so many of the leaders in the new country. The New Englander's love of local self-government, as expressed in township organization, worked against the development of a sound and comprehensive policy for the use of school lands, but on the whole, New England influence in the Northwest was for education.

In so far as the Symmes purchase is concerned there is reason to think that Symmes, himself, was anxious to have the school lands used as soon as possible for the establishment of schools and colleges. While it may be true, as Dr. Cutler said, that Symmes had not thought of land grants for education until they were made to the Ohio Company,<sup>1</sup> nevertheless Symmes was careful to have these grants included in his contract. The use to which these school lands was put was determined by the settlers rather than by the promoters who sold the lands and, as might be expected, there

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<sup>1</sup> Cutler: II, p. 323.

was no unanimity of purpose or opinion among the settlers. There were, however, a great many strong advocates of education among the early settlers in the Symmes purchase.

In all the early settlements in the Northwest Territory there was a minority, at least, in favor of the immediate establishment of schools. Many of the pioneers went into the wilderness with the determination to build a civilization equal to that they left behind them. Some even dreamed of founding a university that would be to Ohio what Harvard was to New England; but New Englanders were not alone in their purpose to build schools and colleges. Many settlers from the middle and southern states were staunch friends of education and even Kentucky played an important part in the founding of some of the earliest schools in Ohio by furnishing educational leaders. The cause of education had many active supporters who labored earnestly and faithfully to make the most of the lands committed to them in trust for the advancement of education. In order to appreciate the value of the service rendered by these early friends of education and to understand the reasons for the meagerness of the results of their labors it is necessary to take into account some of the difficulties which confronted them.

There were many among the early settlers who were indifferent to the need for education and who cared nothing for the land grants for schools and colleges. No doubt there were some who were actively opposed to education, but these certainly constituted a very small minority. As will be shown later, indifference, self-seeking, and greed for the school lands on the part of politicians were the greatest and most dangerous enemies of education in the early days of the Northwest Territory.

Chief among the obstacles to the development of schools was the immediate need of making a living which every man had to meet. Land had to be cleared, houses built, crops planted, and a multitude of smaller but no less pressing tasks performed, all of which combined, consumed the time and energies of the frontiersmen. No matter how great the interest in education might have been, such interest was necessarily of secondary importance. Making a home was the first task of the pioneer. Schools, churches, and other institutions had to wait until this first task had been accomplished.

But making a living and founding a home were not the only

burdens of the early settler in the Ohio country. The settlements were surrounded by hostile Indians who were ready to contest every foot of advance of the white man into the wilderness. Exposed to the constant danger of attack by the savages and afforded little or no protection by the national government the frontiersmen were thrown upon their own resources to defend their homes from destruction and their families from murder or a slavery worse than death. Under such conditions there is little wonder that schools received scant encouragement; the wonder is that so much was accomplished for education.<sup>2</sup>

Another factor that worked against the early establishment of schools was the lack of means of support. As a general thing the frontier people were poor. They usually had plenty of food and clothes and the crude necessities of life, but rarely had surplus wealth. Land was the chief source and form of wealth and land was plentiful and cheap. The prices paid for government lands by the Ohio Company and other speculators were probably as high or higher than the value of the lands justified. The early land grants for education seem of enormous value when considered in terms of the value of those lands to-day, but they were by no means sufficient to meet the educational needs of the early settlers in Ohio. Even with the wisest management it would have been necessary to supplement the revenue derived from school lands in order to have established and maintained free schools. Unfortunately schools lands never received the wisest management, but usually the worst. This greatly increased the difficulties of the work of founding schools by the early settlers.

There were other things besides the physical and economic conditions of frontier life and the hostility of the Indians that retarded the growth of schools. Among these was the small and scattered population. There is much to be said of the importance of buildings and other physical equipment in the development of education, but after all, the fundamental essentials of a school are pupils and teachers. Of course there were children in the early settlements, but even the larger settlements were so small that one teacher could carry on all the work of education that was required. In the out-lying districts schools were practically out of the ques-

<sup>2</sup> Interesting accounts of early frontier life in Ohio may be found in Howe: *The Great West*, I, Nos. 26, 27, 28, 30; also in Cuming's *Tour*, in Thwaites: *Early Western Travels*, IV and in F. A. Mechaux's *Travels to the West of the Alleghany Mountains* in Thwaites: *Early Western Travels*, III.

tion so long as the danger from the Indians was present. At first glance it looks as if it would have been easy to get teachers to supply the needs of these frontier settlements, but as a matter of fact it was difficult to induce competent teachers to venture from the east into the wilds of the upper Ohio to work for the small salary that could be paid. The Northwest in 1790 offered few inducements to the ambitious schoolmaster.<sup>3</sup>

The greatest hindrance to the early development of education through the use of the congressional land grants was more fundamental than any of those yet mentioned. It was the lack of social unity among the frontier settlements. The population was small and widely dispersed, with settlement focused about a number of small villages scattered over the upper Ohio valley. The common danger from the Indians was the strongest bond that drew these settlements together, and even that was weak. Petty jealousy and bitter rivalry were not uncommon among these frontier communities<sup>4</sup> and, while aggressive hostility was not the rule, active coöperation was rarely in evidence.

The lack of social unity was not only a characteristic of the Ohio territory as a whole, but it was also manifest in each local settlement. Frontier settlements were generally made up of emigrants from various sections of the United States or from Europe, each bringing with him his opinions and prejudices concerning education as well as regards religion and politics. Even in those settlements when New Englanders were in a large majority lack of united effort was a great hindrance to the growth of schools. In such cases the majority had little regard for the opinions of the minority who therefore were opposed or indifferent to the plans of the leaders.

The lack of unity of thought and purpose concerning education within the frontier settlements was not due solely to the heterogeneous nature of their population in point of origin. They were growing communities with a constant influx of people who had to solve the first problems of frontier life, clear land and make a home. Many of those who had already accomplished these tasks were ready and anxious to rise to a higher plane of civilization and culture by the development of political, religious and educational institutions. These differences in ideals and purposes that grew

<sup>3</sup> See Summers: *History of Marietta*, pp. 173 ff. Also Cutler: I, p. 435.

<sup>4</sup> King: *Ohio*, pp. 272-73, 283, 285.

out of the differences in economic status continued to be an important check on educational progress throughout the period of rapid growth of population in the Northwest. This can be seen clearly in the management of the school lands in Ohio and other states formed out of the Northwest Territory. Time alone could change this condition and before time had done its work schools had suffered great and irreparable loss.

All of the difficulties and hindrances that held back the early development of schools under the policy of land grants for education might be summarized and condensed into one fundamental obstacle, namely, a lack of solidly united public sentiment in favor of schools. Opinion ranged from positive opposition to education to the highly impractical ideal of a great western university that was so dear to some of the New England settlers. The failure to transplant in all its dying glory the outworn system of higher education which New England had inherited from Old England did much to clear the way for the later educational progress of the middle West. Regardless of the ultimate outcome, the lack of social consciousness of the need for schools served to obstruct the efforts of the pioneers to establish and maintain schools through the use of the congressional land grants for education. What these early friends of education actually accomplished is at least worthy of a brief review.

At the last meeting in Massachusetts of the Ohio Company, March 9, 1788, the following resolution was adopted: "That the directors pay as early attention as possible to the education of the youth and the promotion of the public worship among the first settlers, and for these important purposes they employ, if practicable, an instructor, eminent for literary accomplishments and the virtue of his character, who shall also superintend the first scholastic institution and direct the manner of instruction, and enable the directors to carry into execution the intention expressed in the resolutions, the proprietors and others of benevolent and liberal minds are earnestly requested to contribute, by voluntary donations, to form a fund to be solely appropriated thereto."<sup>5</sup> The first settlers on the lands of the Ohio Company were scarcely established in their new homes before they took steps to carry out the intent of this resolution. They built the first schoolhouse in

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<sup>5</sup> Cutler: II, p. 3.

Ohio, a blockhouse at Marietta, in 1789.<sup>6</sup> Major Anselm Tupper was the first teacher in this school.<sup>7</sup> The following year, 1790, the Ohio Company "appointed one hundred and fifty dollars" of their funds for the support of schools at Marietta, Belpre and Waterford, and schools were maintained at all three points in that year.<sup>8</sup>

The records are not clear as to the details concerning these early schools. That they were elementary schools there is little doubt, but as to the length of the school term, the course of study, tuition charges or the salary of the teacher nothing definite is known. Dr. Cutler left the record that Rev. David Story went out to Ohio as a preacher in 1789 at a salary of five dollars a week and board. The Ohio Company bore part this expense.<sup>9</sup> It is not probable that the schoolmaster was better paid than the preacher. Doubtless the donation of the Ohio Company was supplemented by tuition fees, as was the custom on the frontier at that time. In 1790 John Reiley established a private elementary school at Columbia, near Cincinnati, and maintained it successfully by charging a small tuition fee.<sup>10</sup>

The first academy in Ohio was established at Marietta in 1797. On April 29 of that year, the citizens of Marietta held a meeting to consider the problem of maintaining schools. General Rufus

<sup>6</sup> Summers, in the *History of Marietta*, p. 173, gives 1788 as the date of the first school. Dr. Cutler's letter to Gen. Putnam, under date of November 18, 1788, substantiates this statement. Certainly there was a schoolmaster in Marietta in 1788. The school building was opened the following year. See footnote No. 9 for extract from Cutler's letter.

<sup>7</sup> D. C. Shilling: "Pioneer Schools and Schoolmasters," in *Ohio Arch. and Hist. Soc. Publ.*, XXV, p. 38.

<sup>8</sup> *Ibid.*; also in Hildreth: *Pioneer History of Ohio*, p. 261.

<sup>9</sup> Cutler: I, p. 435. From a letter of Dr. Cutler to General Putnam, dated Ipswich, November 18, 1788. In this letter is also the following: "Colonel Platt was so engaged while I was in New York, that I could not find the amount of the fund for preaching and schools; there is, however, a considerable sum. Colonel Tallmadge told me he had collected a considerable sum, which he should pay into the treasury. I presume may be drawn at any time by order of the Directors.

"Mr. Rogers has concluded not to return, and I wish the school may be given to Mr. William Dodge, that he may be considered a Grammar Master, but that he take scholars of every description at present.

"I have requested Colonel Platt to forward a sum, raised for the support of preachers and schoolmasters, to the Directors at Muskingum, of 200 dollars (if he has so much on hand) which will enable you to pay the preacher and schoolmaster for the present."

<sup>10</sup> The custom was to organize a school of twenty to thirty pupils who paid from \$1.75 to \$2.25 each per quarter. The schoolmaster "boarded around," hence received approximately \$60 and board and lodging per quarter. See Lewis: *History of Higher Education in Kentucky*, p. 31; also "Pioneer Schools and Schoolmasters," in *Ohio Arch. and Hist. Soc. Publ.*, XXV, p. 41.

Putnam was chairman and Jonathan Meigs was clerk of the meeting. A committee was appointed to devise a plan for carrying on the work of education.<sup>11</sup> The following Saturday this committee reported a need for one thousand dollars and recommended that this amount be raised by subscription. The report of the committee was adopted and subscriptions were solicited. General Rufus Putnam headed the list with three hundred dollars and others followed his generous example until the thousand dollar mark was passed, eleven hundred and sixty-two dollars being subscribed.<sup>12</sup> The next week it was decided to name the institution the Muskingum Academy and a board of trustees was formed. This board set forth the policy of the institution in certain articles which they adopted. Among these were the following concerning education:<sup>13</sup>

Article 3. It shall be the duty of the preceptor to teach the pupils reading, writing, arithmetic, geography, English grammar, and the Latin and Greek languages; the different branches in which a pupil is to be taught is to be signified to the preceptor by the parent or guardian of the pupil.

Article 5. It shall be the duty of the preceptor to cause some or all of the pupils to learn select, entertaining and instructive speeches and dialogues adapted to their several capacities and ages which they shall pronounce in the Academy before such audience as may attend on the quarter day, which shall be the last day of every quarter.

Article 8. The prices of tuition to be paid to the preceptor for each quarter shall be: for reading and writing two dollars, for arithmetic, English grammar, the first rudiments of astronomy, and geography, two dollars and fifty cents. Latin, Greek, and mathematics, three dollars.

The board further provided that a small fee should be charged for repairs to the building and put upon the preceptor the obligation of teaching the children "manners." School hours were from nine to twelve and from two to five, except in winter when the afternoon session was from one-thirty to four-thirty.

The Muskingum Academy opened in 1800 with David Putnam, a graduate of Yale, as preceptor. The work of the academy grew and progressed until 1830 when it became a department of the Institute of Education. The other departments of this institute were an infant school, a primary school, and a young ladies' seminary. In 1833 the old academy or high school department of the

<sup>11</sup> W. W. Boyd: "Secondary Education in Ohio Previous to 1840," in *Ohio Arch. and Hist. Soc. Publ.*, XXV, p. 129.

<sup>12</sup> Summers: *History of Marietta*, p. 173.

<sup>13</sup> Boyd: *loc. cit.*, p. 130.

Institute of Education was chartered separately as the Marietta Collegiate Institute. Two years later this institution was re-chartered as Marietta College, under which name it has continued to the present time.<sup>14</sup>

The story of the beginnings of education at Marietta and other villages within the grant to the Ohio Company is fairly typical of other frontier settlements. During the first decade, at least, the educational work was confined to elementary and grammar schools. The land grants for education were of little or no assistance, since school lands were generally unrented and, in cases where they were rented, they were rent free for the first five years. As a consequence schools were supported by subscription and tuition. Although the early settlers succeeded in establishing only a few elementary and grammar schools during the first decade of their residence on the frontier they were none the less interested in higher education.

In September, 1788, Dr. Cutler was at Marietta and recorded in his diary that a high hill west of the city was proposed as the site of the University.<sup>15</sup> The following May the Board of Directors of the Ohio Company instructed Dr. Cutler and General Putnam "to make such application to Congress as they shall judge expedient for procuring a charter for the University, and for the encouragement of learning in this settlement."<sup>16</sup> Both members of this committee had hopes of the early establishment of the University. On September 28, 1789, Cutler wrote to Major Sargent that "if Congress should be disposed to favor the establishment of the University, I am confident it will have no inconsiderable influence on the spirit of migration from this part of the country. I hope by the time your eldest son has completed his scholastic studies the University will be in condition to admit him."<sup>17</sup> The next January General Putnam urged Dr. Cutler to meet him at New York because "the state of our affairs at Marietta, the President's speech respecting education and other matters, as well as the matters contained in our commission, require the immediate attendance of us both at New York."<sup>18</sup>

<sup>14</sup> For a full account of Marietta College see I. W. Andrews: "Historical Sketch of Marietta College," in *Report of Common Schools in Ohio*, 1885.

<sup>15</sup> Cutler: I, p. 417.

<sup>16</sup> *Ibid.*, p. 445.

<sup>17</sup> *Ibid.*, p. 449.

<sup>18</sup> Washington's address to Congress, Jan. 8, 1790, contained this concerning education: "Whether this desirable object will be promoted by affording aids

The hope of this committee was deferred for some time. Indian troubles became serious, immigration was checked, and the Ohio Company fell into such serious financial straits that, in 1792, the directors of the company addressed a memorial to Congress asking for concessions as regards the company's contract.<sup>19</sup> Due to Dr. Cutler's ability as a lobbyist this memorial was referred by the House of Representatives to a committee which was chosen by Cutler and his associates.<sup>20</sup> This committee reported on a bill highly favorable to the Ohio Company. Seven hundred fifty thousand acres were conveyed in fee simple to the company in return for the \$500,000 in Continental securities which the company had paid to the government, and two additional tracts, one of 214,285 acres and the other of 100,000 acres, were to be conveyed on easy terms. The original reservations for education and religion were retained in the 750,000 acre tract but were not granted in the two smaller tracts.<sup>21</sup> The Ohio Company proceeded on its own initiative to make these donations for religion and education in these two tracts and later petitioned Congress to make good these grants. This petition was denied.<sup>22</sup>

The generosity of Congress had saved the Ohio Company from bankruptcy and had left it in possession of the land grants for religion and education, although the company had failed to fulfil the conditions on which these donations were made. As soon as the affairs of the company were in a more settled condition and the title to its lands was cleared the early settlers again took up the proposition of establishing a university. The records of the Ohio Company, under date of December 16, 1795, contain the following resolution:

The reconnoitering committee having reported that townships number eight and nine in the fourteenth range are the most central in the Ohio Company's purchase and it being fully ascertained that the lands are of an excellent quality:

*Resolved*, unanimously that the aforesaid townships number eight and

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to seminaries of learning already established, by the institution of a national University, or by other expedients, will be well worthy of a place in the deliberations of the legislature." *St. Pap. and Pub. Doc.* 3rd Ed., I, p. 15. Putnam's letter to Cutler is printed in Cutler: I, p. 451.

<sup>19</sup> *Annals of Congress*, 1791-93, p. 494.

<sup>20</sup> Cutler: I, p. 482, footnote.

<sup>21</sup> Enacted April 21, 1792. *Annals of Congress*, 1791, p. 1363. Records concerning discussion of this bill are on pp. 494, 540, 558 of the same volume.

<sup>22</sup> *Am. St. Pap. P. L.*, I, p. 236-37. This memorial was dated Jan. 16, 1796. Final action was taken by Congress on Jan. 17, 1806.

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nine in the fourteenth ranges be reserved for the benefit of an University, as expressed in the original contract with the Board of Treasury.<sup>23</sup>

The work of surveying these townships was commenced immediately, under the direction of General Putnam, but the affairs of the projected "University" moved very slowly. Four years later the territorial legislature appointed a committee, of which General Putnam was chairman, to "lay off a town plot with a square for the college. At that time the income from the University lands was estimated at approximately five thousand dollars by General Putnam.<sup>24</sup>

In the summer of 1799 General Putnam requested Dr. Cutler to draw up a complete charter for a university and send it to him as soon as possible.<sup>25</sup> In reply to this request Dr. Cutler drew up a charter for a university, in which are set forth the aims and purposes of higher education as conceived by the better class of New England settlers in Ohio. Section one of this charter reads as follows: "Be it enacted by the General Assembly (here insert the

<sup>23</sup> C. L. Marlzolff: "Ohio University" in *Ohio Arch. and Hist. Soc. Publ.*, XIX, p. 418. In 1790 the Ohio Company had appointed a committee "to fix on the two townships which the Directors, by the contract with Congress, are obliged to set apart for the support of the University." Indians troubles prevented the completion of this work. Jan. 10, 1795, the Directors of the company resolved that the Committee appointed in 1790 for "the purpose of ascertaining and designating the two townships reserved for the benefit of a University" be requested to complete the work as soon as possible. Cutler: II, pp. 32-33.

<sup>24</sup> *Ohio Arch. and Hist. Soc. Publ.*, XIX, p. 420. General Putnam wrote to Dr. Cutler, under date of Feb. 3, 1799, as follows: "That you may have data on which to make your calculations the following statement may not be useless:

"The two University townships contain 46,880 acres. Fortunately, I believe them to be the two best townships of land in the whole purchase. They are all, or nearly all, taken up and settled, some in large and some in small tracts. The settlement commenced two years ago next April. Among the settlers are a number of New England people; men of considerable information, abilities, and industry. The number of militia is about one hundred. They already raise their own provision, have a corn-mill, etc. They none of them expect to have the lands more than five years rent free from the time of settlement, and the lowest permanent rent at which those lands can be put, on the average, I conceive, cannot be less than twelve dollars per hundred acres, which gives \$5,529.60 annual income for the support of the University. And as to the school and ministry lands, I suppose the whole quantity to be 62,700 acres, some of which I suppose to be extremely valuable, as those at Marietta and in some other townships; others, I know, are very poor, but after five years cultivation rent free, I will suppose them to rent at six dollars the hundred acres, and then the amount will be 3,762 dollars—say one-half for schools and one-half for the ministry. Although these estimates are below what I expect these lands will be ultimately rented for, yet even such an income, well-applied to the different objects for which it is intended will be of infinite advantage to these settlements; and some means ought to be adopted as soon as possible for bringing them into a state of improvement." Cutler: II, pp. 18-19.

<sup>25</sup> Cutler: II, p. 22.

style of the assembly), that there be a University instituted and established, and forever to remain, within the limits of the tract of land purchased by the said Ohio Company of Associates, by the name of the American University, for the instruction of youth in all the various branches of the liberal Arts and Sciences, for the promotion of good education, piety, religion, and morality, and for conferring all the degrees and literary honors granted in similar institutions.”<sup>26</sup>

The territorial legislature created the university, Jan. 2, 1802, with a few important amendments, adopting the charter furnished by Dr. Cutler. The legislature changed the name of the institution from “American University” to “American Western University.” More significant amendments to the original charter were the ones which created a separate board for the management and control of common school and ministerial lands and which vested control of the board of trustees of the college in the state legislature.<sup>27</sup>

Since the question of greatest public interest at this time was the admission of Ohio into the Union, the affairs of the university moved slowly until that question was settled. On February 18, 1804, the state legislature passed an act “establishing an university in the town of Athens.”<sup>28</sup> By this act the name was changed to Ohio University.

The board of trustees met for the first term in June, 1804, and took over the management of the university lands. After two years the board had collected sufficient funds from rents to commence to build and therefore let a contract for a brick building, twenty by thirty feet, two stories high. After another two years, on March 2, 1808, the board appointed a committee to report on a system “for opening the academy, providing a preceptor, and, conducting that branch of the Ohio University.”<sup>29</sup> This committee formulated a course of study of Latin, Greek, English, mathematics, rhetoric, logic, geography, and natural and moral philosophy, and selected Rev. Jacob Lindley as preceptor. The University was opened and three young men enrolled. Thus began the work of the Ohio University, the oldest institution for higher

<sup>26</sup> The charter is reprinted in full in Appendix C.

<sup>27</sup> Dr. Cutler, in his charter, had placed the control of these lands in the hands of the Trustees of the University. See Appendix C, Sec. IX.

<sup>28</sup> *Ohio Arch. and Hist. Soc. Publ.*, p. 422.

<sup>29</sup> *Ibid.*, p. 424.

education in the Old Northwest and the first to be endowed with funds derived from national land grants for education.<sup>30</sup>

Any account, however brief, of the educational work of the early settlers in the Ohio Valley would be incomplete without some reference to the founding of Miami University, the second higher institution of learning endowed by national land grants.

The story of the John Cleve Symmes Purchase has already been related. After seven years filled with confusion and misunderstandings concerning this purchase an agreement between Congress and Symmes was finally reached. Letters Patent, issued September 30, 1794, granting to Symmes and his associates "all of the Great Miami river and extending from thence along the river Ohio, to the mouth of the Little Miami river, and bounded on the south by the said river Ohio, on the west by the Great Miami river, on the east by the said Little Miami river, and on the North by a parallel of latitude so as to comprehend the quantity of three hundred and eighty-two acres of land with the appurtenances."<sup>31</sup>

The reservation concerning education in this grant reads as follows: "It is hereby declared that one complete township or

<sup>30</sup> Transylvania University was the first college founded west of the Alleghany mountains. It was an outgrowth of the following act of the Virginia General Assembly in 1780: "Whereas it is represented to the general assembly, that certain lands within the county of Kentucky formerly belonging to British subjects, not yet sold under the law of escheats and forfeitures, which might at a future day be a valuable fund for the maintenance and education of youth, and it being the interest of this commonwealth always to encourage every design which may tend to the improvement of the mind and the diffusion of useful knowledge, even among its most remote citizens, whose situation a barbarous neighborhood and a savage intercourse might otherwise render unfriendly to science: *Be it therefore enacted*. That eight thousand acres of land, within the said county of Kentucky, late the property of Robert McKenzie, Henry Collins, and Alexander McKie, be and the same are hereby vested in William Fleming, William Christian, John Todd, Stephen Trigg, Benjamin Logan, John Floyd, John May, Levi Todd, John Cowan, George Meriwether, John Cobbs, George Thomson, and Edmund Taylor, trustees, as a free donation from this commonwealth for the purpose of a publick school, or a seminary of learning, to be erected within the said county as soon as the circumstances of the county and the state of its funds will admit, and for no other use or purpose whatsoever: Saving and reserving to the said Robert McKenzie, Henry Collins, Alexander McKie, and every of them, and all and every person or persons claiming under them, or either of them, all right and interest to the above mentioned lands, or any part thereof to which they may be by law entitled, and of which they shall in due time avail themselves, any thing herein contained to the contrary notwithstanding." Hening: *Statutes at Large*, X, pp. 287-88.

Transylvania Seminary was established near Danville, Kentucky, in 1785, was removed to Lexington in 1788, and rechartered as Transylvania University in 1798, at which time it was merged with the Kentucky Academy. Venable: *Literary Culture in the Ohio Valley*, pp. 164-65.

<sup>31</sup> Upham: "The Centennial of Miami University" in *Ohio Arch. and Hist. Soc. Publ.*, XVIII, p. 325. *Am. St. Pap. Pub. Lands*, I.

tract of land, of six miles square, to be located with the approbation of the governor, for the time being, of the territory northwest of the River Ohio, and in the manner and within the term of five years aforesaid, as nearly as may be, in the center of the tract of land hereinbefore granted, hath been and is granted and shall be holden in trust to and for the sole and for the exclusive intent and purpose of erecting and establishing therein an academy and other public schools and seminaries of learning, and endowing and supporting the same, and to and for no other use, intent or purpose whatever."<sup>32</sup>

It is evident from this language that the intention was to dedicate one township within the Symmes purchase to public education and to safeguard against its misuse for any other purpose. It is worthy of note, however, that this grant was not confined to higher education, but permitted the establishment of schools of any and every grade. It was generally held to be a grant for higher education and was used for that purpose.

Because of the confusion in the sales of land under the terms of the original contract between Symmes and the government no township in one body was available within the bounds described in the grant of September 30, 1794. As a consequence, the problem of locating a township that did not exist went unsolved for several years. Finally, after Ohio entered the Union, a township was located in the District of Cincinnati outside the bounds of the original Symmes tract.<sup>33</sup> Congress authorized this procedure in an act which modified the enabling act for the admission of Ohio as a state into the Union.<sup>34</sup> The location of the university was postponed, probably to see if any opposition developed to the location of the township for education outside the bounds of the Symmes purchase.

In 1809 the legislature decided to take up the question again. An act was passed creating Miami University, but the legislature did not undertake to fix the location of this institution. A commission was appointed and instructed to select a location "in such part of the John Cleve Symmes Purchase as an eligible place can be found."<sup>35</sup> One of the commissioners failed to act and the other

<sup>32</sup> *Am. St. Pap. Pub. Lands*, I, p. 67. The provision is the same as in the original contract with Symmes of 1787.

<sup>33</sup> *Ohio Arch. and Hist. Soc. Publ.*, XVIII, p. 327.

<sup>34</sup> Knight and Commons: *History of Higher Education in Ohio*, p. 30.

<sup>35</sup> *Ohio Arch. and Hist. Soc. Publ.*, XVIII, p. 328.

two proceeded to carry out the instructions of the legislature. They finally agreed upon Lebanon as the place for the establishment of the university. The legislature at its next session, rejected the work of this commission and fixed the location of the university at Oxford. There was considerable criticism of this act of the legislature, doubtless due to disappointment on the part of the towns that had hoped to be chosen as the home of the university. Cincinnati was especially active in opposition to the decision of the legislature and tried for a number of years to have the university removed from Oxford.

The political bickering which attended the founding of Miami University seriously retarded its growth. Many were indifferent on the question of higher education and some were in active opposition to the university. The divided sentiment and personal feeling that had been engendered during the controversy over the selection of a location made it very difficult to get financial support for the university in Ohio. The friends of the college sent an agent back to New England and through the Atlantic coast states to solicit funds, but he met with little success. The first building of the university was a log house costing one hundred fifty dollars, in which a grammar school was opened in 1816. It was not until 1824 that the work of the university was raised to collegiate rank.

From one point of view the work for education of the early settlers seems very small and ineffectual. The high hopes of the promoters of the Ohio Company of Associates for the immediate establishment of a great university in the wilderness fell far short of accomplishment. A quarter of a century went by before there was a graduate from a college in the Northwest. But in the light of the difficulties these pioneers of learning had to surmount their work appears heroic. The frontiersmen of the better class were generally friends of education who labored patiently and well for the cause of learning. The obvious and most important asset available for the support of schools was the school lands. The task of converting virgin soil into common schools and colleges was by no means a small undertaking, nevertheless the early settlers in the Ohio valley attacked the problem with the enthusiasm and persistence so characteristic of the Anglo-Saxon pioneer and blazed the trail for future educational progress.

In the earliest years of settlement, when the need of government aid was greatest, the land grants for education were of least value.

It took years to develop these lands to the point where they could produce very much revenue and in no event were the funds thus derived sufficient to maintain public schools. The customary tuition fees did little to improve education and were wholly inadequate in so far as higher education was concerned. Private subscriptions were the chief means available for support of colleges and academies and raising endowments was no easier then than now. The principle and policy of supporting education by taxation was unknown on the frontier. The back-woods educators were guided by the educational theories and traditions of the eastern states which were frequently ill-adapted to frontier conditions. But notwithstanding all the hindrances that retarded the progress of education, it certainly kept pace with the general development of the frontier. The early settlers made good use of the resources they had at their command for founding schools and, while they developed no new theories of public education, they kept alive the zeal for learning and created precedents in the management and control of public schools that have had a far-reaching influence upon subsequent educational theory and practice in the United States.

## CHAPTER VIII

### MANAGEMENT OF SCHOOL LANDS AND FUNDS IN THE NORTHWEST

IT does not come within the scope of this work to treat at length the question of the management of school lands and funds in the Northwest. That phase of the history of national land grants has been so admirably presented by others that nothing of value could be added here.<sup>1</sup> However, in order to show the full significance of the national land grants for education it is necessary to present a few facts as regards the various policies that developed for the management of these lands.

In general, the national government surrendered the management of school lands to state or local authorities. The chief control exercised by the national government was through the terms of the original grants. By this means Congress determined in each case into whose hands the management of school lands should be committed. The act enabling Ohio to become a state, passed April 30, 1802, provided "that section number sixteen in every township, and where such section has been sold, granted or disposed of, other lands equivalent thereto and most contiguous to the same, shall be granted to the inhabitants of such township, for the use of schools."<sup>2</sup> By this act control was vested in the inhabitants of each township. The next year, after pressure had been brought to bear from Ohio, a supplementary act was passed by Congress, March 3, 1803, which set forth in detail certain quarter townships in the United States Military Reserve and in the Connecticut Reserve and one thirty-sixth of the Virginia Military Reserve and of any Indian lands thereafter purchased that should to be used for schools.<sup>3</sup> This act also reserved one township in the Cincinnati District for a university.<sup>4</sup> Subsequently, on March 2, 1807, Congress set aside eighteen quarter

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<sup>1</sup> Knight presents an exhaustive study of this question in his *History and Management of Land Grants for Education in the Northwest Territory*. Acknowledgment is here made of the great assistance his work has been in connection with this chapter.

<sup>2</sup> *U. S. Statutes at Large*, II, p. 173; also in *U. S. Land Laws*, I, p. 85.

<sup>3</sup> *U. S. Land Laws*, I, p. 88.

<sup>4</sup> Miami University was founded on this grant.

townships and three sections in the Virginia Military Reserve in lieu of the thirty-sixth part of the whole Reserve which had been donated for education.<sup>5</sup> The management of this tract was placed in the hands of the state authorities.

After these land grants for education were made the national government refrained from exercising any control over their management so long as the terms upon which the lands were given were observed. This became the established policy and on few occasions has Congress attempted either directly or indirectly to exercise control over land grants for education or the funds derived therefrom. Only in cases of gross mismanagement and violation of the terms upon which the donations were made has Congress undertaken to interfere, and then with ill success. A case in point is the attempt on the part of Congress to compel the Illinois Legislature to comply with the terms upon which the "three per cent fund" was granted.<sup>6</sup> After several years of controversy between the state of Illinois and the national government Congress practically surrendered the right to exercise any supervision of school lands or funds by the repeal of the law which required an accounting by the state to the Secretary of the Treasury.<sup>7</sup> However, Illinois thenceforth applied the fund to education.

While the influence of the national government upon the management of land grants for education was exerted indirectly through the acts of Congress which designated where the authority for the management of these grants should be placed, by the time the Northwest Territory was organized into states three distinct plans of management had been tried by Congress and a definite policy developed. The first plan was that set forth in the act enabling Ohio to become a state by which the land grants for education in each township were made directly to the inhabitants of the township. Congress made no provisions for the management of these. The first constitution of Ohio stipulated that "religion, morality, and knowledge, being essentially necessary to good government and the happiness of mankind, schools and

<sup>5</sup> *U. S. Land Laws*, I, p. 148.

<sup>6</sup> *U. S. Statutes at Large*, III, p. 430. When Illinois came into the Union Congress provided that three per cent of the revenue derived from the sale of public lands in Illinois should be donated to the state for education. The legislature diverted this fund to other uses. See Knight: *Land Grants for Education*, pp. 82-85.

<sup>7</sup> *U. S. Statutes at Large*, IV, p. 431-32.

the means of instruction shall forever be encouraged by legislative provision."<sup>8</sup> Thus the school lands were given by Congress to the inhabitants of each township for the encouragement of education within the township, but the general control of education was placed in the hands of the state legislature by the state constitution. As a matter of practice the legislature passed laws fixing the general policy for the management of the school lands, but turned over the actual management of the lands to the townships.

In 1804 Congress created the land districts of Vincennes, Kaskaskia, and Detroit and reserved section sixteen in each township for education and one township in each land district for a "seminary of learning."<sup>9</sup> The title of these lands remained in the national government. When Indiana was admitted to the Union in 1816 Congress followed the precedent established in the admission of Ohio and gave every section sixteen to the inhabitants of the township in which it was located and gave the seminary township to the state.<sup>10</sup> Two years later, upon the admission of Illinois to the Union, Congress adopted the second plan for dealing with the control of school land grants. By the act enabling Illinois to become a state Congress granted section sixteen in every township to the state, for the use of the inhabitants of such township, for the use of schools.<sup>11</sup>

The difference between this plan and the first is in the fact that the school lands were not granted to the inhabitants of each township but to the state. The principle of using every section sixteen for schools for the benefit of the inhabitants of the township in which the section was located was retained, however. In Ohio and Indiana the management of the school lands was left to the township; in Illinois the management was in the hands of the legislature. In all three states the funds derived from the section sixteen in any township had to be used for school purposes within that township, so in practice there was very little difference between the first plan and the second. This second plan was important because it made easy the transition from the early plan of township control of school lands to the final policy that was developed.

<sup>8</sup> Constitution of Ohio, Art. VIII, Sec. 3. In Chase: *Statutes of Ohio*; I, p 82.

<sup>9</sup> *U. S. Statutes at Large*, II, pp. 277-83.

<sup>10</sup> *Ibid.*, III, pp. 289-91.

<sup>11</sup> *Ibid.*, III, p. 430.

In 1826 Congress set aside two townships or their equivalent in the Territory of Michigan for the use of a university within the territory.<sup>12</sup> After a long and heated controversy with Congress Michigan came into the Union in 1836.<sup>13</sup> The enabling act which was finally accepted by the territory contained two important provisions concerning education. By this act section sixteen in every township was "granted to the State for the use of schools." The act further provided "that the seventy-two sections of land set apart and reserved for the use and support of a university by an act of Congress approved on the twentieth day of May, eighteen hundred and twenty-six, entitled 'an act concerning a seminary of learning in the Territory of Michigan,' are hereby granted and conveyed to the State, to be appropriated solely to the use and support of such university in such manner as the Legislature may prescribe."<sup>14</sup>

The provision concerning university lands does not differ materially from the policy followed in the case of the states previously formed in the Northwest, but the provision as regards the sections sixteen marked the beginning of a new and distinct policy of the national government. Not only was the title to these lands vested in the state, but the state was relieved of the necessity of using each section sixteen for schools within the township in which the section was located. This change created a state common school fund that could be used to build up a state school system. The burden of New England local self-government was removed, in part at least, from common school education and the state legislature was free to make the most of the Congressional land grants for education.

The act enabling Wisconsin to become a state, approved August 6, 1846,<sup>15</sup> contained provisions concerning education similar to those in the enabling act for Michigan. At that time the plan embodied in these provisions had become the established policy of Congress. In theory this centralization of the management and control of school lands in the hands of the state legislature was a great improvement over the early decentralized plan of township control which was applied in Ohio and Indiana. In practice the

<sup>12</sup> U. S. *Statutes at Large*, IV, p. 180.

<sup>13</sup> For a full treatment of this controversy see Utley and Cutcheon: *Michigan, As a Province, Territory and State*, II and III.

<sup>14</sup> U. S. *Statutes at Large*, V, pp. 59-60.

<sup>15</sup> *Ibid.*, IX, pp. 56-58.

results were not all that could be hoped for or expected. After all, it was not so much a question of who should manage the school lands but how they should be managed to fulfil the purpose for which these grants were made.

In each of the territories or states in the old Northwest two general plans of management of school lands were followed. In each case the policy of leasing the lands was first pursued, only to be discarded later to make way for the policy of selling the lands. At first glance it would appear strange that the newer states learned so little from the experiences of their neighbors. Two facts explain this. First, the states passed through much the same process of development, and in the early period of growth leasing seemed to meet the needs of the time better than any other plan, while later it seemed advisable to sell the lands to meet the changed needs. Secondly, all five of the states in the Northwest developed so nearly contemporaneously within such a relatively short time that it was impossible to discern at such close range the inherent strength or weakness in the policy of leasing or to foresee the evils which were to grow out of the policy of selling school lands. A brief sketch of the workings of these two policies will assist in bringing out the significance of the land grants for education.

The leasing system was first tried in Ohio shortly after that state was admitted to the Union, thereby gaining title to the lands reserved for education lying within her borders. By an act passed April 15, 1803, the legislature provided the lands granted for the support of schools in the several parts of the state should "be let on lease for the purpose of improving the same and thereby rendering them productive, that the profits arising therefrom may be applied to the support of schools, according to the true intent and meaning of the original donation."<sup>16</sup> Under the terms of this act the school lands lying in the United States Military Reserve were to be leased for any term of years, not exceeding fifteen, and the sections number sixteen, not already leased, in all other parts of the state were to be leased for any term not exceeding seven years. The lessee was required to clear and fence thirty acres in every one hundred and sixty acre tract, plant crops and set out a small orchard. The management of these lands was placed in the hands of local agents, appointed by the governor, for each county

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<sup>16</sup> Chase: *Statutes of Ohio*, I, p. 361-62.

or district. The legislature further stipulated in this act that it was the "special duty of the said agent, to inspect and inquire into any waste or trespass" that might be committed on the school lands and to prosecute the offenders.

It is evident that the purpose of this act was not to produce revenue for schools but to improve the school lands. This was probably as wise a policy as could have been followed at the time, but it failed to accomplish its purpose. The United States was offering an abundance of good land for sale on long time credit so there was no particular reason for a person obligating himself for a term of years to clear and improve school lands with no prospect of being allowed to buy the land. As a matter of fact, very little land was leased under this plan and it was abandoned at the end of two years.

On February 20, 1805, the Ohio legislature turned over to the township trustees the management of sections sixteen and ordered the trustees to lease that section in tracts of not less than eighty or more than two hundred acres "to those who make the most advantageous proposals," for a period not longer than fifteen years.<sup>17</sup> The trustees were given authority to require the lessee to make whatever improvements they deemed proper. This more liberal policy of leasing increased the number of tenants, but on such terms as to produce little or no revenue for schools and not much improvement to the school lands. The competition with the cheap lands of the national government would have worked against any policy of leasing that would have been in harmony with the purpose for which the school lands were given.

In dealing with the school lands within the Virginia Military Reserve the Ohio Legislature adopted a new policy which marked the beginning of the transition from the system of leasing to the policy of selling school lands. On February 17, 1809, the legislature enacted a law which created the offices of surveyor, register, and treasurer.<sup>18</sup> The surveyor was ordered to run off all of the quarter-sections reserved for school purposes within the Virginia Military Reserve. The register and treasurer were instructed to advertise and offer for sale to the highest bidder, at public auction, all of these school lands by quarter-sections. The minimum price was fixed at two dollars an acre and the proportionate part of

<sup>17</sup> Chase: *Statutes of Ohio*, I, p. 507.

<sup>18</sup> *Ibid.*, pp. 620-22.

the expense of surveying, advertising and offering the lands for sale.

The conditions of sale, as set forth in the act, were as follows: "There shall be paid to the treasurer, at the time of making the purchase, such sum as may be found chargeable on each quarter-section, for the expense of surveying, advertising and offering for sale as aforesaid; and on the remaining sum, the purchaser, his heirs or assigns, shall pay yearly and every year, forever, at the rate of six per centum per year; subject, however, to alteration by any succeeding legislature, so as to enable the purchaser or purchasers to make such commutation as said legislature may think expedient."<sup>19</sup>

The act further provided that the register should "execute deeds of lease for ninety-nine years, renewable forever," upon the fulfilment of the conditions of the sale. While the title to the land remained in State of Ohio the lease in perpetuity authorized by this act was virtually a sale. Thousands of acres were leased on these terms, creating revenue for education at the rate of twelve cents an acre!

The injustice and utter folly of such law became apparent even to the state legislature, so in 1816 a new law was enacted that provided that the lands should be leased for ninety-nine years, renewable forever, at a rental of six per cent of the appraised value with the additional provision that the lands should be revalued in 1835 and every twenty years thereafter.<sup>20</sup> The next year, January 27, 1817, this plan was applied to all the sections sixteen. In this case the rental was to be six per cent on the appraised value of the lands, with a revaluation every thirty-three years.<sup>21</sup>

The precedent for this form of lease had been set by the trustees of Ohio University in 1804. Acting under the instruction of the legislature the trustees granted leases of the university lands for ninety-nine years, renewable forever, at a rental of six per cent of the appraised value, with the provision that the lands should be revalued every thirty-five years. The next year, 1805, a supplementary act was passed which did not contain the provision concerning revaluation every thirty-five years. When the time came for the first revaluation, the lessees contended that the act of

<sup>19</sup> Chase: I, p. 621.

<sup>20</sup> *Ibid.*, II, pp. 993-95.

<sup>21</sup> *Ibid.*, pp. 1026-30.

1805 had repealed the act providing for revaluations. The Supreme Court decided a test case in favor of the university, upholding the right to increase the rent on the basis of revaluation. The lessees appealed to the legislature and that body declared it had been the intent of the law of 1805 to repeal the provision concerning revaluations and forbade the trustees of the university to collect higher rent. As a result of this act the university now receives less than five thousand dollars rent from lands worth more than a million dollars.<sup>22</sup> In 1810 the legislature practically destroyed the value of the land grants for a seminary in the John Cleve Symmes purchase by an act which provided for perpetual leases without revaluations.

In spite of the fact that the lessees of the lands of Ohio University eventually succeeded in evading the just provisions of the law of 1804, the plan of leasing established by that law, and which was later applied to all the sections sixteen by the law of 1817, showed promise of producing some revenue, at least, for education. This promise was never fulfilled in fact for there was little increase in the actual income from the school lands. Finally, in disgust with the whole plan of leasing, the Ohio legislature followed the advice of a commission, previously appointed to investigate the whole question of school lands, and petitioned Congress, in 1824, for permission to sell the school lands.<sup>23</sup> The petition was granted and thus ended the system of leasing school lands in Ohio.

The history of the system of leasing in the other states of the old Northwest is very similar to that of Ohio, though by no means as extensive. Next, both in time and in importance, is the history of leasing in Indiana. In 1808 the territorial legislature of Indiana gave the Courts of Common Pleas the authority to lease school lands in the various counties for a period of not more than five years. The lessee was required to clear ten acres of each quarter-section held under lease.<sup>24</sup> In 1810 the legislature gave the courts power to lease the lands on whatever terms seemed advisable, and the revenue derived from such leases was to be used for the support of common schools according to the true intent of the Act of Congress.<sup>25</sup>

<sup>22</sup> For a detailed account of the leasing of the university lands see *The History of Higher Education in Ohio* or Knight: *Land Grants for Education*.

<sup>23</sup> *Am. St. Pap. Pub. Lands*, IV, p. 47.

<sup>24</sup> Knight: *Land Grants for Education*, p. 64.

<sup>25</sup> *Indiana Territorial Laws*, 1810, p. 46, 47.

At the time of this legislation Indiana was not a state and the title to the school lands was vested in the national government. As has been pointed out the act enabling Indiana to become a state gave the school lands within each township to the inhabitants of the township.<sup>26</sup> The state legislature, therefore, had only general supervision of the management of the school lands, except those granted for a university. The first constitution of Indiana prohibited the sale of school lands before the year 1820.<sup>27</sup> The first state legislature passed an act which provided for the appointment of a superintendent in each township whose business it was to manage the section sixteen. He was authorized to lease school lands "to the best advantage, for not more than seven years."<sup>28</sup> Cleared lands were to be leased for only three years. The next year the legislature changed the terms of these leases to nine years.<sup>29</sup>

The policy of permitting the township trustees to fix the conditions on which school lands were leased was largely expanded by an act of the legislature, in 1824, which gave to the trustees of incorporated congressional townships the power to dispose of school lands "in such manner as may seem most conducive to the best interests" of the schools, with the restriction that no lands should be sold.<sup>30</sup> Thus, in trying to make effective the purpose of Congress in granting the school lands to the inhabitants of each township, the Indiana legislature opened the way, by this law of 1824, for as many systems of leasing as there were townships within the state. In fact lands were leased on almost every conceivable terms and, in some cases, on terms so absurd as to be almost beyond conception.

The legislature very soon saw the folly of this policy of granting such general powers to the township trustees, so the following year, February 12, 1825, an act amending the law of 1824 was passed which limited the term of school leases to ten years.<sup>31</sup> No other restrictions or safeguards were placed upon the leases and, as a consequence, waste and mismanagement continued unchecked. By 1827 Indiana had become so discouraged by the

<sup>26</sup> *U. S. Statutes at Large*, III, p. 289.

<sup>27</sup> Constitution of Indiana, Art. IX, Sec. 1, Adopted 1816, in *Revised Laws of Indiana*, 1824, p. 48.

<sup>28</sup> Knight: *Land Grants for Education*, p. 65.

<sup>29</sup> *Laws of Indiana*, 1818, p. 302.

<sup>30</sup> *Revised Laws of Indiana*, 1824, pp. 380-81.

<sup>31</sup> *Laws of Indiana*, 1825, p. 93.

results of leasing that the legislature determined to follow the example of Ohio and petition Congress for authority to sell the school lands. This petition was granted by Congress in 1828.<sup>32</sup>

In Illinois the policy of leasing school lands was short-lived. Nothing was done with the school lands until after the admission of Illinois into the Union. The first legislature, in 1819, instructed the county commissioners in each county to appoint three trustees for each township who should sub-divide and lease the section sixteen for a period of ten years on the best possible terms.<sup>33</sup> This plan was continued with only slight modification until 1831 when the legislature, without waiting for the consent of Congress, which had been sought in 1829, authorized the sale of school lands.<sup>34</sup>

In Michigan nothing was done concerning school lands until 1824 when the territorial legislature petitioned Congress for authority to manage them.<sup>35</sup> Four years later Congress vested this power in the governor and council, with the restriction that no lease should be granted for more than four years.<sup>36</sup> The legislature immediately enacted a law by which township trustees were authorized to lease the school lands for not more than three years, the revenue to be applied "towards the pay of school teachers in the said township."<sup>37</sup> In 1829 the office of Superintendent of Common Schools was created, but no superintendent was appointed. Four years later the superintendent was authorized to lease the school lands in those townships that had no trustees. Under these early laws much of the school lands was leased.<sup>38</sup>

The state constitution adopted in Michigan in 1835 created the office of State Superintendent of Public Instruction and provided that "the proceeds of all lands that have been or hereafter may be granted by the United States to this state, for the support of schools, which shall hereafter be sold or disposed of shall be and remain a perpetual fund; the interest of which, together with the rents of all such unsold lands, shall be inviolably appropriated to

<sup>32</sup> *U. S. Statutes at Large*, IV, p. 298. Indiana applied for permission to sell the school lands Feb. 27, 1827. *Am. St. Pap. Pub. Lands*, IV, p. 664.

<sup>33</sup> *Laws of Illinois*, 1819, p. 108.

<sup>34</sup> *Laws of Illinois*, 1830-31, pp. 172-76. On Jan. 22, 1829 the legislature had authorized the sale of lands as soon as Congress gave consent. *Laws of Illinois*, 1828-29, p. 150.

<sup>35</sup> *Am. St. Pap. Pub. Lands*, IV, p. 510.

<sup>36</sup> *U. S. Statutes at Large*, IV, p. 314.

<sup>37</sup> Knight: *Land Grants for Education*, p. 87, quoting *Territorial Laws*, II, p. 695.

<sup>38</sup> Knight: p. 88.

the support of schools throughout the state."<sup>39</sup> The act of Congress which enabled Michigan to become a state, passed in 1837, granted the school lands to the state, to be used for schools without reference to townships.<sup>40</sup> In the same year the state legislature authorized the state superintendent to sell the school lands at not less than eight dollars an acre until the sales should total one million five hundred thousand dollars.<sup>41</sup> By this first act concerning school lands the first state legislature of Michigan abandoned, in theory at least, the policy of leasing school lands.

The experience of Wisconsin with the system of leasing school lands was very similar to that of Michigan. In 1836 Wisconsin was separated from Michigan and the following year the township commissioners were given control of the school lands by an act of the territorial legislature.<sup>42</sup> Two years later, 1839, a law was enacted which created the office of school inspector in each township, who was to lease the school lands for a term of not more than three years.<sup>43</sup> In 1840 the legislature placed the control of the school lands back in the hands of the school commissioners of each town and reduced the term of leases of school lands to two years.<sup>44</sup> The only other change made in the system of leasing before Wisconsin became a state was made in 1842 when the term of the leases was changed to four years.<sup>45</sup>

The first constitution of Wisconsin created a permanent school fund of the revenue derived from the sections sixteen and from the five hundred thousand acres of land donated by Congress for internal improvements and five per cent. of all the sales of public lands within the state.<sup>46</sup> This use of the grant of five hundred thousand acres for internal improvements was contrary to the terms of the Congressional grant and, therefore, could not become effective without the consent of Congress. In 1848 Congress approved this provision of the state constitution.<sup>47</sup> The state con-

<sup>39</sup> Constitution of Michigan, Art. X, Secs. 1 and 2, adopted in 1835. In *Revised Statutes at Michigan*, 1838, p. 42.

<sup>40</sup> *U. S. Statutes at Large*, V, pp. 59-60.

<sup>41</sup> *Laws of Michigan*, 1837-38, p. 210. This law also authorized the sale of university lands to the amount of \$500,000, at a minimum price of twenty dollars an acre.

<sup>42</sup> Knight: p. 104.

<sup>43</sup> *Statutes of the Territory of Wisconsin*, 1839, p. 137.

<sup>44</sup> *Laws of the Territory of Wisconsin*, 1839-40, pp. 80-84.

<sup>45</sup> *Ibid.*, 1841-42, p. 46.

<sup>46</sup> Constitution of Wisconsin, Art. X, Sec. 2. Adopted 1848. In *Revised Statutes of Wisconsin*, 1849.

<sup>47</sup> *U. S. Statutes at Large*, IX, p. 233.

stitution also created a board of commissioners composed of the Secretary of State, the Treasurer, and the Attorney General, who should manage and control the school lands. All lands were to be appraised and offered for sale by this board.<sup>48</sup> By these constitutional provisions the people of Wisconsin determined, before becoming a state, to abandon forever the policy of leasing school lands.

The system of leasing school lands was tried in each of the five states of the old Northwest and in every case it was discarded as a failure. In Ohio where this system had the longest trial it seems to have been the worst failure. Among the chief difficulties that attended the leasing system was the problem of squatters on school lands. Caleb Atwater, who was active in the political life of Ohio at the time when that state abandoned the leasing system, recorded concerning squatters:

These occupants made no very valuable improvements, on these lands, but they contrived, in time, to obtain various acts of our general assembly, in favor of such squatters. Such acts increased in number every year, until they not only cost the state, large sums of money for legislating about them, but some entire sessions were almost spent, in such unprofitable legislation.

In the meantime, scarcely a dollar was ever paid over to the people, for whose benefit these lands had been given, by Congress.

Members of the legislature, not unfrequently, got acts passed and leases granted, either to themselves, to their relations or, to their warm partisans. One senator contrived to get, by such acts, seven entire sections of land into, either his own or his childrens' possession!<sup>49</sup>

This same writer asserts that the "perverse legislation" concerning school land leases cost the state of Ohio at least one million dollars between the years of 1803 and 1820.<sup>50</sup> This same pessimistic historian is the authority for the statement that very few people were opposed to this policy during those years. As portrayed by Atwater the evils of the system of leasing were indeed great. Perhaps he, who lived surrounded by these evils, lacked historical perspective in passing judgment upon the system. It is well to bear in mind that Atwater was a somewhat disgruntled politician who had spent much time and some money in combatting the evils of leasing, for which service he received scant praise

<sup>48</sup> Constitution of Wisconsin, Art. X, Secs. 7 and 8, adopted 1848. In *Revised Statutes of Wisconsin, 1849*.

<sup>49</sup> Atwater: *A History of the State of Ohio*, p. 253.

<sup>50</sup> *Ibid.*, p. 253.

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or thanks and little remuneration.<sup>51</sup> At best, the system of leasing school lands was ineffective in producing revenue for the encouragement and support of education. Whether the change to the system of sales was a great improvement is another question.

In brief, the adoption of the policy of selling school lands came about in this manner, Ephraim Cutler, who was a member of the Ohio General Assembly, introduced a resolution in December, 1819, for the appointment of a committee on schools. The committee was appointed and Cutler was made its chairman. Later he introduced a bill in the house of representatives providing for the support of common schools. This bill passed the house but was lost in the senate.

In December, 1821, a committee on schools and school lands was appointed, with Caleb Atwater as chairman. This committee made a report pointing out the misuse to which the lands had been put and recommended that the Governor be authorized to appoint seven commissioners to report to the next general assembly a system of education for common schools and to report upon the condition of the fund set apart by Congress for the support of common schools.<sup>52</sup> This report was adopted and the following May, 1822, seven commissioners were appointed, one for each kind of school lands, namely: sections sixteen, Virginia Military lands, United States Military lands, lands in the Ohio Company Purchase, lands in the Symmes Purchase, Connecticut Reserve lands, and Refugee lands.<sup>53</sup>

This commission worked faithfully, and, in December 1823, presented a report to the legislature recommending the establishment of a common school system and the sale of school lands. The legislature debated and fought over the matter and, as Atwater, who was one of the commissioners, related it, "finally broke up in a row and went home."<sup>54</sup> The sale of the school lands and the proposed common school system were issues in the election of 1824. The friends of these measures won at the polls and the next legislature laid the foundation of the Ohio system of public schools and petitioned Congress for permission to sell the school lands.<sup>55</sup>

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<sup>51</sup> Atwater: *A History of the State of Ohio*, p. 262.

<sup>52</sup> *Ibid.*, p. 255.

<sup>53</sup> *Ibid.*, p. 259.

<sup>54</sup> *Ibid.*, p. 262.

<sup>55</sup> Chase: *Statutes of Ohio*, II, pp. 1466-68.

As soon as Congress empowered the legislature to sell the lands large quantities were sold at the last appraised value in these townships which consented to the sale. Holders of permanent leases were given the privilege of buying their lands at their original valuation.<sup>56</sup> This policy involved a great sacrifice of some of the best school lands because lessees bought the best of the land they held and refused to buy the poor land. After ten years of this wasteful practice the state superintendent of common schools finally prevailed upon the legislature to repeal the law in so far as the purchase of leased lands in the sections sixteen were concerned. The legislature still permitted the practice in the military reserves. In 1837 a law was passed permitting lessees to purchase their lands at an appraised value fixed by three disinterested persons.<sup>57</sup> This law came too late to be of any great benefit to education: the damage was already done.

As has been pointed out, school lands could not be sold without the consent of the township to which they were originally granted by Congress. Some townships refused to sell their lands and continued to lease them. It became general for the funds in these townships to be mismanaged, misappropriated and even embezzled. The state superintendent and state auditor undertook to recover these funds by suits and prosecutions, but after they had gained a verdict in the courts the legislature frequently came to the rescue of the guilty officials by passing relief bills. The auditor said in his report of 1843: "there seems to be no end to the plunder upon this fund. . . . I have felt my energies relaxed by the facility with which relief bills have been gotten up, and so often succeeded in the General Assembly. . . . The lands have been squandered and the fund has been plundered until it is now merely nominal in character."<sup>58</sup> This report evidently had some effect upon the legislature for a law was enacted which placed the appraisal of school lands in the hands of a board consisting of non-residents of the township, appointed by the Court of Common Pleas. In 1845 a minimum price of five dollars an acre was fixed by law and thenceforth Ohio has adequately safe-

<sup>56</sup> Chase: III, pp. 1552-58. This is the law that authorized and fixed the conditions of sales of school lands. *Ohio Laws*, Chap. 712, passed Jan. 29, 1827.

<sup>57</sup> *Ohio Laws*, XXXVII, pp. 78-79.

<sup>58</sup> Knight: p. 56, quoting *Ohio Laws*, XLII, p. 19.

guarded the sale of school lands. But little land remained to be safeguarded.

The change from the leasing to the selling of school lands brought no better results in Indiana than it had in Ohio. On the twenty-third of January, 1829, soon after Congress authorized the sale of the lands in Indiana, the state legislature set a minimum price of a dollar and a quarter an acre. Holders of leases could not purchase their lands at the original appraised value, but were compelled to bid at public auction.<sup>59</sup> The law of 1829 further provided that the local commissioners should lend the money derived from these sales at six per cent. interest on real estate security for periods of three years. An investigation of the school funds in 1841 revealed the fact that much of the funds had been unwisely invested and, in some townships, wholly lost. Two years later the legislature enacted a law which required that all local funds be turned over to the county treasurer for investment by him.<sup>60</sup>

A new constitution was adopted in Indiana in 1851. The next year the legislature undertook to consolidate all school funds and pro-rate the income among the townships on a basis of school enrollment. The townships which had conserved their land grants for education fought this patently unjust plan on the grounds that it violated the conditions of the original grant by Congress which gave every section sixteen to the inhabitants of the township for the support of schools within the township. The opponents of this plan also contended that it was contrary to the state constitution. The Supreme Court of Indiana upheld the contentions of these townships and declared the act invalid.<sup>61</sup>

By an act of March 5, 1855, the legislature consolidated all school funds except the township school lands into a common school fund and intrusted the management of the township lands to the county treasurer. This became the established policy in Indiana except as regards unsold township lands which were leased by the township trustees who were required by law to turn over all rent money to the county treasurer.<sup>62</sup> In Ohio the state borrowed all the funds from the townships; in Indiana the county treasurer made loans to individuals at a rate of interest fixed by

<sup>59</sup> *Laws of Indiana*, 1828-29, pp. 120-28.

<sup>60</sup> Knight: pp. 69-70.

<sup>61</sup> *Indiana Reports*, VI, pp. 83-100.

<sup>62</sup> *Laws of Indiana*, 1855, pp. 161-83.

the legislature. The seminary and university lands in Indiana were managed by the legislature and, through mismanagement, much of this fund was lost in bad loans. In all, less than one hundred fifty thousand dollars was realized from the sale of sixty thousand acres of the grants for higher education.<sup>63</sup>

As has been stated in another connection, in 1831 the legislature of Illinois, without waiting for the consent of Congress, authorized the sale of school lands at not less than a dollar and a quarter an acre.<sup>64</sup> Prior to sale the township trustees appraised the lands. In 1840 a law was passed which gave a majority of the voters in any township the authority to lower the appraised value fixed by the trustee, with the restriction that the price could not be less than the value fixed by law, which was a dollar and a quarter an acre.<sup>65</sup> The voters had no authority to increase the price set by the trustee. The next year a new law was enacted which provided that the county commissioner should sell at public auction the school lands in any township upon the order of two-thirds of the voters of the township. No minimum price was fixed by law and, as a consequence, in many cases the lands were sold for less than one dollar an acre. By this law the county school commissioners were authorized to lend school funds at twelve per cent. interest.<sup>66</sup> On March 1, 1847, the management of these funds was transferred to the township treasurers.<sup>67</sup> Subsequently there were only minor changes in the policy of management of the township school lands.

The university lands in Illinois were managed by the legislature. The original township granted by Congress proved to be very poor so, in 1830, Congress consented to exchange it for another township or its equivalent.<sup>68</sup> The legislature immediately offered these lands for sale and disposed of nearly all of them for a dollar and a quarter an acre. The state borrowed the money from the seminary fund at six per cent. interest and each year borrowed the interest at the same rate until 1835 when the interest was devoted to the support of common schools.<sup>69</sup> This was a clear violation of the conditions of the grant by Congress, but the practice

<sup>63</sup> Knight: p. 131.

<sup>64</sup> In 1843 Congress consented to the sales and approved the sales already made. *U. S. Statutes at Large*, V, p. 600.

<sup>65</sup> *Laws of Illinois*, 1839-40, p. 85.

<sup>66</sup> Knight: p. 81.

<sup>67</sup> *Laws of Illinois*, 1846-47, p. 131-32.

<sup>68</sup> *U. S. Statutes at Large*, III, p. 475.

<sup>69</sup> *Laws of Illinois*, 1834-35, pp. 22-24.

was continued until 1857 when the State Normal University was established.<sup>70</sup>

Four and one half sections of the seminary lands remained unsold in 1861, at which time they were given to the Illinois Agricultural College. These lands were soon sold for about twenty dollars an acre, but through mismanagement part of the proceeds of the sales was lost. The state finally brought suit and recovered some of the lands which were sold later for about nine thousand dollars. The seminary fund was augmented by the addition of the proceeds from the sale of other public lands until it reached about one hundred sixty thousand dollars. The history of land grants reveals no better example of gross mismanagement than the seminary fund in Illinois.<sup>71</sup>

There is some relief in turning from the somewhat disappointing story of the sale of school lands in the first three states formed in the Northwest Territory to an account of the sale of these lands in Michigan. It will be recalled that the policy of selling school lands was first adopted in Michigan in 1837 when the state superintendent of schools was authorized to sell the lands at not less than eight dollars an acre.<sup>72</sup> Within less than a year after the enactment of this law more than thirty thousand acres were sold at approximately twelve dollars an acre.<sup>73</sup> These lands were sold on time payments and the period of depression caused by the panic of 1837 made it impossible for many purchasers to meet their payments. In 1841 the legislature met this situation by reducing the price of the unsold lands to five dollars an acre and, the following year, gave relief to those who had already purchased by enacting a law that provided that, upon application by the purchaser, the land should be appraised on the basis of its value at the time when it was purchased and the price reduced not more than forty per cent. of the original purchase price.<sup>74</sup> The school fund was reduced by approximately one hundred seventy-five thousand dollars by this act, but, under the circumstances, it was probably a very just measure.<sup>75</sup>

<sup>70</sup> *Laws of Illinois*, 1857, pp. 298-301.

<sup>71</sup> Knight: pp. 135-36.

<sup>72</sup> *Laws of Michigan*, 1837-38, p. 209-14.

<sup>73</sup> Knight: p. 90, citing Mich. Sen. Doc., 1838, Nos. 43, 44.

<sup>74</sup> *Laws of Michigan*, 1842, pp. 44-47.

<sup>75</sup> Knight takes the position that the legislature yielded to political pressure and bought public favor at the expense of the school fund. (Pp. 94-96.) The fact remains that many purchasers, due to conditions beyond their control, were unable to pay for their lands and would have lost heavily if relief had not been given.

In 1846 the minimum price of school lands was reduced to four dollars an acre although sales had been increasing at the price of five dollars. The reason for this reduction has never been discovered so the suspicion that it was a political move has grown apace. On the whole the common school lands in Michigan were sold at a much higher price than in any of the other states in the old Northwest. Four dollars an acre seems high when compared with prices for which thousands and thousands of acres were sold in Ohio, Indiana, Illinois, and Wisconsin. By 1850 it had become the practice in Michigan for the state to borrow the common school fund and, by the new constitution adopted that year, this was made the established policy.<sup>76</sup>

The university lands in Michigan were, in some respects, not as well managed as the common school lands. In 1826 Congress granted seventy-two sections to the state of Michigan for higher education. In 1831 the trustees of these lands, with the consent of Congress, traded the more valuable half of them for a larger quantity of inferior land.<sup>77</sup> This proved to be an unfortunate transaction because the trustees eventually sold the lands they obtained by the exchange for five thousand dollars, while their original lands were valued at the time of this sale at five hundred thousand dollars.<sup>78</sup> Apart from this transaction the university lands were well-managed in Michigan, although the legislature, under considerable pressure, compromised with squatters on these grants and finally, in 1840, sold them the lands they had pre-empted at less than seven dollars an acre, much less than their value.<sup>79</sup> By 1885 practically all of the university lands were sold, creating a fund of more than five hundred thousand dollars, the largest in the old Northwest.

The first constitution of Wisconsin, adopted in 1848, created a permanent school fund of the sections sixteen, the five hundred thousand acres given by Congress and usually dedicated to internal improvements, and five per cent. of the proceeds from the sale of other public lands.<sup>80</sup> The constitution also created a board for the management of school lands, consisting of the state Treas-

<sup>76</sup> Constitution of Michigan, adopted 1850, Art. XIV, Sec. 1. See *Laws of Michigan*, 1851, p. XXVII.

<sup>77</sup> *U. S. Statutes at Large*, VI, p. 402.

<sup>78</sup> Knight: p. 137, citing Gregory: *School Funds and School Laws of Michigan*, p. 61.

<sup>79</sup> *Laws of Michigan*, 1840, pp. 101-109.

<sup>80</sup> Constitution of Wisconsin, Art. X, Sec. 2, adopted 1848.

urer, the Secretary of State, and the Attorney General, who should offer the lands for sale after they had been appraised.<sup>81</sup> In 1850 the state legislature recognized squatter rights by a law which permitted squatters to purchase their lands at a minimum price of a dollar and a quarter an acre.<sup>82</sup> This law applied to settlers who had located on the lands prior to the grants by Congress. The next year a more general law was enacted offering the same terms to all actual settlers except those already in possession of one hundred sixty acres or more.<sup>83</sup>

In 1852 the minimum price of the five hundred thousand acres grant and of unappraised school lands was fixed at a dollar and a quarter an acre.<sup>84</sup> Speculators soon bought large quantities of these lands at the minimum price<sup>85</sup> so, in 1855, the legislature limited the number of acres that one individual could purchase.<sup>86</sup> This restriction was removed in 1863 and the minimum price was lowered to seventy-five cents an acre.<sup>87</sup> This seems to have been a concession to speculators, probably with the hope that new settlers would come in to take advantage of the low price of lands. During the next twenty years the minimum price fluctuated between seventy-five cents and a dollar and a half an acre. The guiding principle in fixing the price seems to have been the desire to attract settlers into the state rather than the purpose to use the lands for the advancement of education.

This tendency to sacrifice school lands to increase population was also manifest to a less degree in the management of the university lands. It was not until 1838 that Congress reserved the two townships in Wisconsin for a university. The territorial legislature immediately created a university, but the institution was not built during the territorial days. The constitution of 1848 established the state university and created a perpetual fund out of the university land grants for the support of the university.<sup>88</sup> The lands were appraised and offered for sale in 1849 at prices ranging from one dollar and thirteen cents to seven dollars and six

<sup>81</sup> Constitution of Wisconsin, Art. X, Sec. 8, adopted 1848.

<sup>82</sup> *Laws of Wisconsin*, 1850, p. 194.

<sup>83</sup> *Ibid.*, 1851, p. 27.

<sup>84</sup> *Ibid.*, 1852, pp. 12-13; 213.

<sup>85</sup> This was easily done because any lands that were not sold when offered at public sale could then be bought privately at the minimum price.

<sup>86</sup> *Laws of Wisconsin*, 1855, pp. 25-26.

<sup>87</sup> *Ibid.*, 1863, p. 359; 430-31.

<sup>88</sup> Constitution of Wisconsin, Art. X, Sec. 6. Adopted 1848. In *Revised Statutes of Wisconsin*, 1849, p. 34.

cents an acre.<sup>89</sup> In 1850 the legislature fixed the minimum price at ten dollars an acre<sup>90</sup> but so much pressure was brought to bear on the legislature that, after making several concessions, the minimum price was fixed at three dollars in 1852.<sup>91</sup> This action led to a large increase in sales of the university lands.

The legislature soon began to see that the university lands had been squandered, so Congress was petitioned to grant another two townships for a university in lieu of the salt lands that had never been located.<sup>92</sup> Congress granted the petition in 1854,<sup>93</sup> but within five years the legislature had again reduced the minimum price of the university lands to three dollars an acre. In 1864 the legislature seems to have become reconciled to this wasteful policy and made three dollars an acre the fixed price of all unappraised lands.<sup>94</sup>

Wisconsin was more fortunate in the investment of the proceeds from the sales of school lands than in the sales themselves. The first plan adopted by the board of commissioners appointed in 1849 was that of lending the school funds to individuals. This was in accord with the provisions of the law of 1849. In 1860 it was discovered that many of the loans were not adequately secured so that, by reasonable estimate, at least one fourth of the money loaned was lost.<sup>95</sup> Two years later, March 14, 1862, the legislature authorized the commissioners to invest the funds in state bonds.<sup>96</sup> The commissioners followed this policy until all the available state bonds were in the school fund. On March 22, 1866, the legislature made the debt of the state to the school fund permanent and fixed the rate of interest at seven per cent.<sup>97</sup> In 1868 the commissions were empowered to invest the school, university, normal school, and agricultural college funds in United States bonds and in the bonds of the New England states and of New York and Ohio.<sup>98</sup> By acts of 1871 and 1872 the commissioners were authorized to invest the funds in local school bonds and

<sup>89</sup> Knight: p. 145.

<sup>90</sup> *Laws of Wisconsin*, 1850, p. 144.

<sup>91</sup> *Ibid.*, 1852, p. 769.

<sup>92</sup> Knight: p. 147.

<sup>93</sup> *U. S. Statutes at Large*, X, p. 597.

<sup>94</sup> *Laws of Wisconsin*, 1864, p. 514.

<sup>95</sup> Knight: p. 112.

<sup>96</sup> *Laws of Wisconsin*, 1862, p. 53.

<sup>97</sup> *Ibid.*, 1866, pp. 26-28.

<sup>98</sup> *Ibid.*, 1868, p. 112.

municipal bonds of the City of Milwaukee.<sup>99</sup> Since the change made in 1862 in the general policy of investing the school funds the investments made by the commissioner have been uniformly safe.

There is one incident in the management of the proceeds from the sale of university lands in Wisconsin that is of some significance. In 1862 the legislature ordered the expenditure of part of the principal of this fund to pay for the erection of university buildings,<sup>100</sup> and one hundred four thousand dollars was used for this purpose.<sup>101</sup> This act was clearly contrary to the state constitution and to the conditions on which Congress had made the donations of the university lands. By way of restitution of these misappropriated funds the legislature agreed to pay to the university seven per cent. on the amount misappropriated.

To summarize briefly, the policy of Wisconsin has been to invest the university fund of approximately three hundred fifty thousand dollars in government and municipal bonds. Notwithstanding the fact that there was a marked tendency to sacrifice school lands to attract immigration to the state, on the whole the school lands and funds of Wisconsin were as well-managed as any in the Northwest.

<sup>99</sup> *Laws of Wisconsin*, 1871, pp. 52-56; 1872, p. 136. The investment in the bonds of Milwaukee was limited to \$500,000 in water bonds.

<sup>100</sup> *Ibid.*, 1862, pp. 168-69.

<sup>101</sup> Knight: p. 149.

## CHAPTER IX

### LATER APPLICATIONS OF THE PRINCIPLE OF LAND GRANTS FOR EDUCATION

THUS far this study has been confined almost exclusively to the history of the land grants for education in the Northwest Territory. There are two reasons for this, namely: (1) the early ordinances dealt primarily with this section of the country, and (2) it was in the territories and states erected in this old Northwest that the precedents for the support of public education by federal land grants were firmly established. The final task of this work is to show how the early land ordinances affected the general policy of the national government as regards education and to explain in some detail the influence of these ordinances on the development of the public school system in the United States.

During the first ten or fifteen years after the adoption of the federal constitution there appeared to be a strong probability that the new government would not continue the policy of making land grants for the support of schools. Considerable opposition to this policy developed in the older states that had no public lands within their borders which could be thus used to encourage education. It was during this period when the national land policy was taking definite form that the early efforts in Ohio to establish schools through the use of the land grants for education were of untold importance in keeping this policy alive until it was finally adopted by the national government.

From the adoption of the national constitution to the passage of the act enabling Ohio to become a state, April 30, 1802, only two land laws of any significance were enacted by Congress. These were the laws of May 18, 1796, and May 10, 1800, both of which dealt with the manner of sale of public lands in the Northwest. Neither of these laws made any reservations of land for the support of schools. It looked as if the national government intended to shift the responsibility for compliance with the educational provisions of the Ordinance of 1787 upon the inhabitants of the Northwest Territory. The only land grant for education during this period was the renewal in 1792 of the grant of one

township to John Cleves Symmes, who had obtained this grant in his original contract, August 29, 1787, and later forfeited it through failure to comply with the terms of this contract.<sup>1</sup> Apart from this one instance Congress showed no disposition to follow the example set by the land grants for schools contained in the contract with the Ohio Company.

In so far as the national government is concerned the first act of Congress to embody the policy of land grants for education was the Enabling Act of Ohio, which reserved every section sixteen for the support of schools. The history of this act and the subsequent acts which extended this policy to the Connecticut and Virginia Military Reserve, then to the other territories of the Northwest, has already been traced. It remains to be shown how this policy of land grants for education was extended and applied in other public land states.

The first three states admitted into the Union, after the original thirteen, were Vermont, in 1791, Kentucky, in 1792, and Tennessee, in 1796. These were not, strictly speaking, public land states and no grants for education were made in any of them at the time of admission. While it is true that, in 1780, Virginia had granted eight thousand acres for the founding of a seminary of learning in the county of Kentucky, the national government did nothing to extend the policy of land grants south of the Ohio river before 1803. In that year, March 3, Congress reserved every section sixteen in the territory south of Tennessee for the use of schools and made a special grant for Jefferson College at Natchez.<sup>2</sup>

On April 18, 1806, Congress passed a bill settling certain claims in Tennessee. It provided that one hundred thousand acres should be reserved for two colleges, one hundred thousand acres for academies, one to be established in every county, and one section in each township reserved for public schools.<sup>3</sup> Three days later, April 21, 1806, an act adjusting claims in the Territory of Orleans and in the District of Louisiana also provided that section sixteen in every township should be reserved for public schools and one entire township for a seminary of learning.<sup>4</sup> This act was in response to a petition of the Legislative Council of the Territory of Orleans asking Congress to make grants in that territory similar

<sup>1</sup> *Journal of Congress*, XII, p. 150 f.

<sup>2</sup> *U. S. Land Laws*, I, p. 97.

<sup>3</sup> *Ibid.*, p. 136.

<sup>4</sup> *Ibid.*, p. 142.

to those made in the Mississippi Territory in 1803. The chief argument set forth in this petition in support of this request was the reasonableness and justice of extending the educational provisions of the Ordinance of 1785 to other public lands.<sup>5</sup> The terms of these grants of 1803 and 1806 were similar to those of the grants in Ohio.

At the time of the admission of Louisiana in 1812, and of Mississippi in 1817, nothing was said in the enabling acts as regards land grants for education, but this fact in no wise affected the grants previously made during the territorial days of these states. Indiana had been admitted in 1816 with grants similar to those made in Ohio and, in 1818, Illinois was admitted with the new provision which granted section sixteen in each township "to the state, for the use of the inhabitants of such township, for the use of schools." This seemed to be a move forward, but the next year, March 2, 1819, the act enabling Alabama to become a state revived the policy pursued in Ohio and granted section sixteen to the inhabitants of the township for the use of schools.<sup>6</sup> This act also contained a grant of one township for a seminary of learning, title to which was vested in the state legislature.

In 1812, when the territory of Orleans became the state of Louisiana, the name of the Louisiana territory was changed to Missouri territory by an act of Congress June fourth of that year.<sup>7</sup> The only reference to education in this act was the repetition of the famous educational provision of the Ordinance of 1787. On February 17, 1818, Congress reserved two townships in the Missouri territory, one on the Missouri river and the other on the Arkansas river, for the establishment of two seminaries of learning.<sup>8</sup> Two years later, March 6, 1820, the act enabling Missouri to become a state confirmed the seminary grant on the Missouri river and also granted section sixteen in each township to the state for the use of the inhabitants of the township for the use of schools.<sup>9</sup> The provisions of this act went into effect the following year when Missouri was admitted into the Union. Thus Congress returned to the form of grant made in Illinois.

There is one incident in the history of land grants for education

<sup>5</sup> *A. St. Pap. Pub. Lands*, I, p. 259.

<sup>6</sup> *U. S. Statutes at Large*, III, p. 489.

<sup>7</sup> *Ibid.*, II, p. 747.

<sup>8</sup> *Ibid.*, III, p. 407.

<sup>9</sup> *Ibid.*, III, p. 547.

in Missouri that is of interest for the reason that it throws some light on the educational views held by Congress. In 1818 a petition from Missouri requested Congress to permit the sale of one half of the sections reserved for schools and the establishment of an academy in St. Charles county with the proceeds thus derived. Congress denied this petition on the grounds that reading and writing for the many was better than higher learning for the few.<sup>10</sup>

The act enabling Maine to become a state in 1820 was silent on land grants for education because Maine was not a public land state. After the admission of Missouri, Arkansas was the next state which came into the Union. The enabling act for Arkansas, passed June 23, 1836, contained the same provisions as regards land grants for education as the enabling act for Missouri. The seminary township grant was confirmed and each section sixteen was granted to the state, for the use of the inhabitants of such township, for the use of schools.<sup>11</sup>

Michigan became a state in 1837 and, as has been shown, received a new type of land grant for education, far superior to either the type of grant made to Ohio or to Illinois. In the case of Michigan every section sixteen was granted to the state for the use of schools. The funds derived from school land could thus be used to develop schools in any part of the state regardless of township lines. This did much to aid in the development of a well-organized state system of education.

The full importance of this new policy evidently was not appreciated by Congress at the time of the admission of the next state, Florida, in 1845. The enabling act for Florida, enacted March 3, 1845, granted to the state "section sixteen in every township, or other lands equivalent thereto, for the use of the inhabitants of such township for the support of public schools; also, two entire townships of land, in addition to the two townships already reserved, for the use of two seminaries of learning."<sup>12</sup> This act further provided that five per cent. of the net proceeds from the sale of other public lands within the state should be used for education. From this it would appear that Congress had returned to the policy of granting sections sixteen to the state for the use of the inhabitants of each township, as in the case of the grants to

<sup>10</sup> *Am. St. Pap. Pub. Lands*, III, p. 302.

<sup>11</sup> *U. S. Statutes at Large*, V, p. 58.

<sup>12</sup> *Ibid.*, p. 788.

Illinois. This, however, is not true; the truth is, Congress had no well-defined policy at this time with reference to land grants for education. On the same day, March 3, 1845, that the enabling act for Florida became law another act was passed, enabling Iowa to become a state. This law contained the provision "that section numbered sixteen in every township of public lands, and, where such sections have been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to the State for the use of schools."<sup>13</sup> Seventy-two sections also were granted to the state for a university. In the excitement of the closing hours of the last day of its existence the Congress that passed these two enabling acts was apparently wholly unconscious of the fact that they contained two very distinct types of land grants for education.

The annexation of Texas did not involve the question of land grants for education since Texas was not a public land state. In 1846 Iowa came into the Union on the terms of the enabling act of March 3, 1845, and thenceforth the government continued to adhere to the Michigan type of educational grant in admitting new states. The only exceptions to this were California and West Virginia, and in the case of California sections sixteen and thirty-six in each township were granted to the state for public schools on March 3, 1853.<sup>14</sup> This policy of granting two sections in each township for education was instituted in the law of 1848, authorizing the survey of the Oregon territory. The enabling acts for the next three states admitted into the Union, Minnesota, February 26, 1857,<sup>15</sup> Oregon, February 14, 1859,<sup>16</sup> and Kansas, January 29, 1861,<sup>17</sup> granted to each of these states sections sixteen and thirty-six for common schools and seventy-two sections to each of them for a university. The enabling act for Nevada, March 21, 1864,<sup>18</sup> granted only sections sixteen and thirty-six, but on July 4, 1866, Congress made the customary grant of seventy-two sections for a university and extended to Nevada the provisions of the famous act of July 2, 1862, which made the grants for agricultural and mechanical colleges.<sup>19</sup>

<sup>13</sup> *U. S. Statutes at Large*, V, p. 789.

<sup>14</sup> *Ibid.*, X, p. 244.

<sup>15</sup> *Ibid.*, XI, p. 167.

<sup>16</sup> *Ibid.*, XI, pp. 383-84.

<sup>17</sup> *Ibid.*, XII, p. 127.

<sup>18</sup> *Ibid.*, XIII, pp. 30-32.

<sup>19</sup> *Ibid.*, XIV, p. 85.

On April 19, 1864, Congress passed the act enabling Nebraska to become a state.<sup>20</sup> The usual grants to the state of sections sixteen and thirty-six for common schools and seventy-two sections for a university were made and, in addition thereto, the state was granted five per cent. of the net proceeds from the sale of other unreserved public lands for the support of common schools. The use of this five per cent. for schools was by no means new, for it had been a common practice for Congress to grant this revenue to the states for roads or other internal improvements and in many cases it had been used, by special permission of Congress, for education. The significance of this provision in the enabling act of Nebraska is that it shows the tendency for this practice to become an established policy of the national government.

In the case of Colorado Congress adopted another policy of great importance with reference to the land grants for education. Sections sixteen and thirty-six were reserved to the state for common schools by an act of March 21, 1864, at the time this same grant was made to Nevada.<sup>21</sup> Then, in 1875, when Colorado became a state, the usual grant of seventy-two sections for a university was made.<sup>22</sup> In this act which made the university grant was the interesting provision that the sections sixteen and thirty-six could not be sold for less than two dollars and a half an acre. Why Congress had never seen fit until this time to put adequate restrictions upon the sale of school lands is difficult to understand. The wisdom of this policy has been demonstrated in recent years in every state where it has been followed and, in admitting states since Colorado, Congress has generally placed such restrictions upon the sale of school lands as to prevent their being sacrificed or squandered as was so frequently the case in the older states.

On February 22, 1889, Congress passed the enabling act for Montana, North Dakota, South Dakota, and Washington.<sup>23</sup> Sections sixteen and thirty-six in each of the states was granted to the state for public schools and seventy-two sections were granted to each state for a university. A minimum price of ten dollars an acre was placed upon both university and common school lands; the proceeds from the sale of the latter were to go into the common

<sup>20</sup> *U. S. Statutes at Large*, XIII, pp. 47-50.

<sup>21</sup> *Ibid.*, pp. 32-35.

<sup>22</sup> Act of Mar. 3, 1875, *U. S. Statutes at Large*, XVIII, pp. 475-76.

<sup>23</sup> *U. S. Statutes at Large*, XXV, pp. 679-81.

school fund. By the terms of this act each of the states, Montana, Washington, and North Dakota, received ninety thousand acres for an agricultural and mechanical college and South Dakota received one hundred twenty thousand acres for this purpose. This provision was in accord with the terms of the agricultural and mechanical college act of 1862<sup>24</sup> and subsequent acts extending its provisions to new states formed after its enactment. In addition to these grants each of these four states was granted for education five per cent. of the net proceeds from the sale of other public lands lying within its bounds.

When Idaho became a state, July 3, 1890, the act of admission granted to the state sections sixteen and thirty-six for common schools, seventy-two sections for a university, ninety thousand acres for an agricultural college, and five per cent. of the net proceeds from the sale of other public lands within the state for common schools.<sup>25</sup> The minimum price of the university lands was fixed at ten dollars an acre. Idaho also was granted one hundred thousand acres for a scientific school, one hundred thousand acres for state normal schools, and fifty thousand acres for a university at Moscow; the minimum price fixed at ten dollars an acre.

These additional grants were made in lieu of the grants usually made for internal improvements under the act of 1841.<sup>26</sup> Every public land state admitted between 1845 and 1889, with the exception of Minnesota, had diverted these grants for internal improvements to the support of education; so, for this reason, Congress adopted this policy of making specific grants for education in lieu of these grants for internal improvements. Wyoming came into the Union a week after Idaho, July 10, 1890, with the same grants for a university, agricultural college, and common schools, and with a special grant of thirty thousand acres for a school for the deaf and dumb and blind.<sup>27</sup>

The enabling act for Utah, July 16, 1894, contained the most liberal grants for education that Congress had made up to that time.<sup>28</sup> By this act Utah received sections two, sixteen, thirty-two, and thirty-six, or their equivalent, for common schools, five per cent. of the net proceeds from the sale of other public lands

<sup>24</sup> U. S. *Statutes at Large*, XII, p. 503.

<sup>25</sup> *Ibid.*, XVI, pp. 215-17.

<sup>26</sup> *Ibid.*, V, p. 453.

<sup>27</sup> *Ibid.*, XXVI, pp. 222-26.

<sup>28</sup> *Ibid.*, XXVIII, pp. 107-12.

for the common school fund, two townships for a university, and two hundred thousand acres for an agricultural college. The special grants were one hundred ten thousand acres for the university, in lieu of saline lands, and in lieu of swamp lands, one hundred thousand acres for a school of mines, to be connected with the university, one hundred thousand acres for normal schools, and one hundred thousand acres for a school for the blind. The legislature was given power to regulate the sale of school lands.

This same liberal policy was followed in admitting the last three states, Oklahoma, Arizona, and New Mexico. The enabling act for Oklahoma, June 16, 1906, granted to the state sections sixteen and thirty-six for common schools, with certain restrictions on such sections in Indian, military, and national reservations; \$5,000,000, in lieu of sections sixteen and thirty-six in Indian Territory; every section thirteen, open to settlement, in Oklahoma or Indian Territory, distributed as follows: one-third for the university, one-third for the normal schools, one-third to the agricultural and mechanical college and the colored normal university; two hundred fifty thousand acres for a university; one hundred fifty thousand acres for a university preparatory school; two hundred fifty thousand acres for an agricultural and mechanical college; three hundred thousand acres for normal schools; one hundred thousand acres for a colored agricultural and normal university; and five per cent. of the net proceeds from the sale of other public lands for the common school fund.<sup>29</sup> The act permitted the leasing of common school lands for not more than ten years and of university lands for not more than five years. The sale of school lands after appraisal by three disinterested appraisers was also permitted.

The enabling act for New Mexico<sup>30</sup> and Arizona,<sup>31</sup> June 20, 1910, granted to each state sections two, sixteen, thirty-two, and thirty-six for common schools, two hundred thousand acres for a university, one hundred fifty thousand acres for an agricultural and mechanical college, one hundred fifty thousand acres for a school of mines, two hundred thousand acres for normal schools, and one hundred thousand acres for a military institute. The minimum price of school lands in New Mexico was fixed at three

<sup>29</sup> U. S. *Statutes at Large*, XXXIV, Pt. I, pp. 267-85.

<sup>30</sup> *Ibid.*, XXXVI, Pt. I, pp. 562-63.

<sup>31</sup> *Ibid.*, pp. 572-74.

or five dollars an acre, depending upon the location. In Arizona the minimum price was fixed at three dollars an acre. The lands in New Mexico and Arizona that were irrigated or could be irrigated were an exception to these provisions concerning minimum prices. For these lands the minimum price was fixed at twenty-five dollars. This act further provided that no school lands in either state can ever be sold until they have been appraised. This enabling act was the last of such acts passed by Congress, for with the admission of New Mexico and Arizona into the Union the last of the public domain within the United States was organized into states.

In addition to the enabling acts and the other laws that have been discussed in the foregoing there were a number of other acts of considerable importance as regards land grants for education. It is in place here to outline briefly the nature and importance of these laws. First among these was the preëmption act of September 4, 1841,<sup>32</sup> which provided for the distribution of the net proceeds from the sale of public lands among the states then in the Union, or subsequently admitted, on a basis of their representation in Congress. By this act five hundred thousand acres were granted to each state for internal improvements. While this law did not make a specific grant for education, as has already been pointed out, it became a common practice to devote the funds thus derived to the support of schools. This act of 1841 was the culmination of a series of laws extending over a period of eleven years, the chief concern of which was the preëmption policy; while the main significance of this act was in that connection, it was also of great importance because it provided a source from which public education will ultimately receive more than sixty millions of dollars.

The next law of any consequence for education was the act of September 28, 1850, which granted the swamp lands in Arkansas to that state and extended this grant to all other states then in the Union, or subsequently admitted. As in the case of the grants of 1841, these swamp land grants, or the lands granted in lieu of them, were generally devoted to education. In all, public schools have received more than forty million acres from this source.

Perhaps the most important single act for education ever passed by Congress was that of July 2, 1862, which made the land grants

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<sup>32</sup> U. S. *Statutes at Large*, V, p. 453.

for agricultural and mechanical colleges.<sup>33</sup> To every state not in rebellion were granted thirty thousand acres for each senator and representative; the proceeds from the sale of these lands were to remain an undiminished fund which should be invested at five per cent. in bonds of the United States or other good securities; the income was to be used for the maintenance of colleges teaching agriculture, the mechanic arts, military science, and such other courses deemed proper; but no funds could be used for buildings. To states in which there were no available public lands scrip was to be issued in lieu thereof. On April 14, 1864, the provisions of this act were extended so that any state could participate in its benefits upon acceptance of its conditions.<sup>34</sup> The provisions of this act were extended, on July 23, 1866,<sup>35</sup> to any new state upon its admission into the Union and on January 23, 1873, the time for the acceptance of provisions of the act of July 2, 1862, was extended to the first of July, 1874.<sup>36</sup> This enabled all the southern states to participate in the benefits of this law. More than eleven million acres have been granted to the states under the provisions of the act of July 2, 1862, and the subsequent acts extending its provisions.<sup>37</sup>

The next act of importance was that of March 2, 1887, for establishing agricultural experiment stations.<sup>38</sup> This law granted to each state \$15,000 out of the proceeds from the sale of public

<sup>33</sup> *U. S. Statutes at Large*, XII, pp. 503-5.

<sup>34</sup> *Ibid.*, XIII, p. 47.

<sup>35</sup> *Ibid.*, XIV, p. 208.

<sup>36</sup> *Ibid.*, XVII, pp. 416-17.

<sup>37</sup> The table given herewith summarizes the chief land grants for education made by the national government. It was compiled from data drawn largely from the article on the National Government and Education in the *Cyclopedias of Education*, IV, p. 377 ff. These data were compared with other authorities and checked against the facts presented in this work. While absolute accuracy is impossible in such a table, this is approximately correct.

	No. of Acres	Approximate Value
Common school section grants . . . . .	81,064,300	\$410,000,000
Saline grants . . . . .	900,000	1,000,000
Five per cent. fund . . . . .		7,187,316
Amount used for education derived from act of 1841, before 1889 . . . . .		14,000,000
Grants since 1889 in lieu of other grants . . . . .	11,243,080	50,000,000
Swamp lands granted since 1850 used for schools . . . . .	40,000,000	13,000,000
University grants . . . . .	3,500,000	30,000,000
Grants under terms of act of July 2, 1862 . . . . .	11,367,832	30,000,000
Totals . . . . .	148,075,212	\$555,187,316

<sup>38</sup> *U. S. Statutes at Large*, XXIV, pp. 440-41.

lands for the founding of such experiment stations in connection with the agricultural and mechanical colleges. On August 30, 1890, Congress enacted a law which granted to each state for the support of the agricultural colleges \$15,000 for that year and that amount increased by \$1,000 annually for ten years; thereafter each state was to receive \$25,000 annually. All of these funds were to be drawn from the proceeds from the sale of public lands.<sup>39</sup> On May 17, 1900 a supplementary act was passed which provided that if the proceeds from the sale of public land were not sufficient to meet these payments the balance should be paid by the United States.<sup>40</sup> These acts are of special importance because they mark the transition from land grants for education, through money grants out of the proceeds from the sale of public lands, to money grants for education from the general revenue of the United States.

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<sup>39</sup> *U. S. Statutes at Large*, XXVI, pp. 18-19.

<sup>40</sup> *Ibid.*, XXXI, p. 179.

## CHAPTER X

### SUMMARY AND CONCLUSIONS

IN this final chapter a few of the main conclusions that may be legitimately drawn from the facts presented in this study will be set forth briefly. That the basis of the conclusions may be clearly established a summary will first be made of the foregoing chapters.

#### SUMMARY

The purpose of the first chapter was to explain the economic and political importance of the West at the time of the enactment of the early land ordinances. To this end it was shown that after 1763 the fundamental problem as regards the West was an economic one. If that region lying between the Allegheny mountains and the Mississippi river was to remain a part of the English colonies it was necessary that it be bound to the east by economic ties. The conspiracies to win the West away from the Union which developed after the Revolution were inspired by the great economic value of the Ohio and Mississippi valleys, and the conspirators' hope of success was based upon the economic needs of the West. After 1763 there was a gradual growth in the consciousness of these needs in the middle colonies and Virginia which led to the early projects for the improvement of the means of communication and transportation between the back country and the Atlantic seaboard.

Next after the economic value of the West the problem of the political organization of that section was of prime importance. By the close of the Revolution it was generally recognized that the political institutions of the new nation must be extended into the West in order to hold that section to the new government. The surrender of claims to western lands by the various states, especially the terms of the Virginia cession which provided for the formation of new states in the ceded territory, indicated the drift of public opinion and foreshadowed the ultimate solution of the problem of government of the West.

The second chapter outlined the history of the early ordinances dealing with the West. It was shown how the final treaty of peace

with England in 1783 gave a new impetus to the westward movement and made acute the need for a governmental ordinance for the newly acquired territory. The Virginia act of cession of the western lands to the national government had provided for the nationalization of these western lands and the adoption of this policy had been assured by the acts of other states relinquishing claims to the back country.

With the West in possession of the national government it devolved upon Congress to establish some form of government over that region. The Ordinance of 1784 was the first attempt to perform this task. While this ordinance remained a dead letter it is important for two reasons: (1) it nationalized the West in accordance with the terms of the Virginia act of cession; (2) it was silent as regards land grants for education. This ordinance was not a land law but a governmental ordinance and it is therefore of more importance from the point of view of political theory than for its bearing on the national land policy. It was understood at the time of its enactment that Congress would also pass a law for the sale of the western lands. In 1785 such a law was enacted.

The Ordinance of 1785 was a land law. Its purpose was to establish a policy for the survey and sale of the public domain that would be acceptable to all sections of the country. Because of the two very distinct and conflicting methods of surveying public lands in use at the time, the Ordinance of 1785 was a compromise between the New England township plan and the southern method of indiscriminate surveys of small tracts. The ordinance provided that the public lands should be surveyed into townships six miles square, subdivided into thirty-six sections, each a square mile. Every other township was to be sold entire, while the alternate townships were to be sold by sections. The most important provision in this ordinance was that which reserved section number sixteen in every township for the maintenance of public schools within the township.

The Ordinance of 1785, although a compromise, proved to be a triumph for the New England policy of "township planting" as this form of settlement proved more popular in practice than the "indiscriminate locations." The reservation of the sections sixteen for education was also a New England idea and it was written into the ordinance as a concession to the New Englanders. At the time this provision was looked upon as of minor importance.

Its value was thought to lie in the fact that it would attract settlers into the new country and promote land sales rather than in the fact that it was the beginning of a far-reaching national policy for the encouragement of public education by land grants. Subsequent events proved that the true significance of this ordinance was in this provision that reserved sections sixteen for education, thereby establishing a precedent that became a fixed policy of the national government.

In Chapter III it was shown that the Ohio Company grew out of the Congressional desire to pay the debt to the Continental Army in western lands. The "Army Plan" and the "Financiers' Plan" were both proposals to make such a settlement with the soldiers. Each of these plans contained a provision for the support of public schools by land grants. They differed in that the "Army Plan" placed the control of educational land grants in the hands of the states that were to be formed in the West while the "Financiers' Plan" provided that the control of such lands should be vested in the national government.

Neither of these plans became operative so a group of New England officers of the Continental Army organized the Ohio Company of Associates for the purpose of buying lands in Ohio with continental certificates under the terms of the Ordinance of 1785 or others equally as good. This company finally succeeded in buying 1,500,000 acres of land in Ohio on terms much more favorable than those fixed by the Ordinance of 1785. The success of the Ohio Company in dealing with Congress was largely due to the fact that it was associated with a large land speculation, the Scioto Company, which was promoted by the Secretary of the Board of Treasury of the United States and others of prominence. Political deals as regards the appointment of the officials in the Northwest Territory also contributed to the success of the Ohio Company's contract with the national government.

In the discussion of the Ohio Company it was also pointed out that this company, through its very able representative, Dr. Cutler, brought considerable pressure to bear on Congress in connection with the enactment of the Ordinance of 1787. The success of the Ohio Company was conditioned, in part at least, upon the form of government established in the Northwest so it is not probable that the company would have bought lands in Ohio if the terms of the ordinance for government of that territory had been

unsatisfactory to the members of the company. The Ordinance of 1787 and the sale of lands to the Ohio Company were closely associated in the minds of Congress and beyond question the terms of the Ordinance were greatly influenced by the opinions and desires of the members of the Ohio Company.

In the fourth chapter was developed the fact that while the Ordinance of 1787 was not a land law, but rather a governmental ordinance, it was essentially related to the national land policy in that it contained certain principles of government the establishment of which was deemed necessary to the successful sale of public lands. Among these principles there were two of especial significance, namely: (1) the formation in the western territory of states on an equality with the original states; (2) the use of public lands for the support of education.

Maryland, in 1779, stood for the establishment of new states as a condition in the settlement of the conflicting claims to the western lands. Both the Army Plan and the Financiers' Plan embodied this principle and it was the basic provision of the Ordinance of 1784. The Ordinance of 1787 gave better and final expression of this principle and fixed it definitely as a part of the national policy of dealing with the public domain.

The principle of land grants for the support of schools was a part of America's heritage from England, even though the connection was somewhat remote. The charity schools of the South were the most direct outgrowth of the English precedent. In New England the practice of granting lands for the support of schools developed out of the local conditions as a part of system of "township planting." The "Army Plan" provided for land grants for schools, although it made no such provision for religion. The "Financiers' Plan" contained this principle in the provision for land grants for "seminaries of learning." The Ordinance of 1784 was an ordinance for government and was silent on the question of land grants for education, it being understood at the time that a land ordinance would be enacted to supplement the law of 1784. The support of schools by land grants was a generally accepted principle in 1784 so the Ordinance of 1785, which was a land law, gave full expression to this principle. The contract of the Ohio Company with the national government secured for the company land grants for both common schools and a university. The Ordinance of 1787, which was the organic law of the Northwest

Territory, expressed this principle in the general but none the less comprehensive phrase, "Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." Thus, while the principle of land grants for education did not originate in the Ordinance of 1787, such grants were used to comply with its mandate to encourage schools and the means of education. A precedent was thereby set which became a definite part of the national land policy.

The purpose of the fifth chapter was to show that education was a minor consideration in the Ordinance of 1787 and that no special credit is due those responsible for the passage of this ordinance because its provision for the encouragement of schools was later used effectively as an argument for land grants for education. Much has been written to magnify the influence of the members of the Ohio Company in this connection. It was not meant in the discussion in chapter five to minimize the zeal and piety of Dr. Cutler and his associates in their successful efforts to obtain land grants both for schools and religion, but rather to point out that there was no clear consciousness on their part as to the ultimate influence on education of the Ordinance of 1787. Members of Congress generally looked upon this ordinance as a means to further the sale of western lands and provision concerning education was considered a special inducement to this end. The true significance of this provision as the foundation of a national policy was not perceived by anyone concerned with its enactment or by the general public. The importance of the Ordinance of 1787 was overshadowed at the time by the proceedings of the constitutional convention then in session.

In the sixth chapter it was shown that while the ordinance of July 13, 1787, commonly called the Ordinance of 1787, made no definite provision for land grants for education, the ordinance for the sale of lands, enacted July 23, 1787, definitely granted every section sixteen for the support of public schools in each township and also reserved two complete townships for the support of a university in the center of the first million and a half acres purchased by the Ohio Company. The contract of sale between the Board of Treasury and the Ohio Company, executed in October, 1787, carried out these provisions for land grants for education, and this policy was continued in the sale to Symmes. In this case,

however, only one township was granted for higher education, and that was not given until Symmes extended his purchase.

These contracts for the sale of large bodies of land, with reservations for the support of schools, made it possible to demonstrate the fact that the policy of granting land for education was practical. Furthermore a precedent was thus established that was the strongest argument for further land grants for education in new states as this problem recurred from time to time. The large grants for universities which were procured by these contracts were of especial importance for they were the first donations for higher education made by the national government. The institutions founded by these grants were the beginning of the American state universities.

The seventh chapter described in brief outline the educational work of the early settlers. In this connection were pointed out the chief reasons why schools grew so slowly in this early period. Most important among these reasons were (1) the physical hardships of the frontier made making a living the dominating problem; (2) Indian hostility; (3) general poverty of the people with respect to everything except land; (4) scarcity of money; (5) scattered population which made school attendance small and irregular; (6) the difficulty of procuring good teachers; and (7) the lack of social unity inherent in frontier society. All of these forces worked against the development of public schools and a system of public education.

The study of the work of the early settlers also revealed the fact that free public schools, supported by taxation, had no place in the educational thought of that time. The common practice was to charge tuition in the public schools and to supplement this source of revenue with private donations. The charter adopted by the Ohio legislature for the American Western University placed the board of trustees of that institution under the control of the legislature. This certainly was a move towards a state university. From state controlled schools founded upon donations of public lands the transition was not difficult to free public schools supported by taxation. Thus while the early settlers developed no new or distinctive ideas in education, they aided materially in the growth of the present-day system of public education in the United States.

In the eighth chapter it was shown that Congress tried three

plans of making land grants for common schools before a final policy was evolved. The first plan was that of granting every section sixteen to the inhabitants of each township for the support of schools within the township. This was the plan followed in the grants in Ohio. The next plan was that used in Illinois by which every section sixteen was granted to the state for the use of schools in each township. By the third plan, first followed in Michigan, every section sixteen was granted to the state for the use of schools. The state was thus free to use the funds derived from these grants to encourage schools throughout the state. This became the established policy of Congress and made possible the development of state public school systems.

It was further shown that there were two general policies followed in the Northwest in the management of school lands. The first policy generally followed was that of leasing the school lands, but in each case it gave place to the policy of selling these lands. The transition from leasing to selling was made easy through the practice of granting perpetual leases to school lands, as in the Virginia Military Reserve in Ohio. Wherever the policy of leasing was tried it failed to produce any considerable revenue for schools and for this reason it was discarded and the school lands sold. However, from the point of view of revenue, the policy of selling was also disappointing. In Ohio, Indiana, and Illinois the selling plan was practically a failure, in Michigan it was relatively successful, while in Wisconsin the school lands were sold for much less than their value in order to attract settlers into the state.

The early investments of the funds derived from the leases or sales of school lands were generally unfortunate. A great part of this fund was lost or squandered through the carelessness, inefficiency or corruption of those to whom the management of these lands was intrusted. Later, when little remained of the school funds, the investments were usually safe and yielded a fair return for the support of education. On the whole, the land grants for education in the old Northwest were a disappointment as a means to encourage public education.

The ninth chapter was a brief history of the later applications of the principle of land grants for education by the national government. It was shown that the first expression of this principle after the adoption of the federal constitution was in the Ohio enabling act. Next it was explained how this principle was applied,

with increasing liberality in the grants, to the other public land states. The main reason for this increase in the land grants for education was the gradual development of the practice of diverting land grants for internal improvements and for other purposes to the support of schools. In this chapter also was emphasized the special importance of the grants for higher education embodied in the series of acts beginning with the act of July 2, 1862, which granted lands for the support of agricultural and mechanical colleges. The fact that the schools thus founded were vocational and of especial value to a definite and powerful class of voters is of political rather than of educational significance. Without doubt the motives behind this legislation grew out of political necessity rather than educational interest, nevertheless it is important to note that it was thought that political necessity could best be served by liberal land grants for a form of higher education. The last fact presented in the ninth chapter was the transition from land grants for education to grants of money for education out of the treasury of the United States. From the point of view of the future this is perhaps the most significant outcome of national land grants for education.

#### CONCLUSIONS

1. In 1785 there were well-established precedents for land grants for education, but the clause in the Ordinance of 1785 which stated that "there shall be reserved the lot No. 16, of every township, for the maintenance of public schools, within the said township" was the beginning of the national land grants for education. The reservations for education in this land ordinance were not the expression of a definite plan or policy for the encouragement of schools, but were placed in the ordinance as a special inducement to promote the sale of public lands.
2. The Ordinance of 1787 was a governmental ordinance rather than a land law and therefore contained no land grants for education. Nevertheless the article of this ordinance which stated that "religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged" set forth a principle and an ideal that was a guiding influence in the later development of a national policy of land grants for education. The words of this ordinance were quoted time and again to urge Congress to make

further grants for education. These words have been rewritten again and again in the constitutions of the several states, and have been both an ideal and an incentive to the furtherance of public education. The full influence of the Ordinance of 1787 upon public education can never be exactly measured and evaluated. The facts remain that this ordinance was the organic law of the great Northwest Territory, in which the value of land grants for education was first demonstrated; that its main provisions were later extended to other territories, and that the policy of land grants for education, as well as other means for the encouragement of education, were inspired by the language of this ordinance.

3. The contracts of 1787-1788 for the sale of large bodies of land in the Ohio valley were inseparably associated with the enactment of the Ordinance of 1787. The influence brought to bear upon Congress, when this ordinance was pending, by the Ohio Company of Associates was indeed very strong and, without doubt, the mandate for the encouragement of education, which this ordinance contained, was in complete harmony with the desires of the members of this company. The land grants for education contained in the contract of sale with the Ohio Company show clearly that this was true. The reservation of every section sixteen for the use of public schools, within each township, was in conformity with the provisions of the Ordinance of 1785, but the large land grant for a university was the first grant of the kind made by the national government. The great importance of these land sales of 1787-1788 was in the fact that they made it possible to prove in actual experience that land grants for education were both practical and wise. Later, when the land policy of the national government was being formed, this concrete proof and unanswerable argument aided materially in perpetuating the policy of land grants for education.

4. One general conclusion that grows out of the study of the early land ordinances is the fact that there was no well-defined policy or purpose involved in the early land grants for education. The political necessity of binding the back-country to the East, the economic advantages of such a union to the seaboard states, and the liquidation of the national debt by the sale of western lands were the prime motives that led to the enactment of these early ordinances. The land grants for education were incidental, in so far as Congress was concerned, and were incorporated into

these laws to aid in the sale of western lands. This consideration was not so potent during the first decade after the adoption of the federal constitution and it appeared for a time as if land grants for schools would be discontinued. The actual beginning of a national policy of land grants for education was in the act enabling Ohio to become a state in 1802, rather than in the early land ordinances.

5. In so far as the use of land grants for education is concerned two things are clear. First, there was little or no appreciation of the value of these grants or interest in their management on the part of the public. Secondly, in general the school lands and funds were poorly managed and frequently squandered through incompetence or corruption. School lands were often leased on terms calculated to serve other interests rather than those of education. The undue haste in selling these lands far below their market value further attests the fact that the general public was little concerned with land grants for education. However, it is not just to conclude that the policy of selling school lands was, in itself, unwise. The land grants for education were made to assist the early settlers in the new territories and states. It was never intended that these lands should be held for the benefit of future generations more able to maintain schools than were the pioneers. If the early settlers could derive the greatest aid from the land grants by selling school lands, such sales were wise. It is only where the lands were sold for considerably less than their market value at the time of sale that adverse criticism is fair.

6. The form of land grants for education that grew directly out of the provisions of the early land ordinances was that which reserved every section sixteen for the use of the inhabitants of the township. This form of grant eventually gave way to the section grants to the state for the use of schools within each township, which in turn was replaced by the grants to the state for the use of schools, regardless of township lines. Before these changes had taken place the first form of grant had exerted a very definite influence on the public school system. This first form of grant was essentially of New England origin and was vitally associated with the "township planting" system of settlement so characteristic of New England. Out of this form of grant grew the district school system which flourished wherever this form of grant was made. This greatly retarded the development of broad and sound state

systems of education; in fact, the evils of the New England district school system which are still present in the United States today were perpetuated by this early form of land grant for education. On the other hand it is true that this form of grant met the local needs in the early days and fostered the ideal of adapting the schools to community problems. In time the evils of the district school system will be overcome, but this ideal will remain.

7. One of the most important contributions to the present-day system of education that came from the early land grants is the state universities. The Ohio Company of Associates, who received the first land grant for higher education made by the national government, did not contemplate the foundation of a state institution, but the state legislature of Ohio so amended the charter for their university as to place its board of trustees under direct control of the legislature. Thus began the American state universities.<sup>1</sup> These institutions, always non-sectarian, sometimes non-religious, standing for academic freedom, a broad curriculum, and coeducation, have become the most liberalizing force in modern education. In some respects the policy of national land grants for higher education was the most significant result of the early land ordinances.

8. National land grants were the very foundation of public education in the United States. However, these grants were never adequate for the support of schools and at times they have appeared to retard the growth of public education because they were used as an excuse for withholding other means of support. It was only natural that tax-payers would prefer to depend upon the land grants for the maintenance of schools rather than to tax themselves. The slowness of the development of education by taxation was not due to the land grants for education, but the inadequacy of these grants made necessary taxation for the support of the schools founded upon them.

9. The most interesting educational tendency that has grown out of the early land grants for schools is the present-day policy of making national money grants out of the United States treasury for education, as exemplified by the Smith-Hughes act. The transition from land grants for education to grants of money out of

<sup>1</sup> Transylvania University, founded in 1785 upon land grants made by Virginia, in the county of Kentucky, was first in point of time; but this institution is not a typical state university. It passed under the control of a religious body and is, today, a denominational school. It cannot properly be classed as a state university.

the proceeds from the sale of public lands was natural and easy. The transition from money grants out of public land funds to money grants out of the general revenue of the national government is no more difficult. This tendency appears to be leading towards national supervision and control of education. Whatever the ultimate outcome of this tendency may be, or what may be the wisdom of it, neither of these questions lies within the scope of this study. It suffices here to show wherein this modern tendency is related to the early federal land ordinances.

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## APPENDIX A

### THE ORDINANCE OF 1785

#### AN ORDINANCE FOR ASCERTAINING THE MODE OF DISPOSING OF LANDS IN THE WESTERN TERRITORY

*Passed May 20, 1785*

Be it ordained by the United States in Congress assembled, that the territory ceded by individual states to the United States, which has been purchased of the Indian inhabitants, shall be disposed of in the following manner:

A surveyor from each state shall be appointed by Congress or a Committee of the States, who shall take an oath for the faithful discharge of his duty, before the geographer of the United States, who is hereby empowered and directed to administer the same; and the like oath shall be administered to each chain carrier, by the surveyor under whom he acts.

The geographer, under whose direction the surveyors shall act, shall occasionally form such regulations for their conduct, as he shall deem necessary; and shall have authority to suspend them for misconduct in office, and shall make report of the same to Congress, or to the Committee of the States; and he shall make report in case of sickness, death, or resignation of any surveyor.

The surveyors, as they are respectively qualified, shall proceed to divide the said territory into townships of 6 miles square, by lines running due north and south, and others crossing these at right angles, as near as may be, unless where the boundaries of the late Indian purchases may render the same impracticable, and then they shall depart from this rule no farther than such particular circumstance may require. And each surveyor shall be allowed and paid at the rate of two dollars for every mile, in length, he shall run, including the wages of chain carriers, markers, and every other expense attending the same.

The first line, running due north and south as aforesaid, shall begin on the river Ohio, at a point that shall be found to be due north from the western termination of a line, which has been run as the southern boundary of the State of Pennsylvania; and the first line, running east and west, shall begin at the same point, and shall extend throughout the whole territory; provided, that nothing herein shall be construed, as fixing the western boundary of the State of Pennsylvania. The geographer shall designate the township, or fractional parts of townships, by numbers progressively from south to north; always beginning each range with No. 1; and the ranges shall be distinguished by their progressive numbers to the westward. The first range, extending from the Ohio to the lake Erie, being marked No. 1. The geographer shall personally attend to the running of the first east and west line; and shall take the latitude of the extremes of the first north and south line, and of the mouths of the principal rivers.

The lines shall be measured with a chain, shall be plainly marked by chaps on the trees, and exactly described on a plat, whereon shall be noted by the surveyor, as their proper distances, all mines, salt-springs, salt-licks, and mill-seats, that shall come to his knowledge; and all water-courses, mountains and

other remarkable and permanent things, over and near which such lines shall pass, and also the quality of the lands.

The plats of the townships respectively, shall be marked by sub-divisions into lots of one mile square, or 640 acres, in the same direction as the external lines, and numbered from 1 to 36; always beginning the succeeding range of the lots with the number next to that with which the preceding one concluded. And where, from the causes before-mentioned, only a fractional part of a township shall be surveyed, the lots, protracted thereon, shall bear the same numbers as if the township had been entire. And the surveyors, in running the external lines of the townships, shall, at the interval of every mile, mark corners for the lots which are adjacent, always designating the same in a different manner from those of the townships.

The geographer and surveyors shall pay the utmost attention to the variation of the magnetic needle; and shall run and note all lines by the true meridian, certifying, with every plat, what was the variation at the times of running the lines thereon noted.

As soon as 7 ranges of townships, and fractional parts of townships, in the direction from south to north, shall have been surveyed, the geographer shall transmit plats thereof to the board of treasury, who shall record the same, with the report, in well bound books to be kept for that purpose. And the geographer shall make similar returns, from time to time, of every 7 ranges as they may be surveyed. The Secretary at war shall have recourse thereto, and shall take by lot therefrom, a number of townships, and fractional parts of townships, as well from those to be sold entire, as from those to be sold in lots, as will be equal to one-seventh part of the whole of such 7 ranges as nearly as may be, for the use of the late continental army; and he shall make a similar draught, from time to time, until a sufficient quantity is drawn to satisfy the same, to be applied in manner hereinafter directed. The Board of treasury shall, from time to time, cause the remaining numbers, as well those to be sold entire, as those to be sold in lots, to be drawn for, in the name of the thirteen states respectively, according to the quotas in the last preceding requisition on all the states; provided, that in case more land than its proportion is allotted for sale in any state, at any distribution, a deduction be made therefor at the next.

The board of treasury shall transmit a copy of the original plats, previously noting thereon, the townships, and fractional parts of townships, which shall have fallen to the several States, by the distribution aforesaid, to the commissioners of the loan office of the several States, who, after giving notice of not less than two or more than six months, by causing advertisements to be posted up at the court-houses, or other noted places in every county, and to be inserted in one newspaper, published in the States of their residence respectively, shall proceed to sell the townships, or fractional parts of townships, at public vendue, in the following manner, viz: The township, or fractional part of a township, No. 1, in the first range, shall be sold entire; and No. 2, in the same range, by lots; and thus in alternate order through the whole of the first range. The townships, or fractional part of a township, No. 1, in the second range, shall be sold by lots; and No. 2, in the same range, entire; and so in alternate order through the whole of the second range; and the third range shall be sold in the same manner as the first, and the fourth in the same manner as the second, and thus al-

ternately throughout all the ranges; *provided*, that none of the lands, within the said territory, be sold under the price of one dollar the acre, to be paid in specie, or loan-office certificates, reduced to specie value, by the scale of depreciation, or certificates of liquidated debts of the United States, including interest, besides the expense of the survey and other charges thereon, which are hereby rated at 36 dollars the township, in specie, or certificates as aforesaid, and so in the same proportion for a fractional part of a township, or of a lot, to be paid at the time of sales; on failure of which payment, the said lands shall again be offered for sale.

There shall be reserved for the United States out of every township the four lots, being numbered 8, 11, 26, 29, and out of every fractional part of a township, so many lots of the same numbers as shall be found thereon, for future sale. There shall be reserved the lot No. 16, of every township, for the maintenance of public schools, within the said township; also, one-third part of all gold, silver, lead and copper mines, to be sold or otherwise disposed of as Congress shall hereafter direct.

When any township, or fractional part of a township, shall have been sold as aforesaid, and the money or certificates received therefor, the Loan Officer shall deliver a deed in the following terms:

*The United States of America, to all to whom these presents shall come, greeting:*

Know ye, that for the consideration of \_\_\_\_\_ dollars, we have granted, and hereby do grant and confirm, unto \_\_\_\_\_, the township (or fractional part of the township, as the case may be) numbered \_\_\_\_\_, in the range \_\_\_\_\_, excepting therefrom, and reserving, one-third part of all gold, silver, lead, and copper mines, within the same; and the lots Nos. 8, 11, 26, and 29, for future sale or disposition; and the lot No. 16, for the maintenance of public schools. To have to the said \_\_\_\_\_ his heirs and assigns, forever; (or, if more than one purchaser, to the said \_\_\_\_\_, their heirs and assigns, forever, as tenants in common.)

In witness whereof, A B, commissioner of the loan office in the State of \_\_\_\_\_, hath, in conformity to the ordinance passed by the United States in Congress assembled, the twentieth day of May in the year of our Lord 1785, hereunto set his hand and affixed his seal, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, and of the independence of the United States of America \_\_\_\_\_.

And when any township or fractional part of a township shall be sold by lots as aforesaid, the commissioner of the loan office shall deliver a deed therefor in the following form:

*The United States of America to all to whom these presents shall come, greeting:*

Know ye, that for the consideration of \_\_\_\_\_ dollars, we have granted and hereby do grant and confirm unto \_\_\_\_\_, the lot (or lots, as the case may be) in the township (or fractional part of township, as the case may be) numbered \_\_\_\_\_, in the range \_\_\_\_\_, excepting and reserving one-third part of all gold, silver, lead, and copper mines, within the same for future sale or disposition. To have to the said \_\_\_\_\_, his heirs and assigns forever (or, if more than one purchaser, to the said \_\_\_\_\_ their heirs and assigns forever, as tenants in common).

In witness whereof, A B, Commissioner of the Continental Loan Office, in the

State of \_\_\_\_\_, hath, in conformity to the ordinance passed by the United States, in Congress assembled, the twentieth day of May, in the year of our Lord one thousand seven hundred and eighty-five, hereunto set his hand and affixed his seal, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, and of the Independence of the United States of America \_\_\_\_\_.

Which deeds shall be recorded in proper books, by the Commissioner of the Loan Office, and shall be certified to have been recorded, previously to their being delivered to the purchaser, and shall be good and valid to convey the lands in the same described.

The commissioners of the loan offices respectively, shall transmit to the board of treasury every three months, an account of the townships, fractional parts of townships, and lots committed to their charge; specifying therein the names of the persons to whom sold, and the sums of money or certificates received for the same; and shall cause all certificates by them received, to be struck through with a circular punch; and shall be duly charged in the books of the treasury, with the amount of the money or certificates, distinguishing the same, by them received as aforesaid.

If any township, or fractional part of a township or lot, remains unsold for 18 months after the plat shall have been received, by the commissioners of the loan office, the same shall be referred to the board of treasury, and shall be sold in such manner as Congress may hereafter direct.

And whereas Congress, by their resolutions of September 16th and 18th, in the year 1776, and the 12th of August, 1780, stipulated grants of land to certain officers in the hospital department of the late continental army; for complying therefore with such engagements, Be it ordained, That the secretary at war, from the returns in his office, or such other sufficient evidence as the nature of the case may admit, determine who are objects of the above resolutions and engagements, and the quantity of land to which such persons or their representatives are respectively entitled, and cause the townships, or fractional parts of townships, hereinbefore reserved for the use of the late continental army, to be drawn for in such manner as he shall deem expedient, to answer the purpose of an impartial distribution. He shall, from time to time, transmit certificates to the commissioners of the loan offices of the different states, to the lines of which the military claimants have respectively belonged, specifying the name and rank of the party, the terms of his engagement and time of his service, and the division, brigade, regiment or company to which he belonged, the quantity of land he is entitled to, and the township, or fractional part of a township, and range out of which his portion is to be taken.

The commissioners of the loan offices shall execute deeds for such undivided proportions in manner and form herein before-mentioned, varying only in such a degree as to make the same conformable to the certificate from the secretary at war.

Where any military claimants of bounty in lands shall not have belonged to the line of any particular state, similar certificates shall be sent to the board of treasury, who shall execute deeds to the parties for the same.

The secretary at war, from the proper returns, shall transmit to the board of treasury, a certificate, specifying the name and rank of the several claimants of the hospital department of the late continental army, together with the quantity of land each claimant is entitled to, and the township, or fractional part of a

township and range out of which his portion is to be taken; and thereupon the board of treasury shall proceed to execute deeds to such claimants.

The board of treasury, and the commissioners of the loan offices in the states, shall, within 18 months, return receipts to the secretary at war, for all deeds which have been delivered, as also all the original deeds which remain in their hands for want of applicants, having been first recorded; which deeds so returned, shall be preserved in the office, until the parties or their representatives require the same.

And be it further ordained, That three townships adjacent to lake Erie be reserved, to be hereafter disposed of in Congress, for the use of the officers, men, and others, refugees from Canada, and the refugees from Nova Scotia, who are or may be entitled to grants of land under resolutions of Congress now existing or which may hereafter be made respecting them, and for such other purposes as Congress may hereafter direct.

And be it further ordained, That the towns of Gnadenhutten, Schoerbrun and Salem, on the Muskingum, and so much of the lands adjoining to the said towns, with the buildings and improvements thereon, shall be reserved for the sole use of the Christian Indians, who were formerly settled there, or the remains of that society, as may in the judgment of the geographer, be sufficient for them to cultivate.

Saving and reserving always, to all officers and soldiers entitled to lands on the northwest side of the Ohio, by donation or bounty from the commonwealth of Virginia, and to all persons claiming under them, all rights to which they are so entitled, under the deed of cession executed by the delegates for the state of Virginia on the first day of March, 1784, and the act of Congress accepting the same: and to the end, that the said rights may be fully and effectually secured, according to the true intent and meaning of the said deed of cession and act aforesaid, Be it ordained, that no part of the land included between the rivers called Little Miami and Scioto, on the northwest side of the river Ohio, be sold, or in any manner alienated, until there shall first have been laid off and appropriated for the said officers and soldiers, and persons claiming under them, the lands they are entitled to, agreeably to the said deed of cession and act of Congress accepting the same.

Done by the United States in Congress assembled, the 20th day of May, in the year of our Lord, 1785, and of our sovereignty and independence the ninth.

RICHARD H. LEE, *President,*

Jour. Am. Cong. v. IV, 520-21, or  
Land Laws, Part 1, Chap. 14.

CHARLES THOMPSON, *Secretary.*

## APPENDIX B

### POWERS TO THE BOARD OF TREASURY TO CONTRACT FOR THE SALE OF WESTERN TERRITORY

The report of a committee, consisting of Mr. Carrington, Mr. King, Mr. Dane, Mr. Madison, and Mr. Benson, amended to read as follows, viz:

That the Board of Treasury be authorized and empowered to contract with any person or persons for a grant of a tract of land which shall be bounded by the Ohio, from the mouth of the Scioto to the intersection of the western boun-

dary of the seventh range of townships now surveying; thence, by the said boundary to the northern boundary of the tenth township from the Ohio; thence, by a due west line, to the Scioto; thence, by the Scioto, to the beginning upon the following terms, viz: The tract to be surveyed, and its contents ascertained, by the geographer or some other officer of the United States, who shall plainly mark the said east and west line, and shall render one complete plat to the Board of Treasury, and another to the purchaser or purchasers.

The purchaser or purchasers, within seven years from the completion of this work, to lay off the whole tract, at their own expense, into townships and fractional parts of townships, and to divide the same into lots, according to the land ordinance of the 20th of May, 1785; complete returns whereof to be made to the Treasury Board. The lot No. 16, in each township or fractional part of a township, to be given perpetually for the purposes contained in the said ordinance. The lot No. 29, in each township or fractional part of a township, to be given perpetually for the purposes of religion. The lots Nos. 8, 11, and 26, in each township or fractional part of a township, to be reserved for the future disposition of Congress. Not more than two complete townships to be given perpetually for the purposes of a University, to be laid off by the purchaser or purchasers, as near the center as may be, so that the same shall be of good land, to be applied to the intended object by the legislature of the State. The price to be not less than one dollar per acre for the contents of the said tract, excepting the reservations and gifts aforesaid, payable in specie, loan-office certificates reduced to specie value, or certificates of liquidated debts of the United States, liable to a reduction by an allowance for bad land, and all incidental charges and circumstances whatever: Provided, That such allowance shall not exceed, in the whole, one-third of a dollar per acre. And in making payment the principal only of the said certificates shall be admitted; and the Board of Treasury, for such interest as may be due on the certificates rendered in payment as aforesaid, prior to January 1, 1786, shall issue indents for interest to the possessors, which shall be receivable in payment as other indents for interest of the existing requisitions of Congress; and for such interest as may be due on the said certificates between that period and the period of payment, the said board shall issue indents, the payment of which to be provided for in future requisitions, or otherwise. Such of the purchasers as may possess rights for bounties of land to the late army, to be permitted to render the same in discharge of the contract, acre for acre: Provided, That the aggregate of such rights shall not exceed one-seventh part of the land to be paid for: And provided also, That there shall be no future claim against the United States on account of the said rights. Not less than 500,000 dollars of the purchase-money to be paid down upon closing of the contract, and the remainder upon the completion of the work to be performed by the geographer or other officer on the part of the United States. Good and sufficient security to be given by the purchaser or purchasers for the completion of the contract on his or their part. The grant to be made upon the full payment of the consideration money, and a right of entry and occupancy to be acquired immediately for so much of the tract as shall be agreed upon between the Board of Treasury and the purchasers.

*Ordered*, That the above be referred to the Board of Treasury, to take order.

July 23, 1787.

Land Laws, Pt. 1. Chap. 21.

## APPENDIX C

CHARTER OF AMERICAN UNIVERSITY  
AS DRAFTED BY DR. M. CUTLER

Institutions for the liberal education of Youth being essential to the progress of Arts and Sciences, important to morals and religion, friendly to the peace, order, and prosperity of Society, and honorable to the Government which patronizes them; and Congress having made grants of lands for the encouragement and support of a *University*, for schools, and for the purposes of Religion, within the purchase made by the Ohio Company of Associates; Therefore:

Section I. Be it enacted by the General Assembly (here insert the style of the Assembly), That there be a University instituted and established, and forever to remain, within the limits of the tract of land purchased by the said Ohio Company of Associates, by the name of the *American University*, for the instruction of youth in all the various branches of the liberal Arts and Sciences, for the promotion of good education, piety, religion, and morality, and for conferring all the degrees and literary honors granted in similar institutions.

Sec. II. And be it further enacted, That there shall be in the said University, and forever to remain, a body politic by the name and style of the *Board of Trustees* of the *American University*, which Board of Trustees shall consist of the President and Vice-President of the University, ex officio, and of eleven Trustees, all of whom shall reside, while in office, within the limits of the purchase made by the said Ohio Company of Associates; to be appointed as hereafter provided.

Sec. III. And be it further enacted, That the said Board of Trustees shall have power and authority to elect a President, who shall preside in the University, and also a Vice-President, who shall preside in the absence of the President; and likewise to appoint Professors, Tutors, Instructors, and all such officers and servants in the University as they shall deem necessary for carrying into effect the design of this Institution; and shall have authority, from time to time, to determine and establish the name, number, and duties of all the officers and servants to be employed in the University, except wherein provision is otherwise made by their act; and may empower the President, or some other member of the Board, to administer such oaths as they shall appoint and determine for the well ordering and good government of the University.

Sec. IV. And be it further enacted, That the said Board of Trustees shall have power and authority from time to time to enact statutes and rules for the government of the said Board, not incompatible with the Government of the United States, or the state in which the University is founded; and shall have power and authority to suspend, dismiss, and disfranchise the President, Vice-President, or any member of the said Board, who shall, by his conduct, render himself unworthy of the office, station, or place he sustains; and said Board shall have power and authority to suspend, dismiss, disfranchise, and remove from the University, any officer or instructor (except the President and Vice-President), or any resident, student, or servant, whenever the said Board shall deem it expedient for the interest and honor of the University. And whenever the President, Vice-President, or any member of the Board of

Trustees, shall be removed by death, resignation, or otherwise, or whenever any member of the Board shall move his place of residence without the limits of the purchase of the Ohio Company of Associates, the said Board shall hold a meeting, and due notice of the design thereof shall be given to each member, for the purpose of supplying such vacancy; and there shall be not less than nine members present at the time of choosing a President, Vice-President, or member of the Board, and the choice shall be made by ballot; and the President shall, at all times, have the right of nominating to the Board, but not of appointing, his successor in office, except when he shall be removed for misdemeanor; and the said Board shall appoint a certain day for holding a public commencement, and such commencement shall be annually holden within or near the University, for the purpose of conferring such degrees and literary honors as are usually granted in similar institutions, at which time the Board of Trustees shall always be present; and the first commencement shall be holden as soon as, in the opinion of the Board, there shall be a sufficient number of students qualified to receive literary honors; and no degrees, or literary honors, shall be at any time given without the previous approbation of the Board of Trustees.

Sec. V. And be it further enacted, That the President, Vice-President, and such Professors, Tutors, or Instructors as the Board of Trustees shall appoint for that purpose, shall have power and authority, from time to time, to order, regulate, and establish the mode and course of education and instruction to be pursued in the University, and also to make, publish, and execute such a code of rules, regulations, and by-laws as they shall deem necessary for the well-ordering and good government of the University, and to repeal or amend any part thereof; provided, nevertheless, that all such rules, regulations, and by-laws, before they become valid, shall be examined and approved by the Board of Trustees. And the President, or, in his absence, the Vice-President or Senior Instructor, shall direct and cause to be holden in the said University, quarterly, in every year, a public examination, at which all the Professors and Instructors shall be present; and each class of the students shall be examined relative to the proficiency they have made in their particular arts, sciences, or branches of education in which they have been instructed.

Sec. VI. And be it further enacted, That the said Board of Trustees shall have one common seal, which shall be the seal of the University, under which shall be passed every Diploma, or certificate of Degrees, and the President, Vice-President, or Board of Trustees make use thereof in any writing or instrument which may concern the University, or be relative to the end and design of its institution, and the said Board shall have power to break, change, and renew the same at pleasure; and that they may sue and be sued in all actions, real, personal, and mixed, and prosecute and defend the same unto final judgment, by the name of the Board of Trustees of the American University.

Sec. VII. And be it further enacted, That the said Board of Trustees shall, forever hereafter, have power and authority to lease, let, rent, and improve, for the use of the University, all the lands contained in the townships number *eight* and number *nine*, in the *fourteenth* range of townships, within the purchase of the Ohio Company of Associates, being the two townships given "for the purpose of a University," by the Congress of the United States of America, by

a certain indenture executed on the twenty-seventh day of October, in the year one thousand seven hundred and eighty-seven, and confirmed by an act of Congress, entitled "an act authorizing the grant and conveyance of certain lands to the Ohio Company of Associates," passed in the year one thousand seven hundred and ninety-two, and also by *Letters Patent*, under the seal of the United States, granted to the Directors of the Ohio Company of Associates, dated the tenth day of May, in the aforesaid year; and the improvements, rent, and income thereof shall be applied for carrying into effect the designs of the said University, in such way and manner as the said Board of Trustees shall direct.

Sec. VIII. And be it further enacted, That the said Board of Trustees shall, forever hereafter, be deemed capable, in law, of having, holding, and taking in fee-simple, by purchase, gift, grant, devise, or otherwise, and of using and improving any lands, tenements, or other estate, real or personal, for the use of the said University; provided, that the annual income of such real estate shall not exceed forty thousand dollars, and the annual income or interest of such personal estate shall not exceed fifty thousand dollars, to be valued in silver at one hundred and ten cents by the ounce; and the annual income or interest of the said real or personal estate shall be applied for the benefit of the University in such way and manner as the Board of Trustees shall, from time to time, determine; and in case any donation shall be made for particular purposes, relative to the designs of this institution, and the Board of Trustees shall accept the same, every such donation shall be applied in conformity to the will of the Donor.

Sec. IX. And be it further enacted, That the Board of Trustees, or such person or persons as they shall appoint, shall have power and authority to let, lease, or cause to be improved, from time to time, the lots number sixteen, given by Congress for the use of schools, and the lots number twenty-nine, appropriated by Congress to the purposes of Religion, within the several townships granted to the Directors of the Ohio Company of Associates by *Letters Patent*, under the seal of the United States; and the inhabitants of each respective township shall have the exclusive right to the rents, income, or improvements arising from the lot number sixteen and the lot number twenty-nine, which are situate within their respective townships, to be appropriated agreeably to the intentions for which the said lots were respectively given; and the Board of Trustees shall pay, or cause to be paid without delay, the amount of the rents, or income of the lot number sixteen, as soon as such rents or income can be obtained, or, otherwise, shall appropriate the improvement thereof solely to the use and benefit of schools; and in like manner shall the profits, in any way or manner arising from the lot number twenty-nine, be solely appropriated to the purposes of Religion, and under such rules and regulations as the said Board shall establish for carrying into effect the design of the respective donations. And the said Board of Trustees shall, as speedily as may be, put, or cause the said lots to be put, into a state to be productive, by causing them to be rented, or otherwise improved, in such manner as the said Board shall judge will be most beneficial to the inhabitants of each respective township; provided, notwithstanding, that the rents or income of such lots as may be situate in townships where the profits arising therefrom can not, at the present time, be applied agreeably to the design of the donation, for the benefit of the inhabitants of such

townships within the said townships, the profits arising from the improvements thereof may be applied for promoting the instruction of youth and the purposes of Religion, respectively, where school instructors and religious teachers are actually employed, until the inhabitants of such townships can receive the benefit thereof, within their respective townships; and the said Board shall apportion such profits in such way and manner as, in their opinion, shall be most just and equitable to the inhabitants, and most conducive to promote the designs of the respective donations.

Sec. X. And be it further enacted, That A. B., C. D., E. F. (naming eleven) shall constitute the said Board of Trustees, for the time being, and until a President and Vice-President of the University shall be elected and enter into office; and that A. B. be, and he is hereby, authorized to appoint the time and place of holding the first meeting, and that he notify each member constituting the Board of Trustees to attend accordingly; and that, as soon as the said Board shall judge it expedient, a President and Vice-President, or either of them, shall be chosen in the manner before prescribed; and that, at all times, the President, or, in his absence, the Vice-President, or, in his absence, such member as the Board shall appoint, shall preside at the meetings of said Board of Trustees.

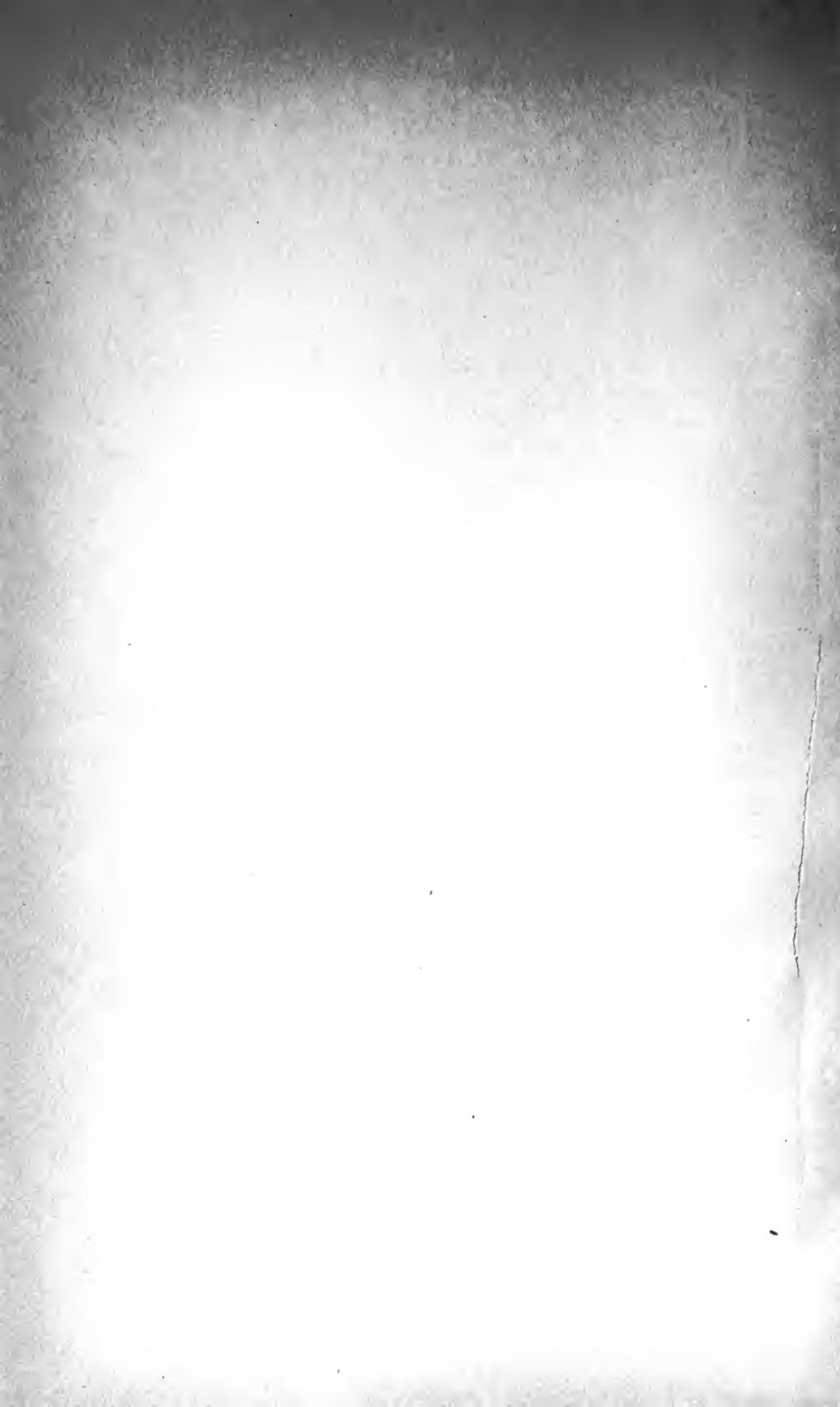
Cutler: *Life of Cutler*, II: pp. 22-27.

## VITA

HOWARD CROMWELL TAYLOR was born November 4, 1887, in Boone County, Missouri.

He attended Stephens College, Primary Department, Columbia, Missouri, 1893-1899; Stephens College, Preparatory Department, 1899-1902; University Military Academy, Columbia, Missouri, 1902-1903; University of Missouri, Columbia, Missouri, 1903-1904; Georgetown College, Georgetown, Kentucky, 1904-1907, receiving the A.B. degree in 1906 and the A.M. degree in 1907; University of Missouri, Graduate School, 1912-1914; Columbia University, Faculty of Philosophy, 1914-1915, receiving the A.M. degree in 1915.

He was clerk in the general offices of the Missouri Pacific-Iron Mountain and Southern Railway, St. Louis, Missouri, 1907-1909; principal of the Arcadia Heights School, Arcadia, Missouri, 1909-1912; teacher of history and government, University of Missouri, summer of 1914; teacher of history, East Carolina Teacher Training School, Greenville, North Carolina, summer of 1915; Professor of Education, Drury College, Springfield, Missouri, 1915-1916; Instructor in Educational Psychology, University of Missouri, 1916-1917; Dean of the College of the City of El Paso and Associate Professor in the College of Mines of the University of Texas, El Paso, Texas, 1917—.





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