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Creation of the first American Western Policy, 1783–1787

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CREATION OF THE FIRST AMERICAN WESTERN POLICY
1783-1787

By

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ABSTRACT

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Following the American Revolution, thousands of pioneers crossed the Appalachian mountains and settled in the trans-montane West. Because of the problems and needs created by this great migration, the American Confederation Congress from 1783 through 1787 had to compose a policy for the trans-Appalachian West. The purpose of this thesis is to survey and discuss the formulation of the land and Indian policies, diplomacy and territorial government ordinances that resulted in the first American western policy. The information contained in the following essays has been drawn from numerous secondary works on the subject, the personal correspondence of individuals who created western policy, the Letters of the Members of the Continental Congress, and the Journals of the Continental Congress.

The debate over western policy fit into the sectional division of Confederation political factions. Eastern Nationalists (Northeasterners who favored strengthening the federal government) were wary of westward expansion, and feared that new western states would lessen their political and economic supremacy. They favored limited migration, a humanitarian Indian policy, revenue-oriented land policy, temporary surrender of American navigation of the Mississippi River, and a colonial form of territorial government. The Southerners were more optimistic about westward expansion, and opposed this Eastern Nationalist view. The South expected political and economic benefits from new western states and therefore favored extensive westward migration, an expansionist Indian policy, liberal land sales provisions, navigation of the Mississippi River, and a democratic form of territorial government. From 1783-1784 the South held the upper hand, but with the rise of Nationalism (i.e., the movement to replace the Articles of Confederation with the Federal Constitution) and Southern adoption of the Nationalist program, Congress enacted the Eastern Nationalist western policy. The Land Ordinance of 1785, Indian Ordinance of 1786, Jay-Gardoqui Negotiations of 1785-87, and the Northwest Ordinance of 1787 are all essentially Eastern Nationalist legislation for the West. The rise of Nationalism and adoption of the Constitution were paralleled by adoption of the Eastern Nationalist western policy.

But in the long run, the Eastern Nationalist western policy was a failure. It did not conform to the realities of the frontier, or the desires of the Westerners. As the nation moved west during the nineteenth century, the Eastern Nationalist western policy was defeated, as were the men who had created it.
TABLE OF CONTENTS

ABSTRACT ................................................. ii
FRONTPIECE ............................................. iv

Chapter

I  INTRODUCTION ........................................ 1
II BEYOND THE ENDLESS MOUNTAINS ................ 12
IV INDIAN POLICY IN THE CONFEDERATION CONGRESS . 58
V SALES OF THE PUBLIC LANDS ....................... 107
VI THE MISSISSIPPI RIVER DEBATE ................. 177
VII CREATION OF THE AMERICAN COLONIAL SYSTEM: THE NORTHWEST ORDINANCE OF 1787 ................... 213
VIII CONCLUSION: THE RELUCTANT EXPANSIONISTS . 264
EPILOGUE: THE FEDERALIST PARTY AND THE WEST, 1789-1803 ........................................ 277

BIBLIOGRAPHY .......................................... 298
When the states on the eastern shores . . . shall have become populous, rich, and luxurious, and ready to yield their liberties into the hands of a tyrant, the gods of the mountains will save us, for they will be stronger than the gods of the valleys. Astraea will take her flight from the tops of the Allegheny when she leaves the New World.

David Howell to Jonathan Arnold, 1784

The emigrants to the frontier lands . . . are the least worthy subjects in the United States. They are little less savage than the Indians; and when possessed of the most fertile spots, for want of Industry, live miserably.

Timothy Pickering to Rufus King, 1785*

CHAPTER I

INTRODUCTION

The old myth that the Confederation Congress was an impotent body that did nothing but squabble, and that the Confederation era was one of chaos and anarchy resolved by the Constitutional Convention, has been effectively challenged by several historians. Merrill Jensen issued the first rebuttal of this "Critical Period" school of Confederation history in the 1930s and '40s.1 More recently Herbert James Henderson has argued that "to construe the history of the Continental Congress as a kind of confused journey toward the Convention of 1787 is anachronistic. . . . In actuality, the Continental Congress was primarily a revolutionary legislature, and in this context its record was strikingly successful."2 Indeed, the Confederation Congress's list of successes is quite impressive. It


3The American Congress of 1776 to 1787 is usually called the "Continental Congress" up until about 1783, and the "Confederation Congress" thereafter--although both terms are often
declared American independence, administered the Revolutionary War and Continental Army, framed the alliance with France, and, after winning the war, negotiated the Treaty of Paris of 1783. The list of domestic achievements following the war is also impressive, and is of fundamental importance in the following essays. For one of the greatest achievements of the Confederation Congress was the creation of the first American western policy.\(^4\)

Organization of the West was a major preoccupation of Congress during the 1780s. As the Confederation Congress attempted to devise a land policy, regulate Indian affairs, engage in diplomatic negotiations over the West, and institute territorial government in the trans-Appalachian region, disagreements and differences of opinion arose. These differences led to the formation of rudimentary political factions which held opposing attitudes towards development of the West. Although there are exceptions, the following generalizations are applicable to Congressional factionalism over the West in the 1780s. The opposing sides of western questions usually coalesced regionally, with the Easterners opposing Southerners. At the same time, this sectional division contained ideological implications. Most of the Easterners who took a stand on the West were Nationalists interchanged. Since these essays are confined to the 1783-87 period, "Confederation Congress" will be used.

or centralists, while their Southern opposition attracted some Southern Nationalists and enjoyed the support of many Antifederalists in Congress.  

During the 1783-84 period the Southern coalition held the upper hand. This development coincided with an overall decline in Nationalist strength in Congress. Thomas Jefferson of Virginia, Hugh Williamson of North Carolina, and Antifederalist David Howell of Rhode Island joined with others, mostly Southern, to formulate a national western policy. These men looked with hope to the West, and shared what Henderson has termed "optimistic expectations of western innocence and regeneration." Moreover, they anticipated political and economic benefits to accompany admission of new western states. Southerners looked forward to economic and political allies in the trans-Appalachian frontier, and Antifederalists like Howell believed western congressmen

5The terms "Easterner," "Southerner," "Nationalist," and "Antifederalist" will be discussed throughout these essays. For the "Eastern-Southern" dichotomy in the Confederation Congress, see Henderson, Party Politics and footnote #7 below. "Easterner" is used here instead of "Northerners" because it is the term used by most in the 1780s. The "Nationalists" of the 1780s are defined in Jensen, New Nation, xiii, xiv, 425. "Nationalists" were those who favored increasing the power of the central government at the expense of the states. The Nationalists wanted to replace the Articles of Confederation and, in 1787, pushed for ratification of the Constitution. The terms "centralist" and "Federalist" are modern-day synonyms for "Nationalist." "Antifederalists" is used in these essays to describe those states' righters who opposed a strong national government. Actually these men referred to themselves as "Federalists." See Jackson Turner Main, The Antifederalists, Critics of the Constitution (New York, 1961), vii, xii. But to avoid confusion, I will use the term which has been given to them by others.
would help thwart the centralist tenets of the Nationalists.
After the creation of the National Domain, the Southerners
drafted the Land Ordinance of 1784, and secured passage of
Jefferson's territorial government Ordinance of 1784. Thus
by the Spring of 1784, it appeared as though the Southern
coalition had successfully laid the foundations for Ameri­
can western policy. But their ascendency did not last for
long.

As the centralist impulse increased in the 1780s, a new
group of men became the architects of American western
policy. Men such as Rufus King, Nathan Dane, Gouverneur
Morris, Arthur St. Clair, George Washington, Edward Carrington,
Henry Knox, James Duane, John Jay, William Samuel John­
son, and Timothy Pickering were all instrumental in the
creation of the first American western policy. While not
solely responsible, these men held the key committee member­
ships and chairmanships, advisory positions, and Confedera­
tion cabinet posts instrumental in formulating policy for
the trans-Appalachian frontier. These men share common
characteristics. With the exception of Washington and
Carrington,\(^6\) they were all Northeasterners--residing in the
Middle and New England states. They all belonged to what

\(^6\)Washington and Carrington were both Virginia Nationalists,
and shared much in common with their political allies to the
North. Washington's attitudes towards the West provide a
classic example of a Southerner who advocated the Colonial
"New England" mode of expansion in the 1780s. See Chapter 5
below. It is no coincidence that the Federalist Party of the
1790s, a political movement with a New England nucleus, had
a Southerner, George Washington, as its leader.
Henderson calls the "Eastern" party of Confederation politics. Ideologically, they were all conservatives and Nationalists—they advocated order and stability through a strong, centralized National government. Every one of these men favored the Federal Constitution in 1787, and each of them went on to become prominent members of the Federalist Party. In the following essays I will refer to them as Northerners, Easterners, Northeasterners, New Englanders, and Nationalists—but perhaps the most appropriate term comes from combining the findings of Henderson and Jensen: these men were Eastern Nationalists.

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7 Henderson, Party Politics, pp. 5-6: "What will be referred to as the 'Eastern bloc' or 'party' can be discerned in voting patterns during the entire history of Congress... Predictably, congressional parties were primarily regional... Between 1784 and 1787 intersectional alliances were less structured at first and then became increasingly polarized along a North-South fault that had been implicit in the partisan politics of Congress from the outset of the Revolution."

8 For the "Nationalists," see footnote #5 above, and Jensen, New Nation, xiii-iv, 425.

9 I have identified these Eastern Nationalists in Congressional roll-call votes by referring to the extensive charts and graphs in Henderson, Party Politics. Perhaps the most valuable source was Appendix II, "Federalist Leaders, 1800-1816" in David Hackett Fischer, The Revolution of American Conservatism, The Federal Party in the Era of Jeffersonian Democracy (New York, 1965), pp. 227-412. Fischer's appendix contains short biographies of approximately 240 Federalists, including much valuable information concerning their status in the 1780s, and their stand on the Federal Constitution of 1787. Other sources used in identifying Nationalists are Gordon S. Wood, Creation of the American Republic (Chapel Hill, 1969) and Jensen, New Nation.
The Eastern Nationalists shared common attitudes towards the West and westward expansion. In the wake of the failure of fiscal centralism (Robert Morris' impost proposal in 1781), most Nationalists looked to the West as a viable means of national consolidation. They hoped National supervision of the West would bring prestige, revenue, and power to the central government. But if these motivations made most Eastern Nationalists expansionists, they were at the same time very reluctant expansionists. Indeed, the Eastern Nationalists were not nearly as optimistic about westward migration as their Southern opponents. Most Easterners distrusted the "lawless Banditti" of the West and feared new western states would inevitably decrease the economic and political power of the Northeast. Some Easterners were avowed constrictionists, and opposed all expansion. Yet most took a more pragmatic view. They considered westward migration to be inevitable, and planned a carefully controlled and regulated expansion that would enhance the power and prestige of the central government. The Eastern Nationalists proposed a corporate mode of expansion quite similar to the "New England" system of colonial settlement. The Easterners advocated a slow, well-organized westward advance closely supervised by the national government. As the Massachusetts delegates wrote Governor Hancock:

It has been a question, with the Eastern Delegates especially, whether peopling those new regions with emigrants from the old States, may not, in one point of view, be a disadvantage
to them. But it has been found, that these new lands are very inviting to settlers, and that, if not regularly disposed of and governed by the Union, they will in a very few years, probably be seised upon and settled in an irregular manner, and perhaps at no less expence to Inhabitants of the old States. Considering these circumstances, the advantages of regular settlements, of lessening, the public debt and military expences on the frontier, and of keeping, by such settlements, that Country more effectually connected with the Union, Congress have been induced to adopt measures to establish Government, etc., there. . .

10 For the role of the West in Nationalist strategy, see Henderson, Party Politics, p. 377: "There were two avenues toward National consolidation during the mid-eighties. One was the regulation of commerce and the other was the regulation of the West." For Eastern antipathy towards the West, see ibid., p. 409: The new attitudes toward western government were "the afterthought of the optimistic expectations of western innocence and regeneration of the Republic earlier articulated by Jefferson and Howell. Consequently, there developed a movement in Congress to subdue the western threat by tightening congressional control over the Northwest and by reducing the number of possible states and making their admission more difficult." . . . Not all members of Congress during the succeeding years subscribed to such liberal management of the turbulent west (as the Ordinance of 1784) however. In addition to the constrictionist tendencies of members representing the Atlantic seaboard, manifested in both the Northern stance during the Jay-Gardoqui negotiations and the Potomac-Chesapeake geo-politics of Virginians such as Henry Lee, there was a pervasive fear in the seaboard states that migrants to the West were at best castoffs and at worst disloyal people from the East. That the frontier should have been a scene of violence, litigation, and rumored sedition confirmed more than created the fears of the East. It was only natural that New Englanders were the most alarmed about the West and least sympathetic with the plight of its "lawless Banditti which forms the Law of those Settlements. . . ."
Also, ibid., p. 369: "Some Congressmen, particularly New Englanders, strongly favored the development of compact settlements in order to create communities that could be given stability and coherence through early establishment of schools and churches. This view, especially when reinforced by provisions reserving land in each township for the support of education and religion, was opposed by libertarians who
Throughout the 1784-87 period the Eastern Nationalists worked to implement their western program. They advocated a humanitarian Indian policy, and a revenue-oriented land sales program. They tried to appease Spain with offers to surrender American navigation of the Mississippi for twenty to twenty-five years, and they proposed to institute a strong colonial territorial government in the trans-Appalachian West. Nearly all of their efforts were opposed by Howell, and a Southern coalition led by Jefferson, James Monroe, William Grayson, Hugh Williamson, and Charles Pinckney. As time passed, the opposition decreased for objected to such corporate arrangements. The advocates of rapid expansion for revenue often joined forces for different reasons. Libertarians who favored a minimum of restraint might find common cause with speculators who wanted a free hand to exploit the land."

One cannot state that the opposition to the Northeasterners was overwhelmingly Antifederalist, but note that half the opponents of the Eastern mode of expansion were also Antifederalist leaders, i.e., Howell, Grayson, and Monroe. While the Antifederalist and "States' rights" position seems conducive to a less restrained mode of westward migration, there is no consistent Antifederalist position on the subject. One problem is that the Antifederalists were much more concerned with thwarting the Nationalist movement in Congress than with the West. At the same time some Antifederalist leaders, such as Elbridge Gerry and Richard Henry Lee, thoroughly supported the Nationalist western policy. Problems arise when one tries to find a consistent Libertarian strain among Antifederalists, especially the leaders. As Staughton Lynd and Jackson Turner Main have pointed out, the background and motivations of Antifederalist leaders were often far different from those of their following among the general populace. See Jackson Turner Main, *The Antifederalists Critics of the Constitution*, pp. x-xi.
several reasons. Most Southerners, especially the Virginians, were so anxious to see new western states enter the Union that they were willing to compromise over western policy to secure that end. They bargained in the belief that any expansion was better than none. The classic example of this Southern "geo-political" strategy\textsuperscript{12} was when, in 1785, the Southerners accepted a modified "New England" mode of land sales in the Land Ordinance of 1785. But this agreement did not last for long. The Jay-Gardoqui negotiations of 1786 again split Congress right down the middle over the western question. In the final analysis, it was the rise of Southern Nationalism, particularly in Virginia, that won acceptance of the Eastern Nationalist western policy. The controversy over the West was settled in the "Compromise of 1787"\textsuperscript{13} between Eastern and Southern Nationalists meeting concurrently in the Constitutional Convention and the Confederation Congress. Thus the victory of the Eastern Nationalist western policy is a window through which one can view the overall Nationalist victory in 1787. It is no coincidence that the Federal Constitution and the Northwest Ordinance were both drafted in the summer of 1787. One was directly related to the other. Indeed, the whole western question was a catalyst for the rise of Nationalism.

\textsuperscript{12} For the Southern "geo-political strategy" see Henderson, \textit{Party Politics}, p. 415.

\textsuperscript{13} For the "Compromise of 1787," see Chapter 7, below.
Before proceeding, something must be said of the use of the term "conservative" in the following essays. A premise of these essays is that the Nationalists, and more particularly the Eastern Nationalists, were the "conservatives" of the Confederation era. Many will disagree with this analysis, but such disagreements are nothing new. The leaders of America in the 1780s themselves could not agree as to who was "conservative" and who was "radical," "liberal," or "Revolutionary." Both Antifederalists and Nationalists claimed to be the sole heirs of the American radical Revolutionary ideology. The 'proper' designation depended upon how one interpreted that Revolutionary ideology—a most debatable subject, to be sure. Thus, it is only natural that disagreements continue today, especially among historians. The interpretation of Antifederalist and Nationalist ideology as either radical or conservative is purely subjective.

As stated, the West is a good window through which one

14 Jensen and Main, for example, contend that the Nationalists were "conservatives" because they tried to temper the liberal-democratic aspects of Revolutionary ideology. In promoting the Constitution, they sought order, stability, and security—the age-old goals of all conservatives. Jensen's view is questioned by Gordon S. Wood, The Creation of the American Republic, 1776-1787, who considers the "Federalists" as the true radicals of the 1780s. For the dispute today over the nature of Confederation politics in the 1780s, see Richard B. Morris, "The Confederation Period and the American Historian," The William and Mary Quarterly, 3rd series (1956):139-56.
can view the Eastern Nationalist social and political philosophy. The Northeasterners feared the West. They disliked the lowly sort of people who were settling the trans-Appalachian frontier and feared grave political reversals should they be granted the vote. They believed westward migration would somehow upset their section's economic supremacy. To salve their fears, the Eastern Nationalists sought to slow settlement and delay western growth through a tightly controlled, forceful national western policy. Perhaps 'control' is a key word here. The conservatives' answer to the western problem, as with so many other problems, was control: centralization of authority in a powerful national government. The conservatives who wrote the Federal Constitution believed the ends of society could best be achieved by a government that exercised greater control over men's lives. The unpopularity of Eastern Nationalist beliefs became increasingly obvious, and led to the extinction of the Federalist party. The decline of the Federalists was paralleled by a repudiation of the Eastern Nationalist western policy. The centralist impulse, of course, did not die with the Federalists. It has been refined over the past two centuries and enjoys more support today than ever before. Indeed, the centralist impulse is part and parcel of the American political tradition. It is debatable, however, whether the centralist impulse is at all related to the radical political tradition of the American Revolution.
CHAPTER II

BEYOND THE ENDLESS MOUNTAINS

Cheer up, brother, as we go
O'er the mountains, westward ho
Where herds of deer and buffalo
Furnish the fare

Then o'er the hills in legions boys
Fair freedom's star
Points to the sunset region, boys
Ha, ha, ha-ha!

When we've wood and prairie land
Won by our toil
We'll reign like Kings in fairy-land
Lords of the soil!

The Scotch-Irish pioneers of western Pennsylvania and Virginia called the Allegheny Mountains and the northern Appalachians the "Endless Mountains." If there was an end to these mountain ranges, very few white men in the mid-eighteenth century had seen it, or knew what lay beyond. The unknown land was rich and green. Much of the "Old Northwest" was shaded by oaks and a variety of deciduous trees, while near the Great Lakes there lay a great pine wilderness. Throughout all of this country was interwoven open spaces of deep black soil and rich prairie land. Farther south lay

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1Quoted in John D. Barnhart, Valley of Democracy, The Frontier Versus the Plantation in the Ohio Valley, 1775-1818 (Bloomington, 1953), p. 34.
Kentucky, Tennessee, and the frontier of the trans-Appalachian Southwest. Kentucky was a lush, rolling country covered by forest and meadows, with cane ten to twelve feet high and buffalo grass and clover. Wildlife was plentiful. There were flocks of turkeys, partridges, and pheasants; squirrels, raccoons, opossums, deer, bears, elk, and, until the 1790s, herds of buffalo. Through the heart of the trans-Appalachian West flowed the "Beautiful River," the Ohio, stretching for over a thousand miles until it entered the great Mississippi. Indian tribes inhabited the banks of the Ohio or settled in the forests and valleys of the West. In the North were tribes that spoke the Algonquin tongue--the Wyandots, Delaware, Chippewa, and Shawnee nations of the Ohio Valley. The Cherokee, Choctaw, Creek, and Crow tribes built their unique societies in the Old Southwest. For hundreds of years, the Indians, northern and southern, had the trans-Appalachian West all to themselves. They fished, hunted, and roamed in relative solitude. But the middle eighteenth century brought change. White men from the Eastern seaboard began to penetrate beyond the "Endless Mountains."^2

The first white men to see the Mississippi Valley were early French and Spanish explorers--DeSoto, Marquette, and LaSalle. The French and Spanish each built several outposts

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in the Valley in the seventeenth and eighteenth centuries, but their preoccupations were trapping and trading, and the Indians were not greatly affected by their presence. The British entrance, however, radically changed the history of the trans-Appalachian West. By mid-century, and especially after the French and Indian War, stories had begun to circulate in the thirteen American colonies about the rich lands beyond the mountains. Men like George Washington became involved in land speculation schemes, and the Vandalia, Illinois, Indiana, and Wabash land companies were founded in the 1760s and 1770s. Daniel Boone himself was a scout for the land companies. By the late sixties and seventies, a steady stream of actual settlers was crossing the Appalachians and settling in the Bluegrass region of Kentucky. The British colonial administrators in America were appalled. The new settlements were illegal (since all of the pioneers were squatters) and they contradicted the claims of the various land companies. Much worse, they antagonized the western Indian tribes, whose friendship the British were cultivating. Thus the British western policy, starting with the Proclamation of 1763 (which forbade settlement beyond the Appalachians), was avowedly constrictionist. The settlers could not have cared less. As Lord Dunmore, the Royal Governor of Virginia, observed in 1774, British efforts to halt expansion were, insufficient to restrain the Americans; and that they do and will remove as their avidity and restlessness incite them. They . . . for ever imagine the Lands further off are still
better than those upon which they are already Settled. . . proclamations have been published from time to time to restrain them: But . . . they do not conceive that Government has any right to forbid their taking possession of a vast tract of country.

Americans continued to migrate, the British notwithstanding. As I. R. Christie has shown, American opposition to British western policy was one of the several grievances that led to the Declaration of Independence in 1776.\(^3\)

Settlement slowed during the Revolutionary War and then resumed, with increased vigor, following the Treaty of Paris of 1783. This was the beginning of what became the "Great Migration" of the early nineteenth century. Who were the settlers who intended to tame the Appalachian wilderness?

During these early years they were, for the most part, men and women of the upland South--North Carolina, Virginia, and southwestern Pennsylvania. Many were English, Scotch-Irish, and German immigrants who had settled the frontiers of the original colonies. To journey farther west seemed a natural progression. They migrated for a number of reasons, most of which boil down to dissatisfaction with their lives on the seaboard. Some left for religious reasons, or to escape the law, taxes, and creditors. All of them were restless, bored, and wanted to improve their station in life. They wanted good land, and the rights and privileges that came with it.

\(^3\) For the West from 1763 to 1776, see Francis S. Philbrick, The Rise of the West, 1754-1830 (New York, 1965), pp. 1-52; Lord Dunmore in ibid., p. 353; and I. R. Christie, Crisis of Empire: Great Britain and the American Colonies, 1754-1783 (New York, 1966).
And there was plenty of land in the West. 4

There were several routes over the Appalachian Mountains. Many of the Scotch-Irish moved south, down the "Great Valley" of the Appalachians. They either settled in western Virginia or North Carolina, or moved overland into Kentucky and Tennessee. The Wilderness Road, blazed by Daniel Boone in 1775, led into Kentucky. Settlers would start in North Carolina, travel the Holston River through the Powell Valley and on to the Cumberland Gap. From there the Wilderness Trail led them to the Bluegrass country. On this road it was "hardly possible for a carriage to pass," according to one traveler. And another described it as the "longest, blackest, hardest road" in America. One other southern route, this one leading to Tennessee, appeared with the opening of the Natchez Trace in 1788. But for most of the travelers, the goal was the Ohio—or some other navigable river to take them West. Virginians went up the Potomac and took the Cumberland Road across southwest Pennsylvania. Once at Pittsburgh they could journey down the Ohio to Kentucky. The most popular route of all was Forbes Road—the old French and Indian War military road that went from Philadelphia, over the Alleghenies, to Pittsburgh, Pennsylvania. From there one could take the Ohio River to

The Trans-Appalachian West, from John D. Barnhart, *Valley of Democracy*. 
All of the pioneers of the 1780s needed transportation for their families and supplies. Morris Birbeck, an early western chronicler, wrote, "a cart and single horse frequently afford the means of transfer, sometimes a horse and pack saddle. Often the poor pilgrim bears all his effects and his wife follows, naked footed, bending under the hopes of the family." But wagons were abundant and cheap; by 1790 the design of the "conestoga" wagon was perfected. Thus there were many of these vehicles "so light you might almost carry it, yet strong enough to bear a good load of bedding, utensils,

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5Philbrick, Rise of the West, pp. 82, 303-306.
and provisions, and a swarm of young children," heading over the mountain passes. Whatever the route or means of over-
land transportation, most were headed for the Ohio, and once they reached it the mode of passage changed to one of any number of river craft. Birchbark canoes, pirogues or "dug-
outs," and batteaus (an extra-large and sturdy canoe) were common, but the most popular river craft by far were arks, keelboats, and "flatboats." A flatboat was a large, bulky floating box made out of rough wood. The flatboats had enough space for a living quarters, small kitchen, and storage room for household goods and even livestock. They cost from fifty to a hundred dollars to build and could be torn apart for use at journey's end. May through September was "flatboat season" on the Ohio, and in good weather the trip from Pittsburgh to Louisville, Kentucky took seven to ten days.6

Most settlement during the 1780s was south of the Ohio--in Kentucky, that "new and beautiful country of canes and turkeys." Settlement via the Ohio River and the Wilderness Road resulted in a total population of around twenty to thirty-five thousand in 1785. Harrodsburgh and Boonesborough, both founded in 1775, were joined in the 1780s by a number of new towns, including Louisville and Lexington. To the south,

the Tennessee country experienced considerable growth in the eastern river valleys and on the Cumberland River, near Nashville. Wautauga, founded by James Robertson in the late 1760s, was joined in 1783 by the self-proclaimed "state" of Franklin. Land speculations by Robertson, William Blount, John Sevier, and other North Carolinians spurred settlement of that region. Georgia boasted a population of 75,000, but expansion into Alabama was slowed by the strong Spanish presence, as well as Indian opposition. The country was fertile, however, and Americans had already probed as far as Natchez, Mississippi.7

All of this southern settlement is often contrasted with the relatively slow advance in the "Old Northwest" during the 1780s. Confederation western policy and strong Indian resistance both served to limit settlement north of the Ohio. Yet even there the white presence grew. The British occupied their northwest posts, and French settlements in the region included Detroit, Prairie DuChien, Kaskaskia, and Vincennes. American trappers and traders frequented the region (as had American militiamen during the Revolution), and the Ohio River traffic bordered the Old Northwest. Moreover, squatters were daily crossing the Ohio, avoiding federal troops, settling on lands, and fighting the Indians. And thousands more were poised and ready to join them. Thus, the entire trans-

7Horsman, Formative Years, pp. 2-3, 9; Philbrick, Rise of the West, pp. 80-91, 316; Roosevelt, Winning of the West, p. 144.
Appalachian West was alive with activity in the 1780s. It seemed to many "as if the old states would depopulate, and the inhabitants be transplanted in the new." Some indication of the extent of the migration is the amount of river traffic. Between 1786 and 1788, some 16,000 settlers in over 800 boats passed Pittsburgh on their way south. The monthly average of people migrating rose from 384 in March of 1787 to 1,053 in June of 1788. The 1790 national census showed 73,000 inhabitants in Kentucky and 35,000 in Tennessee. To the north, western Pennsylvania numbered 52,000 and the Old Northwest contained 5,000 with the number climbing daily. Indeed, some 250,000 Americans had made new homes west of the Appalachian watershed in the 1780s. As Morris Birbeck observed,

Old America seems to be breaking up, and moving westward. We are seldom out of sight, as we travel on this grand track towards the Ohio, of family groups, behind and before us. . . . Add to these the numerous stages loaded to the utmost, and the innumerable travelers on horseback, on foot, and in light wagons, and you have before you a scene of bustle and business extending over three hundred miles, which is truly wonderful.  

Meanwhile on the eastern seaboard, the Confederation Congress watched these developments with interest and concern. Nearly everyone agreed that the national government would have to play some kind of role in regulating this great westward

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8 Horsman, Formative Years, pp. 5, 30-37; Barnhart, Valley of Democracy, pp. 38, 40, 44; Philbrick, Rise of the West, pp. 81, 90-91; Morris Birbeck in ibid., p. 310. Birbeck's observations were recorded in the early nineteenth century while traveling from Philadelphia over Braddock's Road.
surge. Congress would have to create a public domain, devise a method for surveying and selling public lands, formulate an Indian policy, and engage in diplomatic negotiations with the Spanish in the Old Southwest. Most important, Congress would have to devise some form of territorial government so as to establish the rule of law in the trans-Appalachian West. Nearly everyone in Congress agreed these measures were necessary, but agreement ended there. Great differences of opinion over western policy divided the members of the Confederation Congress. Many had opposing ideas as to what form the westward movement ought to take. These differences of opinion and ideas were frequently debated during the period from 1783 to 1787, when the Confederation Congress created the first American western policy.
CHAPTER III

CREATION OF THE NATIONAL DOMAIN: THE VIRGINIA
CESSION AND THE ORDINANCE OF 1784

There are at present many great objects before Congress; but none of more importance, or which engage my attention more than that of the Western country. . . . The Western world opens an amazing prospect as a national fund, in my opinion; it is equal to our debt. As a source of future population and strength, it is a guarantee to our independence. As its inhabitants will be mostly cultivators of the soil, republicanism looks to them as its guardian.

David Howell of Rhode Island, 1784

The heavy westward migration following the Revolution created many new problems for the Confederation Congress. But Congress could not act until it gained legal jurisdiction over the trans-montane West--Congress needed legal title to a truly National Domain. The major roadblock to creation of the National Domain was opposition from some of the thirteen states. Several states, the most important of which was Virginia, laid claim to portions of the trans-Appalachian West. They claimed jurisdiction over those areas, and refused to cede them until Congress met certain conditions. Thus the issue of the state land cessions and

creation of the National Domain is a natural starting point in an investigation of American western policy. Congress could not sell lands, negotiate with the Indians and Spanish, or establish territorial governments in the West until the National Domain came into being.

This chapter will focus on two important events in the creation of the National Domain and western policy: The Virginia land cession and the territorial government Ordinance of 1784. Congress discussed these two matters during the early 1780s and engaged in partisan debate. "Landed" states opposed "landless" states and agricultural interests opposed land speculators. Politically, the debate in Congress was between a Southern-Antifederalist coalition and Eastern Nationalists and Maryland land speculators. Men like Thomas Jefferson and David Howell believed the National Domain should exclude land speculators, and that territorial government should be democratic. Eastern Nationalists and their allies wanted a policy favorable to land speculators and a strong, federally controlled territorial government. This basic division is indicative of a South vs. East regional split over western policy that continued throughout the 1780s and the early national period.

1784 was an ebb year for the Eastern Nationalists. Failure of Morris' impost and fiscal centralism left their party in disarray. The weakness of the Nationalists was furthered by the western question and land cession debates,
which split the party into Northeastern and Southern factions.\textsuperscript{2} Thus, when Thomas Jefferson came to serve in Congress in 1784, that body was quite receptive to his liberal program for westward expansion. The decline of Nationalist strength and the influence of Jefferson combined to discourage land speculators and secure passage of the Virginia land cession in 1784. Moreover, Jefferson, Howell, and others were able to draft a remarkably democratic form of territorial government for the trans-Appalachian West—the Ordinance of 1784.

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Richard Henry Lee to Samuel Adams, 1784\textsuperscript{3}
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The state land cessions, of which the Virginia cession of the Old Northwest is the most important, are highly com-

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\item \textsuperscript{3}Quoted in Merrill Jensen, "The Creation of the National Domain, 1781-1784," \textit{Mississippi Valley Historical Review}, XXVI (December 1939): 326.
\end{itemize}
complicated affairs that span the entire Revolutionary era. The purpose here is to make some sense out of the complicated series of events that led to the creation of the National Domain on March 1, 1784. The land cession controversy paralleled the Revolutionary War and was a thorn in the side of the wartime Congress. The events surrounding the cessions can be divided into two chronological periods: (1) from the outbreak of the Revolution to 1781, when Virginia's first cession was rejected by Congress; and (2) from Spring of 1781 until March 1, 1784, when Congress finally approved the Virginia cession. Several themes that run throughout the debates are the conflicting claims of Virginia, Massachusetts, Connecticut, and New York to the Ohio Valley; insistence of the "landless" states (Maryland, New Jersey, and Pennsylvania) that the Ohio country be ceded for the common benefit of all members of the Confederation; efforts of American land-jobbers and speculators (most of them from the "landless" states) to influence Congressional policy; the counter-efforts of Virginians and other Southerners to

4 Although Congress accepted Virginia's cession on March 1, 1784, the cession was later revised and resubmitted. This followed the Monroe committee recommendation that the Old Northwest be divided into "no more than five and no less than three" new states. Since this proposed division contradicted the original Virginia cession (which called for numerous small states in the trans-Appalachian West), it had to be redrafted and accepted once again. See Chapter 7 below. The heated debates over the Virginia cession, however, occurred during the 1776-1783 period.
secure a liberal western policy; the effect all of this had in delaying ratification of the Articles of Confederation and formation of a national western policy; the importance of the cessions debate in the Northeast-South dichotomy in national politics; and the role of the debate over the West in the evolution of a Nationalist movement in the Confederation Congress. Only with all these factors in mind can one embark on an investigation of the Virginia cession and the creation of the National Domain.\(^5\)

When the Americans declared themselves independent in 1776, four of the thirteen new states claimed portions of the Old Northwest.\(^6\) Virginia, Massachusetts, and Connecticut all claimed overlapping portions of the Ohio country according to the terms of their colonial charters, while New York based a claim in the same region on a dubious purchase from the Iroquois Confederation. These four states are known as the


\(^6\)North Carolina, South Carolina, and Georgia all claimed portions of the Old Southwest territory, but the main focus of this essay (and other essays in this thesis) will be the Old Northwest. Because the Southern states refused to cede their lands, much of the western legislation was applicable only to the Ohio country. South Carolina ceded its western claims in 1787, and North Carolina ceded the Tennessee region in 1792. But the entire Southwest did not legally become part of the National Domain until Georgia ceded its claims in 1802.

Note that the Indian title to the trans-Appalachian, the most solid title of all the claimants, is not discussed in this essay. See Chapter 4 below.
"landed" states of the Revolutionary era, and can be contrasted with the "landless" states of New Jersey, Pennsylvania, and Maryland. During the 1776-1783 period a great rivalry grew among and between these landed and landless states as they argued over who should benefit from land sales in the trans-Appalachian West. Most Americans, including those in the landed states, believed the western lands should be ceded to the Confederation and sold to benefit all of the thirteen United States. The desired cessions and sales might have occurred had not the whole issue been complicated by land speculators and profiteers from Pennsylvania, New Jersey, and Maryland. ⁷ During the 1770s the Indiana, Illinois-Wabash, and Vandalia land speculation companies from these three landless states negotiated numerous questionable land purchases with the Indian tribes in the Ohio Valley. These companies' "titles" conflicted with and compounded the confusion generated by the Virginia, New York, Connecticut, and Massachusetts claims to the region. The landed states refused to recognize each other's claims, and Virginia refused to cede its lands to Congress so long as there was any chance that the speculators' claims might be recognized as

⁷There were Southern land speculators, of course, and William Blount, the Franklinites, John Sevier, and the Yazoo profiteers are just a few of the more infamous. Those who invested in Northwest lands, however, were mainly Eastern (with the important exception of Maryland) and included Hamilton, Morris, Duer, Pickering, and other Nationalists. Land speculation was a common occupation among Eastern Nationalists.

Billington, *Westward Expansion*, p. 149.
valid. The Virginians had the most solid claim to the trans-montane region, and resolved to not cede their title until the land speculators' purchases were declared null and void.

The *Virginia Gazette* sounded their battle cry:

> Notwithstanding the impudent assertions . . . industriously circulated by the lordly claimants of millions of acres of that western territory. . . . We can assure the public that the honourable Congress, as a body, has taken no step to confirm the claims of these politic individuals, who at the expence of millions yet unborn, would erect themselves into petty Sovereigns, and defeat the good purpose for which so many brave men have shed their dearest blood.  

As the Revolutionary War commenced, so too did the bitter struggle over western lands and the determination of a Confederation policy for the trans-Appalachian frontier.

Land disputes came immediately to the fore while the Articles of Confederation were being written. Nationalists and speculators from the landless states insisted the Articles of Confederation include a provision giving the Confederation Congress complete autonomy over the Ohio Valley. Eastern Nationalists were particularly interested in a measure that

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8 Most thought the Virginians' claim most valid because: (1) their colonial charter (one of the first granted) included Ohio lands; (2) their state bounded much of the Ohio country; (3) Virginia pioneers inhabited the region; and (4) the Virginia militia established a semi-permanent military presence there during the Revolution.

would strengthen the power and prestige of the national government. They had considerable support in Congress since Nationalist delegates Thomas Johnson, Charles Carroll, Samuel Chase, James Wilson, Samuel Wharton, and Robert Morris all supported enthusiastically a measure which would benefit land companies in which they were all major stockholders. In opposition to these profiteers stood David Howell of Rhode Island, Thomas Jefferson, Arthur Lee, James Madison, and many other Southerners. The land issue not only split Congress into Eastern and Southern factions, but eventually divided the Nationalist party into Northern and Southern camps. Those states with claims to the West outnumbered those without (counting the Southern states with claims to the Old Southwest), however, and defeated the proposed amendment to the Articles of Confederation, seven to six. Maryland was so angry that it refused to ratify the Articles, thus beginning a battle that lasted for eight long years. Since Congress would not accept its terms, Virginia continued to control and administer the trans-Appalachian West. Numerous Virginia pioneers lived in this region and needed protection from the British-Indian alliance on the frontier. Thomas

10 For Nationalist efforts to strengthen the national government through acquisition of a public domain see Merrill Jensen, "The Idea of a National Government during the American Revolution," Political Science Quarterly LVIII (1943): 356-79.

Jefferson, the governor of Virginia from 1776-1780, organized a military expedition of Virginia militiamen under Colonel George Rogers Clark that scored military victories at Kaskaskia and Fort Vincennes in 1779. Besides protecting Americans in that region, Jefferson's policy served also to cement Virginia's claim to the Old Northwest by virtue of military occupation. But the Virginians' good fortunes ended when General Cornwallis attacked the Tidewater in 1780. Most of the state militia was on the frontier with Clark, and Virginia was overrun by Redcoats; Jefferson fled the capitol, and Colonel Clark's mission aborted. Thus by 1780, most Virginians felt the Old Northwest was an administrative, financial, and military headache that should be relinquished to the Confederation Congress as soon as possible. But they still insisted that the speculators' purchases "be deemed and taken as absolutely void," and the battle in Congress raged on.¹²

Problems created by Maryland's refusal to ratify the Articles of Confederation combined with Congress's financial woes and an overall desire to settle the western lands question to bring about a new series of negotiations in the Continental Congress during 1780. New York made the first move, and ceded its claims to the trans-montane West on February 19,

1780. New York's surrender of its dubious purchases was not of much importance, however, nor were the claims of Massachusetts and Connecticut. Virginia was the key to the cession question because that state possessed the most valid title and exercised de facto control over the region. The Virginians hoped they might at last win out, and Theodorick Bland wrote optimistically to his fellow Virginian, Arthur Lee, that the "covert manoeuvres of the Land Jobbing Companies are so well known and so fully discovered that their abettors will hardly be enough to oppose [a cession] in its fullest latitude." On April 28, 1780, the Virginia legislature drafted a cession proposal that surrendered all of its western claims except Kentucky and a small military reserve north of the Ohio. The Virginians called for the establishment of independent states in the West and reasserted their demand that all speculators' purchases be declared null and void. Congress debated the Virginia proposal and on

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13The New York claim, based on an illegal purchase from a handful of Iroquois Indians, was never given much credence by Congress. See Chapter 4 below. The importance of New York's 1780 cession (which was not accepted) is that it was a political maneuver to gain Southern support for New York's fight with Massachusetts over the Vermont country. Congress did not accept New York's cession until 1786, well after the Public Domain was established.

The Massachusetts and Connecticut claims also did not carry much weight except among Easterners seeking to lessen Virginia's influence in the land question. Congress accepted the Massachusetts cession in 1785, while the Connecticut cession was accepted in 1786. For more information concerning this confusing assortment of cessions see Jensen, "The Cession of the Old Northwest;" "Creation of the National Domain;" and Abernethy, Western Lands.
October 10, 1780 agreed,

That the unappropriated lands that may be ceded or relinquished to the United States, by any particular state . . . shall be disposed of for the common benefit of the United States, and be settled and formed into distinct republican states, which shall become members of the federal union, and have the same rights of sovereignty, freedom and independence, as other states.\textsuperscript{14}

This resolution was still too vague to satisfy the Virginians; they wanted specific guarantees against land-jobbing. But the speculators and Eastern delegates refused to provide any such assurance. Finally, on January 2, 1781, the Virginia legislature officially ceded all of its claims to the region north of the Ohio, but included the controversial stipulation "that all purchases and deeds from any Indian or Indians, or from any Indian nation or nations, for any lands within any part of said territory [shall be] deemed and declared absolutely void and of no effect." Maryland subsequently ratified the Articles of Confederation, but the land speculation interests refused to accept the Virginia cession so long as it contained such obnoxious stipulations. Thus the first five years of debate over western lands left Congress in much the same state of confusion as that in which the debate had begun. Maryland

ratified the Articles of Confederation, but the landless states insisted on a stipulation-free cession. The Virginians were just as determined to hang on to the Old Northwest until the plans of the land investors could be thwarted. So, as the Revolutionary War dragged on, Americans continued to bicker among themselves over the future course of that territory west of the Appalachian mountains.\textsuperscript{15}

It seems ironic that Virginia had tremendous difficulty making a gift of such a vast and rich territory as the Old Northwest. Yet the terms of the Virginia cession precluded Congressional approval. As soon as Maryland ratified the Articles of Confederation that state began to reiterate its demand for a "conditionless" cession of the Ohio Valley. Thus the Confederation Congress of 1781-1784 spent a great deal of time debating over the Virginia cession. The Nationalists and speculators in Maryland, New Jersey, and Pennsylvania squared off against the Southerners and their Anti-federalist allies. Each side had enough votes to prevent the other's victory, but not enough to implement its own designs. While the Virginians held to their hard line, the land companies waged a two-pronged attack. They urged Congress to either (1) assert its claim to sovereignty over the Old Northwest on the legal basis that Great Britain had governed the territory and that the Congress, not Virginia, was

\textsuperscript{15}Jensen, "Cession of the Old Northwest," pp. 34, 37, 44-45, 47.
the logical successor to the British; or (2) demand a stipulation-free cession from the Virginians. They did not follow either tactic consistently over the next three years, and both views were espoused as expediency dictated.  

In the Fall of 1781 Congress appointed a committee to discuss the western land problem and make recommendations. According to James Madison, this committee was "systematically and notoriously opposed" to the Virginia claim; its members were all from the landless states of Maryland, New Jersey, New Hampshire, Rhode Island, and Pennsylvania. Predictably, the committee's November 3, 1781 report supported the Indiana Company's purchases in the Old Northwest and dismissed Virginia's claims to the region as "invalid." Moreover, the committee refused to recognize the land grant Governor Thomas Jefferson made to those who had fought at Kaskaskia and Vincennes with George Rogers Clark. The Easterners did not have the votes to have this report approved, however, and the situation remained unchanged. In April of 1782 Arthur Lee of Virginia demanded that all debate over the West be halted until each member of Congress declared (in a roll-call vote) whether or not he owned stock in any of the companies affected by the debates. This "purifying declaration" of Lee's "was evaded by three days chicane,"

and finally dropped altogether. Yet both sides were growing weary from the six years of battle. The Virginia state assembly urged settlement of the dispute so they would "not again be left in uncertainty on that subject." Moreover, the end of the Revolutionary War made Congress daily aware of the problems of finance, Indian relations, diplomacy, land for Revolutionary veterans, and illegal settlement of the trans-Appalachian frontier--none of which could be remedied until it approved the Virginia cession. As James Madison wrote Edmund Randolph: "Every review I take of the Western territory produces fresh conviction that it is the true policy of Virginia as well as the United States to bring the dispute to a friendly compromise."\(^{17}\)

By the Spring of 1783 there was some light at the end of the tunnel. The war was over, and Congress's desperate financial straits necessitated action. Nearly everyone favored western land sales to raise money, especially those Antifederalists who opposed Morris and the Nationalists' impost proposal and taxation schemes. At the same time, the military land bounties could not be granted until Congress approved the Virginia cession. George Washington addressed this problem in a letter to the Indian Affairs committee in October of 1783, and warned of imminent Indian warfare lest Congress restrain the trespassing "banditti" of the West.

On June 6 a Congressional committee had recognized the validity of Virginia's claim, and at the same time arrived at a formula by which Congress could satisfy Virginia's demands without making any specific guarantees. That summer Congress sent a report to the Virginia legislature outlining the terms under which its cession would be accepted.18

Congress's acceptance of the Virginia cession on March 1, 1784 was not a victory of the principles for which that state fought for seven years. There was no ironclad provision in the cession prohibiting land-jobbing and speculation in the Ohio Valley. All the Virginia cession included was a provision tacitly excluding land companies from the trans-Appalachian West.19 Nothing in the cession invalidated the purchases of the Illinois-Wabash, Vandalia, and Indiana land companies. Virginian Joseph Jones wrote Madison that the

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19See Journals of the Continental Congress, XXVI:114: "That all lands within the territory so ceded to the United States and not reserved or apportioned to any of the before mentioned purposes [Virginia military reserve, George Rogers Clark land bounties, etc.] or disposed of in bounties to the officers and soldiers of the American army, shall be considered as a common fund for the benefit of the United States. . . and shall be faithfully and bonafide disposed of for that purpose, and for no other purpose whatsoever." (Emphasis mine.) The previous cessions all contained a provision specifically nullifying purchases made from the Indians. See Journals of the Continental Congress, XXV:561-63. Virginia's political hopes in the West can be seen as a motivation for the stipulation in their March 1 cession that the ceded territory be formed into states "not less than one hundred, nor more than one hundred and fifty miles square" to be admitted into the union with full rights. See Chapter 7 below.
proposed cession did not "fully remove the fears of our people respecting the Indian purchases and grants to companies."

Yet others believed the cession was in the spirit of the original demands. At any rate, the Virginians were sick and tired of haggling. They foresaw future political and economic benefits to come with westward expansion, and they wanted to expedite the matter with a cession. On December 20, 1783 their legislature issued a final cession of their claims to the territory northwest of the Ohio River:

> although the terms do not come fully up to the propositions of this Commonwealth, they are conceived on the whole, to appear so nearly to them, as to induce this state to accept thereof, in full confidence that Congress will in justice to the State, for the liberal cession she hath made, earnestly press upon the other states claiming large tracts of waste and uncultivated territory, the propriety of making cessions equally liberal, for the common benefit and support of the Union.

Thomas Jefferson presented the cession to Congress on March 1, 1784. After New Jersey raised some objections, Congress rejected it by one vote! Later the same day Pennsylvania, however, changed its vote, and at long last Congress accepted the Virginia cession and created the National Domain.20

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20 For Virginia's political and economic motives, see Henderson, Party Politics, pp. 370-71. According to Henderson, the Virginians thought they would gain political muscle from new western states and economic benefits via commerce with the West over the Ohio-Kanawha-Monangahelo river systems. Other information contained in this paragraph is drawn from Burnett, Continental Congress, p. 597; Jensen, "Creation of the National Domain," pp. 338-42; Merrill D. Peterson, Thomas Jefferson and the New Nation: A Biography (New York, 1970), p. 279; Dumas Malone, Jefferson the Vir-
So ended one of the most drawn-out and bitter struggles in the history of the early American republic. In the long run, the Virginians' struggle proved to be in vain. The sale of millions of acres of Ohio Valley lands at seven to eight cents an acre to John Cleve Symmes, the Scioto Associates, and the Ohio Company in 1787 in every way violated the spirit of the Virginia land cession of 1784. But the land speculation interests did not have as much political support in the Spring of 1784 as they had later. Their spokesmen, the Eastern Nationalists, were no longer strong in Congress. There was not, according to David Howell, "the least tincture of their poisonous influence." The vacuum created by this Nationalist ebb was soon filled, however, by a more liberal faction including many Southerners and Anti-federalists. The 1784 Congress held a more optimistic view of westward expansion. Led by Thomas Jefferson and David Howell, the Confederation Congress began to draft a radical territorial government ordinance for the West: the Ordinance of 1784.

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21 See footnote number four above.

But we have an immensity of land courting the industry of the husbandmen. Is it best then that all our citizens should be employed in its improvement, or that one half should be called off from that to exercise manufactures and handicraft arts for the other? Those who labor in the earth are the chosen people of God if ever he had a chosen people, whose breasts he has made his peculiar deposit for genuine virtue. It is the focus in which he keeps alive that sacred fire which might otherwise escape from the face of the Earth.

Thomas Jefferson, 1785

March 1, 1784 is an important date in the history of the trans-Appalachian frontier. On that day, Congress accepted the Virginia cession and examined the first committee draft of the Ordinance of 1784. The Ordinance of 1784, proposing a form of government for the western territories, was the product of discussion and debates that had begun in colonial times. Franklin's Albany Plan (1754) and the Proclamation of 1763 both addressed the problem of territorial government, and one of the causes of the American Revolution was disagreement over British administration of the West. After 1776, numerous individuals submitted territorial government proposals to the Continental Congress, yet that body


could do nothing until the state land cessions were complete and Congressional authority over the West firmly established. Virginia's cession combined with other factors to make territorial government a first-priority matter for the Confederation Congress in March of 1784.

Many American leaders argued in 1783 and 1784 that it was necessary to establish immediately some order over unruly frontiersmen so as to expedite land sales and prevent an Indian war. Most of the Congressional delegates from the Northeast were wary of the westward movement. Although they wanted land revenues, they were afraid of the economic and political consequences of westward expansion, and looked upon the "white savages" of the frontier with apprehension. One Congressional delegation was alarmed because over 400 Virginians had illegally crossed the Ohio, and "committed many wanton and unprovoked acts of cruelty against the Indians." The New York delegates warned that the West was "daily overrun by lawless men who endanger by their Rashness a new Indian war." If Congress was planning to sell lands and keep peace with the Indians, these squatters would have to be controlled. In September and October of 1783 an Indian Affairs committee chaired by New York Nationalist James Duane discussed many of these problems.  

David Howell's protests of territorial government proposals during the Confederation, see Chapter 7 below.

The Duane committee was controlled by the Nationalists. For a complete discussion of the importance of this committee
notwithstanding, the Indian Affairs committee reported that to provide for "security against the increase of feeble, disorderly, and dispersed settlements in those remote and extended territories; against the depravity of manners which they have a tendency to produce . . . or against . . . frequent and destructive war with the Indians," Congress must create a strong territorial government to police the western frontier. This Indian Affairs committee report led to the appointment of Thomas Jefferson, David Howell, and Jeremiah Chase to draft and submit an ordinance for the government of the western territory. Thus, Congressional desire to clamp down on the westerners led to the appointment of Jefferson, Howell, and Chase. But if Congress wanted to get tough with the Westerners, it certainly picked the wrong men for the job.26

When Thomas Jefferson came to serve in the Confederation Congress in late Fall of 1783, his reputation as a Revolutionary radical and author of the Declaration of Independence served to make him a dominant figure in that body. To say that Jefferson was keenly aware of and in favor of western

in the formulation of the American Indian and western policies, see the first section of Chapter 4 below.

development is to state the obvious.²⁷ During the six months he served in Congress at Annapolis, Jefferson played instrumental roles in the drafting of Indian treaties, land policy, and the Ordinance of 1784. There has recently been some controversy as to just how great a part Thomas Jefferson played in drafting the Ordinance of 1784. Robert F. Berkhofer, Jr. argues convincingly that Jefferson was not the sole author of that document. Several of the provisions of the Ordinance were proposed by others prior to 1784, and committee member David Howell figured importantly in drafting the Ordinance. Although Jefferson's fame has no doubt led to an exaggeration of his importance in formulating western policy, the fact remains that he did chair the three-man committee that drafted the Ordinance of 1784, and over half of the original ideas of the Ordinance were his. It is no coincidence that the Ordinance of 1784 appeared in Thomas Jefferson's handwriting when submitted to Congress on March 1, 1784.²⁸

Congress read the first draft of the Ordinance of 1784 on March 3. Unlike its successor, the Northwest Ordinance of


1787, the Jefferson-Howell Ordinance applied to all of the trans-Appalachian frontier, not just the Old Northwest. And unlike its forerunner, the Indian Affairs committee report of 1783, this document emphasized natural rights, and was egalitarian and democratic. Basically, the proposed Ordinance embodied three aspects: (1) a delineation and naming of fourteen new states to be created in the trans-Appalachian West; (2) general rules for an evolution from temporary to permanent governments and statehood for the westerners; and (3) articles of compact to which the new western states would have to subscribe.  

The part of the report delineating and naming states was Jefferson's creation. Fourteen new states were to be formed in the West, and arranged in a symmetrical pattern described by committee member David Howell:

> It is proposed to divide the country into fourteen new states in the following manner. There are three tiers of states: One in the Atlantic [the original thirteen], one on the Mississippi, and a middle tier. The middle tier is to be the smallest and form a balance betwixt the two more powerful ones.

Because he had little physiographic knowledge of the region, Jefferson bounded the new states in a scientifically concise manner, using lines of longitude and latitude as borders. Each state was to be approximately 2° tall and 3° wide, and

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29 For the three different versions of the Ordinance of 1784 as it evolved from a committee report to the final Ordinance, see Boyd, *Papers of Jefferson*, VI:603-15.
THE JEFFERSON HARTLEY MAP

Both maps are from Boyd, Papers of Jefferson, VI:600.
their arrangement was such as to give the new American republic a scientific, orderly, and balanced appearance. Fear of conflict between small and large states influenced Jefferson, as did his conviction (drawn from Montesquieu) that governmental units must be small in order to remain republican. His proposed names for ten of the states are said to have drawn guffaws from contemporaries. Sylvania, Michigania, Cherroneseus, Assenesipia, Metropotamia, Illinoia, Washington, Saratoga, Polypotamia, and Pelisipia all exhibit a strange combination of Indian roots, Revolutionary kudos, and classical endings. But the predetermination of the location and names of the states was done, according to Howell, so that "Settlers would know exactly, by name or by number, in which little republic they lived, so they could move quickly about the business of erecting governments." This first part of the proposed Ordinance of 1784 was no less than a grand scheme for the trans-Appalachian West based upon Thomas Jefferson's notions of geographic balance and republican theory.  

Political motives seem to have played a partial role in the first and second aspects of the proposed Ordinance. Most members of Congress during the 1780s believed that new western states would be allies of the South in the sectional

politics of the Confederation Congress. Thus, one may interpret the first part of Jefferson's plan, calling for fourteen new western states, as an attempt to insure future Southern political power in Congress. Jefferson's ally David Howell and other Antifederalists in Congress were certainly interested in lessening the political weight of the Nationalist Northeast. At the same time the government provisions of the proposed Ordinance had great political implications.

This second aspect of the Jefferson-Howell Ordinance demonstrates the extent to which the Jefferson committee ignored the instructions of its forerunner, the Indian Affairs committee of 1783. Nowhere in this first committee draft of the Ordinance of 1784 is there provision for government controlled by anyone other than those actual settlers who would inhabit the trans-Appalachian West. The committee granted white male suffrage even though it was not practiced in any of the original thirteen states in 1784. Moreover, there was no minimum requirement for the number of people necessary to form a "temporary" government, so whenever a number of settlers in a proposed state felt inclined, they could hold a meeting and form a state government. They had to use one of the constitutions of the original states as a governmental basis, and elect a state legislature to administer governmental affairs. They were also to elect a representative to serve in the Confederation Congress who

31 Henderson, Party Politics, p. 373.
would be able to debate, but would have no vote. When the population reached 20,000, the temporary government stage ended and the state could write a permanent constitution and form a permanent government. This second stage ended when the population of the state reached that of the least populous of the original thirteen states (Delaware had a population of 60,000 in 1784). Then the new western state would be admitted to the Confederacy with the same rights, privileges, and responsibilities as the original thirteen. By this plan Jefferson and Howell hoped to provide for swift admission of new western states into the national political process.  

The final thrust of the March 3 report was a "Charter of Compact," consisting of principles and precepts to which the new western states would be bound. They must always remain a part of the United States, and accept responsibility for a portion of the Confederation's debt. Their state governments were to be republican, and subject to the jurisdiction of the Confederation Congress. The final two Articles of Compact were Jefferson's own radical contributions. The first of the two forbade citizenship in a western state to any person holding an hereditary title. This provision aimed

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32Berkhofer, "Origins of the U.S. Territorial System," p. 246; Berkhofer, "American Territorial System," p. 155. Population estimates of the original thirteen states were inaccurate during the 1780s, and Jefferson seems to have anticipated much more westward migration than actually occurred. This is why Monroe and other Southerners favored lowering the population requirements for statehood in 1786. See Chapter 7 below.
at the quasi-aristocratic Society of Cincinnati, to which many Eastern Nationalist Revolutionary War officers belonged. But the final and most startling Article of Compact stated, "That after the year 1800 of the Christian era, there shall be neither slavery nor involuntary servitude in any of the said states." Jefferson, a Southern slaveholder, could see the tragic consequences of Negro slavery in the United States. In this proposed draft of the Ordinance of 1784, he tried to check the growth of slavery before it was too late. Had this final Article of Compact remained, slavery would have been illegal in the entire western frontier, north and south, and the course of American history would have been greatly altered.

After Congress read this first committee draft of the Ordinance of 1784 on March 3, the debate began. Although several Easterners objected to the liberal governmental provisions, the initial debate centered around the proposed delineation and naming of states. Since North and South Carolina, and Georgia had yet to cede their western lands to Congress, many delegates believed Jefferson's predetermined arrangement of states to be an example of "counting

33 For the Society of Cincinnati, see the first section of Chapter 5 below.

one's chickens before they were hatched." Congress voted to
begin the new state boundaries from 45° latitude down rather
than 30° up; thus the Old Northwest could be bounded and
settled while Southwestern claims were being resolved. Some
delegates also objected to the proposed state names. Most
thought Jefferson's names were too fanciful, and voted to
omit them from the Ordinance. With these objections recorded,
the Jefferson-Howell-Chase committee reconvened on March 17,
rewrote the Ordinance of 1784, and submitted it once again on
March 22. Nearly a month passed before Congress commenced a
more heated debate over the nature of government for the
western territories.  

The most important debates over the Ordinance of 1784
took place from April 19-23. There was considerable argu­
ment at that time over the provisions pertaining to heredi­
tary titles and slavery. More important, many Eastern delegates
wanted to strengthen national control over the Westerners.
The article prohibiting hereditary titles was first to go.
Jefferson wrote that Congress struck the clause, "not from
an approbation of such honors, but because it was thought
an improper place to encounter them." There was sharp divi­sion over the question of slavery in the territories.
Southern delegates (with the exception of Jefferson, Monroe,
and Hugh Williamson) squared off against the Northeast in a

heated debate. The anti-slavery article needed seven votes, but received only six. Jefferson was keenly disappointed over the outcome, as is indicated in a letter to James Madison. "The slavery issue," he wrote,

was lost by an individual vote. Only ten states were present. The 4 Eastern states, N. York, Penn'va, were for the clause. Jersey would have been for it, but there were but two members, one of whom [Beatty] was sick in chambers. South Carolina, Maryland, and Virginia! voted against it. North Carolina was divided as would have been Virginia had not one of its delegates [Monroe] been sick in bed. . . . Thus we see the fate of millions yet unborn hanging on the tongue of one man, and heaven was silent in that awful moment.

Jefferson again expressed his disappointment when the Pennsylvania Packet published, erroneously, the "final" version of the Ordinance of 1784, failing to omit the hereditary titles and slavery articles. He wrote sarcastically to a friend that the Packet's version was,

certainly no act of Congress's because it contained a provision or two not quite within their level of politics . . . two of which as this forgery pretends were an exclusion of hereditary honours, and an abolition of slavery. When the true act shall be published you will find no such petty ideas in it.36

A final series of objections resulted in increased powers for the Confederation Congress in controlling Westerners.

Many Congressmen, mostly Eastern but including some Southerners, believed that some checks should be put on the turbulent West. Delegates Samuel Chase, John Beatty, and Elbridge Gerry spearheaded a drive to add four conservative new provisions to the Articles of Compact. The first prohibited local interference "with the primary disposal of soil by the United States in Congress assembled, nor with the ordinances and regulations which Congress may find necessary for securing the title in such soil to bona fide purchasers." A second amendment prohibited taxation of lands belonging to the United States, while a third stipulated "the lands of non-resident proprietors shall in no case be taxed higher than those residents within any new state." And the conservatives had one final objection to the committee version of the Ordinance of 1784. Many in Congress, especially the Eastern Nationalists, wanted a stronger federal presence in the West to counter the lawless tendencies of the frontier settlers. These attitudes were the basis of Duane's Indian Affairs report recommending a strong, nationally controlled territorial government. The conservatives opposed Jefferson's recommendations for complete self-government in the West, but they were opposed by many Southerners and Antifederalists who favored local autonomy. As a compromise, Elbridge Gerry offered an amendment that allowed the Confederation Congress to intervene and restore order should any difficulties arise before the temporary
governments were formed in the West. This motion, opposed by Howell but not Jefferson, declared,

measures not inconsistent with the principles of the Confederation, and necessary for the preservation of peace and good order among the settlers in any of the said new states, until they shall assume a temporary government as aforesaid, may from time to time be taken by the United States in Congress assembled.37

Thus eight major changes were made to the original committee version of the Ordinance of 1784: (1) the proposed state names were dropped; (2) the mode of delineating boundaries was changed; (3) Congress deleted the hereditary titles and (4) slavery provisions; (5) the states were denied the power to tax federal lands and (6) the lands of "non-resident proprietors;" (7) state interference with Confederation land sales was prohibited; and (8) Congress took measures to control lawless pioneers before a temporary government was established.38

With these major changes incorporated, Congress approved the Ordinance of 1784 on April 23, 1784.39 In its final form, the document was not so radical or democratic as the first committee draft. Some historians contend that Jefferson himself shares partial responsibility for the conservative


39Journals of the Continental Congress, XXVI:279. For a complete text of the Ordinance of 1784, see the Journals, XXVI:275-79. The final vote was ten to one.
Indeed, Jefferson seconded Elbridge Gerry's motion to prohibit taxation of lands of non-resident proprietors; and he voted in favor of the provision allowing Congressional intervention before a temporary government could be formed. Yet Jefferson's actions were perhaps only manifestations of a necessity to compromise. His ideal plan of government for the West was the first draft of the Ordinance submitted on March 1, 1784. Any subsequent changes were wrought by the need to incorporate differing points of view into the document. Moreover, Jefferson's actions between March 1 and April 23 simply do not evidence that much of a shift in opinion. He continued to fight for the exclusion of titled aristocracy, and advocated rapid admission of fourteen new western states into the union. His vote in favor of the Gerry amendment did not compromise his original intentions, because that amendment only allowed Congressional intervention before formation of a temporary government. One must remember that there was no minimum population requirement for the formation of temporary governments under the Ordinance of 1784. Temporary governments could have been formed as soon as a few hundred settlers had a mind to do so. Considering the Westerners' proclivity for forming states and writing constitutions during the 1780s, the period of federal policing would surely have not lasted for long. Even as

amended the Ordinance of 1784 was a radical document. It granted white male suffrage long before any state in the union did so, and it provided for immediate self-government for western settlers. Had it remained in effect, the Jefferson-Howell Ordinance of 1784 would have been a classic example of Revolutionary radicalism in legislative form.

By the summer of 1784, the Confederation Congress had created a national domain and adopted an Ordinance for governing the western territories. Yet the Congress accomplished this only after eight years of bitter and divisive debate between Eastern Nationalists and Southerners. Acceptance of the Virginia cession and the Ordinance of 1784 shows that in 1784 the Southerners had won a victory—but it was a temporary victory. The Ordinance of 1784 was never put into effect. Congress ignored it for three years, largely because of conditions on the frontier, and then replaced it with the Northwest Ordinance of 1787. The Northwest Ordinance appears neo-colonial when contrasted with its 1784 forerunner. By instituting a federally controlled territorial government and property qualifications for voting and office-holding, Congress took the heart out of the Jefferson-Howell plan. Passage of the Northwest Ordinance of 1787 was a Nationalist victory, and is indicative of changing political trends in the Confederation Congress. That document could never have passed in 1784, because the Nationalist star had waned in
that year. Robert Morris was a lame duck, and most of the Nationalists had gone home. The final blow was the western question itself. The Virginia cession debate split the Nationalists right down the middle--North vs. South.\footnote{Henderson, \textit{Party Politics}, pp. 338-39.} Virginia Nationalists James Madison and Arthur Lee broke ranks with their former Eastern allies James Wilson, Charles Carroll and Samuel Wharton. The decline of the Nationalists was only temporary, to be sure, but in viewing it we can see the evolution of Confederation party politics. The Nationalists could not strengthen the central government or implement their western policy until they won a majority once again. And they could not win a majority until the nation started moving towards centralism, and the split with the South was repaired.
CHAPTER IV

INDIAN POLICY IN THE CONFEDERATION CONGRESS

Although the disposition of the people of the States to emigrate into the Indian country cannot be effectually prevented, it may be restrained by postponing new purchases of Indian territory, and by prohibiting citizens from intruding on Indian lands. It may be regulated by forming colonies under the direction of the government and by posting a body of troops to execute their orders. As population shall increase and approach the Indian boundaries, game will be diminished and new purchases may be made for small considerations. This has been and probably will be the inevitable consequences of cultivation. It is, however, painful to consider that all the Indian tribes, once existing in those states now the best cultivated and most populous, have become extinct. If the same causes continue, the effects will happen and, in short period the idea of an Indian this side of the Mississippi will be found only in the pages of the historian.

Henry Knox, Secretary of War

White-Indian relations during the Confederation are one small segment of a story that began at Jamestown in 1607 and has not ended. In colonial times, the British government formulated an Indian policy and established Northern and Southern Indian departments to treat with the natives. They

came to recognize Indian "right of soil" and established a precedent of bona fide purchase of title to Indian lands. Although disagreements and wars were frequent, the British believed the Indians had a right of occupancy. This is why the American colonists most often attempted to secure Indian lands by purchase rather than conquest. However, encroachments increased as the colonial population climbed higher, and the British efforts to halt migration proved futile. King Phillip's War, Bacon's Rebellion, the French and Indian War, Pontiac's Conspiracy, and the western theatre of the American Revolutionary War created an enmity between white Americans and native Americans that endured throughout the late eighteenth and nineteenth centuries. 2

When the American Revolution ended, thousands of pioneers poured over the Appalachians into the Indian country. In 1784, George Washington observed,

Men in these times . . . roam over the Country on the Indian side of the Ohio, mark out lands, Survey, and even settle them. This gives great discontent to the Indians and will, unless measures are taken to prevent it, inevitably produce a war with the western tribes.

By 1785 there were an estimated 50,000 settlers in western Pennsylvania and the Ohio country, and tens of thousands more in Kentucky, Tennessee, and the Old Southwest. War appeared to be inevitable, but an Indian war would be disastrous to the new United States Confederation. Because the Americans were bankrupt and without an army, it was essential that Congress devise an Indian policy that would keep the United States at peace with the western Indians. The Americans wanted land for revenues and westward expansion, but they also wanted peace with the Indians. To Congress fell the task of obtaining both.

From 1783-1786 the Confederation Congress tried in vain to create a workable Indian policy. The debates over Indian affairs brought forth sectional disagreements that evidenced the Northeast-South split in Confederation politics. While the Southerners wanted immediate expansion, and advocated an aggressive Indian policy, the Eastern Nationalists favored a more cautious stance. Initially the overconfident Congress

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acted belligerently in negotiating with the Northern and Southern Indian tribes. They demanded Indian land by "right of conquest" (in the Revolutionary War), and arbitrarily dictated treaties to the Indian nations. The Confederation failed in its attempt to implement this ill-conceived aggressive policy because it lacked the revenue and power necessary for its execution. Some states refused to cede their western lands to Congress, and claimed "state sovereignty" in Indian affairs. And the greatest impediment to Confederation policy was fierce Indian resistance—the Northern and Southern tribes refused to acknowledge American claims to their ancestral domains. Angered by white encroachments and encouraged by Great Britain and Spain, the Indians struck back. The commencement of Indian hostilities in 1786-1787 marked the collapse of the Confederation Indian policy.

The Indian warfare of 1786-1787 coincided with the re-emergence of the Nationalist faction in Confederation politics. These conservatives believed the United States needed a powerful, centralized national government, and sought to replace the Articles of Confederation with a stronger "Constitutional" mode of administration. The Nationalists espoused their views in the Confederation Congress and implemented them in all areas of policy making. Of particular importance to this essay is the Eastern Nationalist attempt to reform Confederation Indian policy. These Northeasterners tried to make Indian policy more just, and advocated cash purchase of Indian lands.
The Eastern Nationalists wanted western lands for revenue and expansion, but their philosophy of westward expansion was not so aggressive as that of their Southern colleagues. They clung to ideals calling for fair treatment of the Indians, and most were caught up in the humanitarian movement of the period. The Eastern Nationalists wanted Indian lands, but they also wanted a clear conscience. The irreconcilable nature of their goals became obvious during the early national period.\(^4\)

There was, of course, one group of Americans that cared not a whit for the ideal of just and humane treatment of the Indians: The frontier settlers. The pioneers did not serve in Congress, nor did they ever appear at formal negotiations with the Indian tribes. Yet their very existence in the trans-Appalachian Indian country made these pioneer yeomen the major force in American Indian relations. To be sure, Congress could pass laws requiring fair treatment of the Indians--but what good were those laws without the support of the frontiersmen? As hundreds of thousands of pioneers streamed into the trans-Appalachian West, the frontier settlers became the \textit{de facto}

\(^4\)The Eastern Nationalists were not the only Americans whose attitudes towards the Indians were based on humanitarianism. According to Bernard Sheehan, this philanthropic motive crossed party lands and included "Men so disparate as Timothy Pickering and Thomas Jefferson." See Sheehan, \textit{Seeds of Extinction}, p. 6. I believe the Eastern Nationalists were more inclined to this position for a number of reasons. See the text and notes to section 3 of this essay. The concept that many Americans wanted both land and a "good conscience" is that of Reginald Horsman. The idea that most of these men were Eastern Nationalists is my own.
architects of American Indian policy. Congress could only follow their lead and try to temper their excesses. Ideals of justice and humanity did not stop land-hungry pioneers from trespassing onto, and stealing Indian lands. And frontier opinions soon became the opinions of a majority of Americans. There was no stopping westward expansion—and there was no stopping cultural genocide that it entailed.

Every advantage, that could be expected or even wished for, would result from such a mode of procedure. Our settlements would be compact, government well established, and our barriers formidable... the Indians, as has been observed in General Schuyler's letter, will ever retreat as our settlements advance upon them... our settlements will as certainly cause the savage as the wolf, to retire; both being animals of prey, though they differ in shape.

General George Washington, 1783

The end of the American Revolution marked the beginning of a new era in white-Indian relations on the North American continent. Although most of the American Indians were allies of Great Britain during the Revolutionary War, there was, surprisingly, no mention of the Indians in the Treaty of Paris of 1783. To make matters more complex, Great Britain arbitrarily ceded all of the Indians' land, from the Appalachian to the Mississippi, to the new United States of America. The Indians could not understand how a treaty signed thousands

5Horsman, Expansion and American Indian Policy, p. 8.
of miles away could take from them their ancestral domain—particularly since the British and Indians militarily controlled the trans-Appalachian West at the close of the Revolution. The ambiguity of the Treaty of Paris set the stage for an inevitable showdown between the white man and the red man in the Mississippi Valley.6

The clash began immediately after the Revolutionary War, when thousands of pioneers moved west into the Indian territory. The Indians were enraged by this advance onto their hunting grounds, and prepared to go to war to defend their lands. Although the pioneer squatters were not averse to war, the leaders of the United States government definitely were. A long, expensive Revolutionary War had just ended, and the American Confederation needed peace badly. To be sure, the Americans claimed all of the trans-montane West by right of conquest and the Treaty of Paris. And they looked to the Ohio Valley as a valuable source of land revenues, and an area for future expansion. But for the time being American expansion must be without war. One of the first important jobs of the

6Reginald Horsman, "Indian Policy in the Old Northwest," William and Mary Quarterly XVIII (1961):38; Horsman, Expansion and American Indian Policy, pp. 3-5; Downes, Council Fires, p. 279. Downes notes a Wyandot plea to their defeated British allies: "We don't know how to act 'till we hear from you, and as we have gone hand in hand together, we hope to continue so, and that you'll not allow your poor children to be crushed under the weight of their enemies ... Father depend upon it, we have great reason to expect [the Americans] shortly---Father! Should a treaty of Peace be going on we hope your children will be remembered in that treaty."
The inability of Congress to accomplish this task became increasingly obvious over the next four years.

From the very beginning there was confusion and division over how great a role the Confederation government should play
in the regulation of Indian Affairs. Article IX of the Articles of Confederation stated ambiguously, "The United States in Congress assembled shall also have the sole and exclusive right of ... managing all affairs with the Indians, not members of any state, provided that the legislative right of any State within its own limits be not infringed or violated." The interpretations of this clause varied, as Nationalists and Antifederalists disagreed as to just how much authority the central government should have in such matters. Finally, Congress decided the Indian situation necessitated action by the national government. They placed regulation of Indian affairs under Secretary of War Henry Knox, and instructed him to negotiate treaties with the Northern and Southern tribes. Negotiations of these treaties was imperative; the United States had to establish permanent boundaries between themselves and the Indian country. But before negotiations could begin, a national Indian policy had to be formulated. In the Fall of 1783 Congress set out to create the first American Indian policy.

The committee on Northern Indians was dominated by Eastern

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9The "Northern" tribes included the Six Nations, or
Nationalists, and the Northeastern perspective is apparent in the proceedings of the committee with a few important exceptions. The committee was greatly influenced by letters from Nationalist Generals George Washington and Phillip Schuyler of the Continental Army. Washington's attitudes towards westward expansion closely resembled those of many Eastern Nationalists, and were fully stated in his letter of September 7, 1783. Washington had just returned from a trip west, and reported that a "parcel of banditti" was "skimming and disposing of the cream of the country" and trespassing on the Indian lands. General Washington warned that if war was to be averted the national government would have to assert its authority over the Westerners. He

Iroquois Confederacy, and the Ohio Valley tribes. The Six Nations were the Mohawks, Onandogas, Senecas, and Cayugas (who allied with the British during the Revolution), and the Oneidas and Tuscaroras (American allies). The Ohio Valley tribes included the Wyandot, Delaware, Chippewa, Ottawa, Shawnee, Miami, Wea, Piankashaw, Potowotomi, and Kickapoo tribes.

Members of the committee on Northern Indians were James Duane (chairman), Richard Peters, Daniel Carroll, Benjamin Hawkins, and Arthur Lee. Duane, Peters, and Carroll were from the Northeast, and all five men belonged to the Nationalist coalition.

George Washington to James Duane, September 7, 1783, in Jared Sparks, ed., *The Writings of George Washington* (Boston, 1838), VIII:477-484. This important letter contains Washington's ideas about westward expansion as well as his suggestions for Indian policy. The Duane committee did not accept all of Washington's recommendations, however. He advocated purchase of Indian lands: The "soil they live on can be had by purchase at less expence" than war. See Horsman, *Expansion and American Indian Policy*, p. 8. Washington's recommendations were adopted in full by Nathan Dane and the Eastern Nationalist coalition in 1786-87.
believed American expansion must be gradual and controlled; settlements should be supervised and compacted. Territorial government must be strong, and the boundaries between whites and Indians clearly defined.\(^{12}\) General Schuyler felt much the same way. He believed the United States could expand peacefully westward onto Indian lands, but only if the expansion was gradual and closely regulated. In his "Thoughts Respecting Peace with the Indians" Schuyler spelled out a plan for American Indian policy and westward expansion. The Indians would be told that since they were on the losing side in the Revolution, the United States could rightfully take possession of all their land west to the Mississippi. However, since the United States were "just and benevolent" they would take only some of the land, allowing the Indians to keep the rest. Schuyler reasoned this same process could be repeated over and over again, and the Indians driven farther west as their lands were whittled away. Thus the United States could gradually expand, eventually acquiring all of the Indians' land without the cost of purchase or the tragedy and expense of war:

\[F\]or as our settlements approach their country, they must, from scarcity of game which that approach will induce, retire farther back, and dispose of their lands, unless they dwindle comparatively to nothing as all savages have done, who gain their sustenance by the chase, when compelled to live in the

\(^{12}\)Washington to Duane, September 7, 1783, in Sparks, Writings of Washington, VIII:477-484.
vicinity of civilized people, and thus leave the country without the expense of purchase, trifling as that probably will be.\textsuperscript{13}

Schuyler and Washington's recommendations were typical of many Northeasterners' attitudes about westward expansion. They wanted to expand, but only gradually, as in the colonial "New England" tradition. But the committee on Northern Indians took a more aggressive stance, as would the Southern-dominated Congress of 1784-85. Contrary to Washington's recommendation, the committee dismissed the need to purchase title from the Indians. The report of the committee on Northern Indians called for a treaty conference to be held with the Six Nations and the Ohio Valley tribes. Those tribes were to be informed of Great Britain's cession, and told the United States claimed all of the trans-Appalachian West by right of conquest. Since the Americans preferred "clemency to rigor," the Indians would be granted peace, and some lands on which to live. The peace would begin with an Indian land cession, however. The Indians could not have "any reasonable objections" to this, since they had lost the Revolutionary War "and they possess no other means to do this act of justice than by compliance with the proposed boundaries." The report also discussed the specifics of the boundary, provided land for the Oneidas and Tuscaroras

\textsuperscript{13} Journals of the Continental Congress, XXV:680; Mohr, Federal Indian Relations, pp. 97, 100; Horsman, Expansion and American Indian Policy, pp. 5, 7-8.
(American allies during the Revolution), and outlawed private purchases, squatting, and trespassing on Indian lands. This committee report on Northern Indians marked the formulation of an American Indian policy. It remained to be seen how Congressional logic would fare on the Northern frontier.\(^\text{14}\)

The committee on Southern Indians\(^\text{15}\) did not submit its report until May 28, 1784, and Congress did not accept it until March 15, 1785. The report was offered over the objections of Georgia and North Carolina, both of whom refused to cede their western lands to Congress and thereby denied Confederation authority to legislate for Indians residing within their boundaries. Despite these objections, Congress adopted a Southern Indian report quite similar to the October 15 report on the Northern tribes. The Southern tribes were to meet in council with American commissioners to form a treaty.

\(^{14}\) Journals of the Continental Congress, XXV:680-94. Horsman, Expansion and American Indian Policy, pp. 10-11; Prucha, Indian Policy, pp. 32-33; Ward, Department of War, p. 61. The proposed boundary line would have run up the Miami, Mad, and Maumee Rivers to Lake Erie. This line was soon abandoned when the Confederation demanded more territory one year later. The Oneidas and Tuscaroras were supposed to keep all of their lands, but by the early nineteenth century both tribes were confined to reservations. Several other provisions provided for an Indian trade committee and called for a committee to form a government for the trans-Appalachian West. The latter was chaired by Thomas Jefferson, who wrote the Ordinance of 1784 the following spring. See Chapter 3 above.

\(^{15}\) The Southern Indians were the Cherokee, Creek, Choctaw, and Chickasaw tribes in present-day Tennessee, Georgia, Alabama, East Mississippi, and North Florida. See R. S. Cotterill, The Southern Indians: The Story of the Civilized Tribes Before Removal (Norman, 1954).
The commissioners were to tell them the United States needed land for its soldiers, settlers, and for payment of its debts. Because the Southern tribes had lost the Revolutionary War they must cede some of their lands to the United States:

The committee are of the opinion that care should be taken neither to yield nor require too much; to accommodate the Indians as far as the public good will admit, and to avoid the hazard of war, the expenses of which may exceed the value of the acquisition sought for; but it is supposed that when they shall have been informed of the damages which our citizens have sustained from their irruptions and those of their British ally, all unreasonable objections will be suppressed.

The March 15 report contained provisions for regulating trade, the return of prisoners of war, and guarantees for Southern representation at the negotiations. But Georgia's and North Carolina's opposition to the Confederation "intervention" was ominous. No one knew how much force Confederation Indian policy would have in the South.  

Thus by the Spring of 1785 the Confederation Congress had created an American Indian policy. Congress ignored Washington's recommendation to purchase title, and the decline of the Nationalist faction after 1783 led to an

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16 *Journals of the Continental Congress*, XXVII:453-58; Mohr, *Federal Indian Relations*, p. 139; Horsman, *Expansion and American Indian Policy*, pp. 9-11, 13-14. Members of the Southern Indians committee were Richard Beresford, Jeremiah Chase, Thomas Jefferson, Richard Spaight, and Jacob Read. Georgia and North Carolina's objections notwithstanding, the committee's report catered to the more aggressive tenets of Southern expansionists. Every member of the committee was from the South.
ill-conceived policy that was aggressive and often belligerent. The United States demanded Indian land cessions on the basis of right of conquest, but hoped to avoid war by allowing the Northern and Southern tribes to keep some of their lands. This new Congressional policy completely ignored colonial precedents recognizing Indian "right of soil." It was based upon right of conquest, but ignored the fact that the British and Indians militarily controlled the West at the close of the Revolution. And many other impediments loomed in the future of Confederation Indian relations: (1) the reluctance of Georgia and North Carolina to cede their western lands; (2) the haziness of Article IX, and state opposition to Confederation intervention in Indian affairs; (3) growing westward migration, and the unjust conduct of frontier settlers towards the Indians; (4) the financial woes of Congress; (5) the forboding presence of both Spain and Great Britain in the heart of Indian country; and, most important of all, (6) the resolve of the Northern and Southern Indian tribes to fight to retain their lands—all of these forces promised to work against a successful Indian policy. And all of these factors were evident when Congress implemented its Indian policy in the mid-1780s.17

17Horsman, "Indian Policy in the Old Northwest," p. 38; Horsman, Expansion and American Indian Policy," pp. 9-11.
You are mistaken in supposing that . . . you are become a free and independent nation, and may take what terms you please. It is not so. You are a subdued people. You have been overcome in a war, which you entered into with us, not only without provocation, but in violation of most sacred obligations. When we offer you peace in moderate terms, we do it in magnanimity and mercy. If you do not accept it now, you are not to expect a repetition of such offers. . . . We shall now, therefore, declare to you the conditions, on which you can be received into the peace and protection of the United States.

The American Indian Commissioners
at Fort Stanwix, 1784

At the Fort Stanwix conference your commissioners settled everything as they thought would best suit them, and be most conducive to their interests. They pointed division lines and at once confirmed them without waiting to hear our opinion of it and whether it would be approved by us or not, holding that our country was added to them by the King of England. The language confused the minds of our chiefs and deterred them from making any reply; they kept saying if we did not consent to their proposals, that their warriors were at our backs and that we should receive no protection from the King of England. Such has been the language of your commissioners at every treaty held with us. . . . We are of the same opinion as the people of the United States: You call yourselves free and independent. We, as the ancient inhabitants of the country and sovereigns of the soil, say that we are equally free as you or any other nation under the sun.

The Northern Tribes to the Secretary of War

The Iroquois Confederacy and the Ohio Valley tribes

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18Mohr, Federal Indian Relations, p. 122; Horsman, Expansion and American Indian Policy, p. 15.
readied themselves for their first council with the American Indian commissioners. In a mass meeting at Sandusky (on the Ohio) in 1783, the Six Nations and the Northwest tribes formed an Indian confederation led by Mohawk chief Joseph Brant. Encouraged by several British officers, the Indians vowed to not cede any lands to the United States without the approval of their entire confederation. They set the Ohio River as the boundary beyond which the Americans could not pass. When the United States called a council at Fort Stanwix (in the Mohawk Valley of New York) in October of 1784, all the leaders of this Northern confederacy attended. By the time the American commissioners arrived, however, winter was approaching, and the Ohio Valley tribes had gone home. Thus from Brant's viewpoint there could be no valid treaty or land cessions. The Americans were determined to get a treaty, however, and threatened military reprisal if they did not get their way. Although only a fraction of the Northern tribes remained, the Treaty of Fort Stanwix was negotiated in October of 1784.\(^1\)

After several delays, the five Confederation commissioners\(^2\) (three Southerners and two Northerners) gathered

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\(^{1}\) Downes, *Council Fires*, pp. 289-92. The Treaty of Fort Stanwix of 1784 is not to be confused with the Treaty of Fort Stanwix negotiated between the British and the Northern tribes following the French and Indian War.

\(^{2}\) The five Indian commissioners were George Rogers Clark, Oliver Wolcott, Benjamin Lincoln, Richard Butler, and Arthur Lee. One of the delays at Stanwix was the problem
the partial representatives of the Six Nations together and informed them of the new American policy. The Six Nations strongly opposed the United States demands. Cornplanter, the Seneca chief, protested, "We Indians love our lands. We warriors must have a large country to range in, as indeed our subsistence must depend on our having much hunting ground." The Americans countered that the Indians were a "defeated and subdued people". They were being offered "moderate terms," thanks to American "magnanimity and mercy." According to the American negotiators, the Six Nations were not being asked to cede their lands, for they had no lands to cede: "We have given the hostile part of the Six Nations some of the country which we have conquered from them." By this stage of the negotiations all pretense of parley was cast aside. The Americans talked belligerently and threatened war if the Indians did not meet their demands. They ended the discussions arbitrarily, stating: "We shall now, therefore, declare to you the conditions, on which you can be received into the peace and protection of the United

of state sovereignty. New York had not yet ceded its western lands to Congress, and several New York state Indian commissioners arrived to negotiate a separate treaty with the Six Nations. When the New York negotiations finally collapsed, the national commissioners took over. New York did not cede its western land claims to Congress until 1785. See Chapter 3 above, as the state land cessions are particularly relevant to the issue of sovereignty in Indian affairs. The Southern land cessions proved to be the most troublesome in regard to Indian relations. See Horsman, Expansion and American Indian Policy, p. 16; Downes, Council Fires, p. 295; Mohr, Federal Indian Relations, p. 109.
States."\(^{21}\)

In the Treaty of Fort Stanwix, the partial representatives of the Six Nations yielded all their claims to lands west of the western Pennsylvania border. They received peace, and some lands on which to live.\(^{22}\) These terms were quite similar to those reached three months later by American commissioners Richard Butler, Arthur Lee, and Samuel Holden Parsons at Fort McIntosh (on the upper Ohio, just within the Pennsylvania state line). Again, threatening language exacted from small segments of the Wyandot, Delaware, Ottawa, and Chippewa tribes a cession which they and their confederates immediately disavowed. The one Northern commissioner, Nationalist Samuel Holden Parsons of Massachusetts, saw the folly of the American position: "It is not

\(^{21}\)Horsman, Expansion and American Indian Policy, pp. 16, 19; Downes, Council Fires, pp. 290, 295; Prucha, Indian Policy, p. 34; Horsman, "Indian Policy in the Old Northwest," pp. 38-39. For Congressional instructions to the American commissioners at Fort Stanwix, see Monroe to Jefferson, July 15, 1785, in Stanislaus Murray Hamilton, ed., The Writings of James Monroe (New York, 1898), I:95. Also, Madison to Jefferson, October 11, 1784, in Gaillard Hunt, ed., The Writings of James Madison (New York, 1901), II:80: "We found a small portion only of the Six Nations assembled; nor was the number much increased when we quitted the business. . . . What the upshot of the Treaty will be is uncertain. . . . These obstacles will be rendered much more embarrassing by the instructions to the Commissioners which I am told leave no space for negotiation or concession, & will consequently oblige them in case of refusal in the Indians to yield to the ultimate hopes of Congress to break the Treaty. But what will be the consequences of such an emergency?"

\(^{22}\)The tribes also agreed to return all American prisoners of war. For the Oneidas and Tuscaroras, see footnote number 14, above.
my province to call in question the propriety of our pro-
ceeds, yet ... is it not more expedient to give content
to the Indians by purchasing such tracts as they will sell
than to hold out an idea which fires their pride and alarms
their fears and will probably deluge our frontiers with
blood?" But Lee and Butler declared, "we claim the country
by conquest, and are to give, not to receive." Indian ob-
jections were overruled and the Treaty of Fort McIntosh was
signed on January 21, 1785. This left one final but diffi-
cult task: negotiating a cession from the most powerful of
the Ohio Valley tribes, the Shawnee. 23

Commissioners George Rogers Clark, Richard Butler, and
Samuel Holden Parsons met with some of the Shawnee at Fort
Finney (at the mouth of the Great Miami in the Ohio country)
in late January of 1785. After the Americans made their de-
mands, the Shawnee chief Kekewepellethe rebutted, "God gave
us this country. We do not understand measuring out the
lands, it is all ours. You say you have goods for our women

23 "The Treaty of Fort McIntosh," Archer B. Hulbert, ed.,
Ohio in the Time of the Confederation (Marietta, 1918), pp.
77-80. See Washington to Richard Henry Lee, December 14,
1784, in Sparks, Writings of Washington, IX:76: "These peo-
ple have given, I think, all the United States could reason-
ably have expected of them."; William D. Pattison, Beginnings
of the American Rectangular Land Survey System, 1784-1800
(Chicago, 1957), p. 14; Mohr, Federal Indian Relations,
pp. 109-11; Horsman, Expansion and American Indian Policy,
pp. 19-20; Downes, Council Fires, p. 292. For a good first-
hand account, see Samuel Holden Parsons to William Samuel
Johnson, October 27, 1785, in Charles S. Hall, ed., The Life
Parsons was a Revolutionary War officer, Nationalist, surveyor,
member of the Cincinnati, and a founder of the Ohio Company.
See Chapter 7 below.
and children; you may keep your goods, and give them to other nations. We will have none of them." The American commissioners grew angry. They threatened to burn the Shawnee villages if they did not sign: "The destruction of your women and children depends on your present choice. Peace or war is within your power." These threats and the presence of American troops evidently had some impact, as Shawnee resistance collapsed. They agreed reluctantly to cede all their lands west of the Great Miami River in the Treaty of Fort Finney, signed January 31, 1785.  

On the surface it appeared that by early 1785 the Confederation accomplished all of the stated goals of its Northern Indians committee report. American Indian commissioners negotiated treaties with Indians at Forts Stanwix, McIntosh, and Finney—and the United States gained cessions to thirty million acres of the Ohio country. But underneath this apparent success lay serious problems. Many of the Northern tribes had not attended the treaty councils and did not consider themselves bound by the provisions. Congress ignored Brant's confederacy, yet most of the confederacy's members still insisted on an Ohio River boundary. The Americans' belligerency had created much animosity among the Northern tribes. Moreover, the United States had forced its

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24 Clark and Butler were Southerners, Parsons was from the Northeast. See Hall, Samuel Holden Parsons; Horsman, Expansion and American Indian Policy, pp. 22-23; Mohr, Federal Indian Relations, p. 115; Downes, Council Fires, pp. 295-97.
will upon the Indians, but had no military muscle to back it up. For the time being, the Northern tribes were somewhat mesmerized by the shock of British desertion and the audacity of the American threats—but they would soon awaken and take their vengeance.  

The history of Confederation relations with the Southern tribes—the Cherokees, Chickasaws, Creeks, and Choctaws—from 1784-1786 is confusing and frustrating. A number of factors combined to preclude a successful Indian policy in the South. Although Congress was slow and had no money to finance a strong southern policy, the major impediments to effective

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25Ward, Department of War, p. 66; Horsman, Expansion and American Indian Policy, p. 22; Monroe to Jefferson, May 11, 1786, in Hamilton, Writings of Monroe, I:126.
Indian relations came from the Southerners themselves. Land speculators like North Carolina's sometime governor and congressman William Blount were feverishly acquiring illegal title to millions of acres of Indian land.\textsuperscript{26} James Robertson and the Franklinites were seizing Cherokee domain in what is now Tennessee and North Georgia. Since Georgia and North Carolina refused to cede their western lands to Congress, they maintained that the Confederation had no legal authority to regulate Indian affairs within their state boundaries. In direct contradiction of Congress's interpretation of Article IX and the national Indian policy, the Southern states negotiated numerous treaties with unrepresentative fragments of the Southern Indian tribes. Spanish intrigues in the South-west and Indian outrage over white settlement combined with all of this interference to thwart the efforts of the Confederation's Southern Indian commissioners.\textsuperscript{27}

Those commissioners were chosen on March 5, 1785, when

\textsuperscript{26}Merritt B. Pound, Benjamin Hawkins, Indian Agent (Athens, Georgia, 1951), p. 26. Blount's appetite for Indian lands was so infamous that among the Southern tribes he was known as the "Dirt King" or the "Dirt Captain"!

\textsuperscript{27}Cotterill, Southern Indians, p. 65; Pound, Benjamin Hawkins, p. 40; Mohr, Federal Indian Relations, pp. 141, 166; Horsman, Expansion and American Indian Policy, p. 37. Some illegal treaties negotiated by Southern states include Georgia's treaty with the Cherokees and a few Creeks (May 31, 1783); Virginia's treaty with the Chickasaws (November 1783); the Franklin-Cherokee Treaty of Chota Ford (July 1786); the Georgia-Creek treaty of November 3, 1786; and the Treaty of Shoulderbone (November 1786).
Congress appointed Benjamin Hawkins, Daniel Carroll, William Perry, Andrew Pickens, and Joseph Martin to treat with the Southern tribes. Not all of the tribes were interested in negotiating, however. The proposed council with the powerful Creeks at Galphinton was canceled when only a handful of Creeks appeared. The overwhelming majority of Creeks followed the lead of their shrewd chieftain, Alexander McGillivray. McGillivray, a half-breed and full Colonel in the British army during the Revolution, was enraged by Georgia's encroachments on the Creek domain. In 1784 McGillivray put the Creeks on a war footing, secured Spanish aid, and laid the foundation for a Southern Indian confederation. That confederation issued a proclamation denying the validity of the United States claim to their country:

28 Burnettt, Continental Congress, p. 628. Originally, Congress appointed only three commissioners--two Northerners and one Southerner. But the Southern states objected strenuously and Congress added two more commissioners (one each from Virginia and North Carolina). Georgia was still unrepresented, however, and their Congressman, William Houston, wrote: "As we are much connected with the Southern Indians I took the liberty to mention that I thought a commissioner ought to be appointed from our State, but I was seriously replied to for suggesting that the least countenance ought to be given so unworthy a state, and one that had not taken a single federal measure." Congress eventually appointed a Georgian half-breed (McIntosh) to fill a vacancy on the commission.

The most knowledgeable of all the Southern commissioners was Benjamin Hawkins of North Carolina. Hawkins, a Nationalist and delegate to the Constitutional Convention, had a firsthand acquaintance with the Indian situation and strove to bring a degree of justice into Southern Indian affairs. He violently opposed the land speculators and was resultantly loathed by most North Carolinean and Georgian politicians. See Pound, Benjamin Hawkins.
We the chiefs and warriors of the Creek or Talapuche, Chickasaw, and Cherokee nations do most solemnly protest against whatever title, pretension or demand the American congress may establish for or against our territory, settlements, and hunting grounds, by virtue of said Peace treaty between the King of Great Britain and the American states, declaring that since we are not party to it, thus we are determined to pay no attention. . . . His Brittanic Majesty has never possessed, either through cessions, sale, or conquest, our territory, nor that of which said treaty speaks.29

The negotiations with the Cherokee, Choctaw, and Chickasaw tribes at Hopewell (in South Carolina) in the winter of 1785-86 were much more successful than the Galphinton fiasco. Benjamin Hawkins wrote that the Hopewell treaties aimed at preserving the rights of the Southern tribes.30 The three treaties31 provided for the return of prisoners of war, trade regulation, punishment of trespassers on Indian lands, and a liberal boundary settlement between the Indians and the Southern states. Unfortunately, the Southerners' opposition to the

29 Creek Declaration in Mohr, Federal Indian Relations, p. 144. See also ibid., pp. 142, 148; Cotterill, Southern Indians, p. 63. The Creeks' refusal to parley at Galphinton forced the Congressional commissioners to move on, but it did not stop the Georgians from immediately negotiating an illegal land cession from two malleable Creek chieftans, Fat King and Tame King.

Much of McGillivray's opposition to the Americans can be attributed to his own extensive land claims in the area.


31 The Americans negotiated three treaties at Hopewell, one each with the Cherokees (November 18, 1785); Choctaws (January 5, 1786); and Chickasaws (January 10, 1786).
treaties rendered them virtually unenforceable. Although the commission took much of the Indians' land, it was not nearly so much as Georgia and North Carolina wanted (North Carolina had passed an act in 1783 declaring all the Cherokee claims within their bounds null and void). The state legislatures of Georgia and North Carolina immediately disavowed the Treaties of Hopewell and registered official protests. In Congress, William Blount complained that the treaties contained "several stipulations that infringe and violate the legislative rights" of North Carolina. Hugh Williamson and John Ashe of North Carolina proposed a "Resolution, purporting Congress's disavowal of such part of the Hopewell Treaty as ceded certain Territory within the limits of the State as hunting grounds, and sta[ting] our Claim to same..." Georgia took up where North Carolina left off. One month after Hopewell, the Georgia state legislature resolved that all treaties made by the Confederation inconsistent with the "sovereign territorial and legislative rights and privileges" of Georgia were "hereby declared null and void."32

32 Horsman, Expansion and American Indian Policy, p. 29; Mohr, Federal Indian Relations, p. 151; Horsman, Formative Years, p. 9; John Ashe to Governor Richard Caswell (NC), in Burnett, Letters of the Continental Congress, VIII:639. See also Hugh Williamson to Governor Samuel Johnston (NC), ibid., pp. 789-90: Williamson assured the North Carolineans, the "Treaty of Hopewell will never operate against the Territorial Claims of the State whenever she thinks fit to make them." Mohr, Federal Indian Relations, p. 147. Note that the political ideology of states' rights and nullification had clearly emerged in the South by the 1780s.
By 1786, Southern Indian affairs were in much the same mess as they had been before Congressional intervention. Georgia and North Carolina refused to make land cessions, and their adherence to the principle of state sovereignty cast much doubt on the authority of Confederation Indian commissioners in the South. The bankrupt Confederation Congress was no match for aggressive Southern land speculators and frontier settlers. And the Southern tribes were growing more hostile with each new encroachment. Many of the tribes were not represented at Hopewell, and the powerful Creeks refused to negotiate at all. James White, the Superintendent of Southern Indian affairs, tried to appease the angry tribes, but his efforts were in vain. The Southern states were bent on total expulsion of the Cherokee, Choctaw, Chickasaw, and
Creek nations from the Old Southwest—even at the cost of war. There were many causes for the Indian hostilities that broke out on the Northern and Southern frontiers after 1784. The ominous presence of the Spanish and the British in the heart of Indian country was certainly a factor. Both nations

33The Spaniards' claims in the Old Southwest caused them to view American expansion with great alarm. Spanish efforts to close the Mississippi River to American commerce combined with an Indian policy aimed at thwarting American westward expansion. For Spanish relations with the Southern tribes, see Arthur P. Whittaker, The Spanish-American Frontier, 1783-1795: The Westward Movement and Spanish Retreat in the Mississippi Valley (Boston, 1927), and The Mississippi Question, 1795-1803 (New York, 1934); Samuel F. Bemis, Pinckney's Treaty (New York, 1926); Laurence Kinnaird, ed., Spain in the Mississippi Valley, 1765-1794, 3 vols., American Historical Association Annual Report, 1945, II-IV (Washington, 1946-49); Mohr, Federal Indian Relations, p. 142; Pound, Benjamin Hawkins; Cotterill, Southern Indians. See also Madison to Jefferson, November 1, 1787, in Burnett, Letters of the Continental Congress, VIII: "We hear from Georgia that that state is threatened with dangerous war with the Creek Indians. The alarm is of so serious a nature that law martial has been proclaimed, and they are proceeding to fortify even the Town of Savannah. The idea there is, that the Indians derive their motives as well as their means from their Spanish neighbors. Individuals complain also that their fugitive Slaves are encouraged by East Florida. The policy of this is explained by supposing that it is considered as a discouragement to Georgians from settlements near the Spanish boundaries."


The British exercised an even greater influence over the
had solid claims to territory in the Mississippi Valley; both
were eager to encourage Indian resistance to the American ad­

vance by providing arms and ammunition, moral support, and
vague promises of military backing in the event of an all­

out war. Yet most of the blame for Indian hostilities in
the mid-1780s can be placed directly on Americans. Indeed,
the main factor leading to the bloody outbreaks was the bel­
ligerent Confederation Indian Policy of 1783-1786. The
Northern and Southern tribes refused to accept American claims

Indians of the Ohio country than did the Spanish over the
Southern tribes. For reasons of diplomacy and commerce (i.e.,
fur trade), Great Britain maintained a powerful military
presence in the Northwest, in direct violation of the Treaty
of Paris. The British refused to evacuate seven of their
military posts in the Ohio Valley (Forts Oswego, Oswegatchie,
Niagra, Presque Isle (Erie), Sandusky, Detroit, and Michi­
mackinac) and were thus a constant factor in American relations
with the Northern tribes.

Although refraining from a direct promise of military
support, Great Britain diplomatically convinced the Northern
Indians that they (the British) would somehow help the tribes
prevent American settlement beyond the Ohio. They supplied
the tribes with trade goods and encouraged an Indian confed­
eration and military alliance. In this way Great Britain
kept the Northern tribes on a war footing without overtly
encouraging hostilities. Throughout the 1780s, the British
watched the United States-Indian struggle from the vantage
point of their Northwest posts--and viewed the commencement
of the warfare for which they shared a partial responsibility.
Most historians have viewed the British Indian policy criti­
cally. They contend the British policy was based upon sel­
fish commercial and diplomatic motives. A. L. Burt, however,
credits Great Britain with unselfish motives in their 1780s
Indian policy. He contends that the fur trade and 'power
plays' were of secondary importance, and that British 'guilt'
for the predicament of the Northern tribes was their main
motivation. Since the American government was weak, and in­
capable of effecting an equitable Indian policy, Great Britain
decided to stay in the Northwest to provide a balance of power
and thereby prevent destruction of the Indians.
to their ancestral domains, disavowed the treaties of 1784-1786 (treaties which many of them had not signed), and declared war on the American intruders. The Confederation Congress was left to reap the tragic consequences of its unrealistic Indian policy.\footnote{Horsman, "Indian Policy in the Old Northwest," p. 40; Prucha, Indian Policy, p. 35.}

The Six Nations and Northwest tribes prepared for war at a grand council at Britain's Fort Detroit in December of 1786. Under the leadership of Joseph Brant, the tribes sent an angry letter to the Confederation Congress. They disavowed the Treaty of Paris, repudiated the treaties of Forts Stanwix, McIntosh, and Finney, and demanded that all American land surveyors immediately cross back over the Ohio River. The Northern confederation protested the American policy of treating with separate tribes, insisting any Indian land cession must be approved by the entire Northern Indian confederacy. Brant and his allies called for new negotiations and a new treaty--a treaty that would prohibit American settlement beyond the Ohio. If their demands were not met, the angry Northern tribes promised to wage war and drive the Americans out by force.\footnote{Downes, Council Fires, pp. 296, 299; Mohr, Federal Indian Relations, p. 123; Horsman, Expansion and American Indian Policy, p. 23. Tribes attending the Detroit council were the Iroquois Confederacy, i.e., Seneca, Mohawk, Tuscarora, Oneida, Cayuga, Onandoga nations, and the Wyandot, Delaware, Shawnee, Ottawa, Chippewa, Poawatomi, Miami, Cherokee, Wea, and Piankashaw of the Ohio country. Several British officers}
Surprisingly, the records of the Confederation Congress show no acknowledgment of the Detroit proclamation until seven months later. In July of 1787 William Blount wrote that Congress had received a letter from Brant "counched in hostile language. . . ." He also said that reports from Kentucky and Georgia indicated trouble, and there was "much Reason to fear that Hostilities will shortly commence. . . ." It was too late to appease the enraged Northern and Southern tribes. As James Manning of Rhode Island observed,

The Savages have begun their barbarous depre­
edations on our western frontiers, but probably not without Provocation from some of the law­less Banditti which forms the Law of those Settlements. Many of the innocent must doubt­less be involved in ruin in consequences of it. The wretched deranged State of finances of the federal Government will allow us, if disposed, to allow these People but feeble aids.37

American resistance to the Northern Indians' forays was

were also in attendance. The surveyors to which Brant alludes were surveying the Seven Ranges of the Ohio Valley to be sold under the Land Ordinance of 1785. See Chapter 5 below. For conflicts between surveyors and Indians, see Pattison, Ameri­can Rectangular Land Survey System.

37 Mohr, Federal Indian Relations, pp. 121-22; Philbrick, Rise of the West, p. 142; William Blount to John Gray Blount, July 19, 1786, in Burnett, Letters of the Continental Congress, VIII:624; James Manning to Hezekiah Smith, June 8, 1786, in ibid., 362; James Monroe became quite aware of the foul mood of the Northern tribes when he traveled West in 1784. See Monroe to Jefferson, August 9, 1784, in Hamilton, Writings of Monroe, I:39: "It is possible I may lose my scalp from the temper of the Indians, but if either a little fighting or a great deal of running will save it I shall escape safe." Two months later the Monroe party was "fir'd on by those Indians; Mr. Teller & two men Killed, & a 4th. wounded." Ibid., November 1, 1784.
unorganized, ineffectual, and most often did more harm than good. The Confederation Congress divided, Northeast vs. South over whether to aid the besieged settlers. The best the bankrupt Department of War could do was send two infantry companies to the falls of the Ohio where they maintained a purely defensive stance. Virginia, however, organized two offensive strikes under General George Rogers Clark and Colonel Benjamin Logan in the summer of 1786 and November of 1787. Clark enraged the Shawnee by burning several of their villages, but his planned invasion of the Wabash country fizzled. Colonel Logan's attack along the Great Miami aimed at punishing warlike Mingos and Cherokees, but all Logan managed to do was murder Melonthee, a Shawnee chief who was, in fact, an American ally. The net result of the Clark and Logan raids was to unite all of the Northern tribes in their hatred of the United States--stiffening their determination to fight and thwart American expansion.

Meanwhile in the South, marauding bands of Cherokees raided the North Carolina and Tennessee settlements, particu-

38 Henderson, Party Politics, p. 385. See also Rufus King to Elbridge Gerry, June 8, 1786 in Burnett, Letters of the Continental Congress, VIII:624: "The lawless and probably unjust conduct of the inhabitants of Kentucky towards the Indians has lately occasioned the loss of a number of valuable lives on the Frontiers of Virginia . . . the Govr: and the Delegates of Virginia clamour for war against the Indian Towns . . . . I am decidedly against any such wars, and I at present understand the Situation and State of Affairs."

39 Ward, Department of War, p. 66; Mohr, Federal Indian Relations, p. 126; Horsman, Expansion and American Indian Policy, p. 33.
larly those within Franklin. The Creek Council declared war against Georgia on August 2, 1786 and, on order from McGil­livray, Creek war parties terrorized the Southeastern frontier, the Cumberlands, and burned Greensboro, Georgia to the ground. The situation was so serious in Georgia that the state legislature declared martial law and ordered all slaves within sixteen miles of Savannah to fortify the town. Georgians sent urgent appeals to Congress, asking for aid, but Congress refused to help. Some delegates charged that had Georgia cooperated with the Confederation, "they would have avoided the bloody War in which they are now involved in consequence of their own violations of the Treaties held by the commissioners of the United States with the Indians." Even if Congress had wanted to help, it was incapable of acting. Nationalist Nicholas Gilman of New Hampshire summed up the situation when he wrote, gloomily,

How these things will end time must reveal, but if we are much longer to be unblessed with an efficient National Government, destitute of funds and without public Credit, either at home or abroad, I fear we shall become contemptible even in the eyes of the Savages themselves.40

The warfare of 1786-1787 marked the collapse of the first

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40 Cotterill, Southern Indians, pp. 70, 74; Ward, Department of War, pp. 70-71; Pound, Benjamin Hawkins, p. 53; Virginia Delegation to Edmund Randolph, December 11, 1786 in Burnett, Letters of the Continental Congress, VIII:687-88; Nicholas Gilman to John Sullivan, November 7, 1787, in ibid., VIII:676. See also Madison to Jefferson, November 1, 1787, in ibid., VIII:663.
Confederation Indian Policy. In the beginning the policy seemed a success, but Congress made tragic miscalculations. In their haste to obtain western lands the American commissioners negotiated belligerently and with only small fragments of the Indian tribes. They claimed all of the West even though the Indians controlled the region. The Northern and Southern tribes were stunned initially by the audacity of the American position, but they soon awakened. Angered by Indian commissioners and frontiersmen, and encouraged by Britain and Spain, the Northern and Southern tribes retaliated violently. The United States found themselves embroiled in an Indian war—a war for which the bankrupt Confederation Congress was totally unprepared.41

The collapse of Confederation Indian policy was just one of the problems of the Confederation government. Disunity, lack of revenue, the split over state sovereignty—these difficulties plagued all aspects of Confederation policy, not just Indian affairs. The alleged failure of the government under the Articles of Confederation to resolve these problems brought about the reemergence of a group of leaders, the Nationalists, who attempted to strengthen the coercive powers of the national administration. By 1787 the Nationalists were advocating the Federal Constitution as the answer to America's woes. In the meantime they tried to strengthen the

41Horsman, Expansion and American Indian Policy, pp. 15, 30-31; Horsman, "Indian Policy in the Old Northwest," p. 39.
Confederation, centralize administration, and limit state sovereignty. Some of them, the Eastern Nationalists, tried to change American Indian policy.

The committee conceive that it has long been the opinion of the country, supported by Justice and humanity, that the Indians have just claims to all lands occupied by, and not purchased from them.

Nathan Dane, 1787
Report on Southern Indians

The utmost good faith shall always be observed towards the Indians; their land and property shall never be taken away from them without their consent; and in their property, rights, and liberty, they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded on justice and humanity shall from time to time be made, for preventing wrongs done to them, and preserving peace and Friendship with them.

The Northwest Ordinance of 1787

The collapse of Confederation Indian policy coincided with the reemergence of the conservative or Nationalist faction in Confederation politics. The Nationalists, relatively inactive since 1783, renewed their efforts to secure a stronger central government. Many of the Nationalists served in Congress during 1785-1787, and their philosophy can be seen in the western policy of that period. Eastern Nationalists like

John Jay, Henry Knox, Rufus King, Timothy Pickering, and Nathan Dane only reluctantly favored westward expansion, and some of them were against it altogether. If there was to be expansion, these Eastern Nationalists wanted it to be gradual, well-organized and onto speculator-owned lands under jurisdiction of a strong territorial government. George Washington agreed with these men, and wrote James Duane urging that settlements be "compact" and "government well established." Timothy Pickering asked Congress to make sure "the settlement of that country may be effected with regularity." To allow the West to be overrun with scattered settlers was, according to Washington, "inconsistent with the wisdom and policy which our true interest dictates." 43

The Nationalists' attitudes towards the West naturally affected their views on American Indian policy. 44 The Nationalists, particularly the Easterners, thought the Indian hostilities of 1786-87 were the inevitable result of unrestrained westward migration. In seeking to control that

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44 See Washington to Duane, September 7, 1783, in Sparks, Writings of Washington, VII:484: "The settlement of the western country, and making a peace with the Indians are so analagous, that there can be no consideration of the one, without involving the other."
expansion they advocated a more just and equitable Indian policy. Indeed, the conservative Nationalists held some of the most enlightened views toward the American Indian of the early national period. There are several reasons for this. The relative isolation of New England from the frontier meant that many Eastern Nationalist leaders had no serious Indian threat within their borders. Their social and religious backgrounds certainly made them more receptive to humanitarian notions concerning the red man. Eastern Nationalists like Jay, Pickering, King, and Dane formed the nucleus of the anti-slavery movement in the United States, and they shared a similar sympathy for the plight of the Indians. Rufus King wrote of the "lawless and probably unjust conduct of the inhabitants of Kentucky towards the Indians," and John Jay evinced both his humanitarianism and his Nationalism when he observed:

The western Indians are uneasy and seem inclined to be hostile. It is not to be wondered at. Injustice is too often done them, and the aggressors escape with impunity; in short, our governments, both particular and general, are either so impotent or so very gently administered as neither to give much terror to evil-doers nor much support and encouragement to those who do well.45

45 Rufus King to Elbridge Gerry, in King, Correspondence of Rufus King, I:180; John Jay in Henry P. Johnston, ed., The Correspondence and Public Papers of John Jay (New York, 1890), III:249.

For humanitarianism, see "Humanitarianism and Sentimentality" in Winthrop D. Jordan, White Over Black: American Attitudes Toward the Negro, 1550-1812 (Chapel Hill, 1968), pp. 365-72: "The growth of humanitarianism, one of the most profound and least explicable developments of the eighteenth
century... was quietly but effectively equalitarian... a number of circumstances combined to nurture an especially strong humanitarian movement in America... Ironically, the presence of two more primitive races tended to stimulate humanitarianism." See also Bernard Sheehan, Seeds of Extinction, p. 4: "The elimination of savagery, many reasoned, could be accomplished in more refined and humanitarian ways. The Indian need not be destroyed... the white man had a moral obligation to see that the tribesmen survived." Sheehan argues that Federalists and Antifederalists alike were caught up in the humanitarian attitudes towards the Indian: "Men so disparate as Timothy Pickering and Thomas Jefferson thought and acted in concert on the question of the Indians." Ibid., p. 6.

I would contend that several circumstances combined to render the Eastern Nationalists more responsive to a humanitarian Indian policy. As mentioned, the isolation of New England is important, as was involvement in the anti-slavery movement. See Jordan, White Over Black, pp. 365-72. Although some Southerners, most notably Jefferson, had some doubts about slavery, the Manumission Society of the 1780s was an entirely New England affair, with John Jay as its first president. Besides Jay, King, Pickering, and Dane, Eastern Nationalist anti-slaveryites included Alexander Hamilton, Samuel Hopkins, James Pemberton, Benjamin Rush, and Noah Webster. It was Eastern Nationalists who revived Jefferson's plan to outlaw slavery in the territories and incorporated that provision into the Northwest Ordinance. See Chapter 7 below.

But the most convincing proof of Eastern Nationalist affinity for a just and equitable Indian policy exists in the writings of the time. Most of the documents that evidence any compassion or sympathy for the plight of the Indian were written by either Easterners or Nationalists. See King to Gerry, June 8, 1786, in Burnett, Letters of the Continental Congress, VIII:624, or footnote number 36; see John Jay to John Adams in Johnston, Correspondence of John Jay, III:215: "The newspapers herewith sent will give you information in detail of Indian affairs, but they will not tell you what however is the fact, that our people have committed several unprovoked acts of Violence against them. These acts ought to have excited notice of the government and been punished in an exemplary manner." Or Alexander Hamilton in Harold Syrett et al., The Papers of Alexander Hamilton (New York, 1969), III:468: "The attempt at the expulsion of so desultory a people is as chimerical as it would be pernicious. It has not a single object for the acquisitions of their lands is not to be wished 'till those now vacant are settled." See also Theodore Sedgwick, 4th. Congress, Annals of Congress (April 1796), p. 900, in the Epilogue to these essays, below.
An equitable Indian policy fit perfectly into the Eastern Nationalists' overall plan for the development of the West, as the Indians were certainly the most effective means of controlling westward migration. They formed a formidable barrier and discouraged encroachments by frontier settlers. If the Indians were dispossessed, then there would be nothing to restrain the Westerners. "Tho numbers in defiance of the authority of the States, cross the Ohio," observed Timothy Pickering, "yet few would be hardy enough to settle on Indian ground." But if all the Indians' lands were taken "to the Mississippi, like lawless emigrants will spread over the whole of it." And Rufus King queried, "Would not the Indian Claims prevent emigration on the Western Side of the Ohio?" The one of the foremost advocates of a just Indian policy was Henry Knox, the Nationalist Secretary of War. Knox was zealous in his eviction of squatters from the Indian country and in protecting the rights of the Indians. See Mohr, Federal Indian Relations, p. 171: "It is, however, painful to consider that all the Indian tribes once existing in those states now the best cultivated and most populous, have become extinct. If the same causes continue, the effects will happen and, in short period the idea of an Indian this side of the Mississippi will be found only in the pages of the historian." See also Prucha, Indian Policy, p. 41: "The Indians have constantly had their jealousies and hatred excited by the attempts to obtain their lands. I hope in God all such designs are suspended for a long period."

Another Nationalist humanitarian was Indian agent Benjamin Hawkins of North Carolina. See Hawkins to Jefferson, 1786, in Pound, Benjamin Hawkins, p. 52: "You will see by the Treaties which I enclose how attentive I have been to the rights of these people; and I can assure you there is nothing I have more at heart than the preservation of them. It is a melancholy reflection that the rulers of America, in rendering an account to Heaven of the aborigines thereof, will have lost everything but the name. . . ."

46Pickering to King, in King, Correspondence of Rufus
Eastern Nationalists wanted gradual expansion, closely supervised by the federal government—expansion that appeased the Northern and Southern tribes and prevented an Indian war. This led them to repudiate the disastrous Indian policy of 1783-1786. From 1786 through 1787, the Eastern Nationalists attempted to change American Indian policy—to make it more just and less aggressive. In the Ordinance of 1786, the Northwest Ordinance of 1787, and the Southern and Northern Indian Affairs Reports of August 1787, they advocated a more centralized and equitable Confederation Indian policy. They reintroduced the British recognition of Indian right of soil and the necessity of bona fide purchase. But the conservatives' efforts were in vain. No amount of reason could restrain the restless pioneers, and these aggressive frontiersmen made an equitable Indian policy impossible.

The Ordinance of 1786, "an ordinance for regulating the Indian department," reflected the attempt to formulate a truly uniform and centralized Indian policy. This Ordinance was drafted by Rufus King, and a committee consisting of William Samuel Johnson, Charles Pinckney, John Kean, and James Monroe. The Ordinance of 1786, accepted by Congress on

King, I:103; King to Pickering, in ibid., I:104-5. See also Pickering to King, June 4, 1786, in ibid., I:106-7: "If such savage emigrants encroach on the Indian territory, or commit any outrages, nothing short of a military force will be able to bring them to Justice . . . to prevent [Indian wars] resulting from such emigrations I could wish the Indians might be expressly authorized by treaty, to break up every settlement within their territory."
August 7, contained two major thrusts: (1) The establishment of a centralized, national Indian department; and (2) Regulation of trade with the Northern and Southern tribes. Congress created a Department of Indian Affairs under the authority of Henry Knox, the Secretary of War. The Indian Department consisted of a Northern and a Southern district (as in the British colonial system), each with a superintendent responsible only to Knox. The superintendent had to take a loyalty oath and post a $6,000.00 bond to guarantee good conduct. The Ordinance was quite explicit about trade. Only United States citizens could trade with the Indians, and they must have a license. The license fee was $50.00, plus a $3,000.00 bond. Congress forbade the use of liquor in the white-Indian transactions, and finally: "Any trader or other person employed by a trader, treating an Indian in an unjust manner shall on due proof thereof being made be deprived of his license or fined."

The Southern states were naturally quite hostile to such a measure, since it threatened their sovereignty in Indian affairs. Timothy Bloodworth of North Carolina tried to amend the Ordinance and reduce national authority in licensing traders and conducting negotiations with the Indians. But

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47 Journals of the Continental Congress, XXXI:49-53 and XXX:370; Horsman, Expansion and American Indian Policy, p. 33; Prucha, Indian Policy, p. 36; Mohr, Federal Indian Relations, p. 105. The superintendent's salary was $1,000 per year. The first appointees were Richard Butler in the North and James White in the South.
only North Carolina, Georgia, and New York voted for the amendment.\(^4\) Representative William Houston and William Few of Georgia moved to omit that portion of the Ordinance of 1786 pertaining to Indians south of the Ohio, but their measure was also defeated. In a final compromise, however, the Southerners inserted a provision requiring the Southern Indian superintendent to "act in conjunction with the authority of [the] state" whenever execution of the Ordinance interfered with the "legislative right of a state." This hazy stipulation weakened the Ordinance's centralizing effect, but the Indian Ordinance of 1786 was nevertheless a step in the direction of a strong and equitable national Indian policy.\(^4\)

The Northwest Ordinance of 1787 provides another good example of Eastern Nationalist Indian policy. In drafting a plan of government for the Ohio country, the Nationalists in Congress showed their desire for gradual, well-ordered expansion into the trans-Appalachian West. The system of government they instituted was much like the British colonial system and lent itself to political control by Northeasters and landed interests in the Ohio Valley.\(^5\) The Northwest Ordinance of 1787 espoused a humane attitude towards the Indians.

\(^4\) New York desired lands from the Six Nations and often allied with Georgia and North Carolina in arguing for state sovereignty in Indian affairs. New York did not cede its western land claims until 1786. See footnote number 20, above.


\(^5\) See Chapter 7, below.
Expansion was still the goal, but the Northeastern plan for expansion was less belligerent and more tempered than previous Confederation policy. Congress recognized Indian rights of prior occupancy and proposed cash purchase. Negotiations and bargaining would replace a policy of overt dictation. And the Congress pledged, somewhat optimistically, the "utmost good faith shall always be observed toward the Indians; their land and property shall never be taken from them without their consent. . . ."  

The warfare on the Southern and Northern frontiers in 1786 and 1787 produced two committee reports that most accurately reflect the Confederation Congress's changing attitudes towards Indian affairs. Both reports (August 7 and 9, 1787) were drafted by Nathan Dane, and came from committees dominated by Easterners and Nationalists.  

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52 *Journals of the Continental Congress*, XXXIII:455-63, 477-81. Members of the committee on Southern Indians were Dane, Dyre Kearny, Edward Carrington, William Bingham, and Melancton Smith. All except Smith were Nationalists—all except Carrington Easterners. The Northern Indian Affairs committee members were Dane, Benjamin Hawkins, John Kean, William Irvine, and Edward Carrington. While Hawkins, Kean, and Carrington were from the South, Hawkins and Carrington were Nationalists and Kean was an Independent. William Irvine was a Pennsylvanian who later joined the Jeffersonians. Nathan Dane exercised considerable influence in drafting both reports.
Indians was a response to Georgia's appeal for military aid to battle the Creeks. The committee rejected this plea, and blamed the Georgians for the outbreak of hostilities:

Various circumstances shew that the Indians, in general, within the United States want only to enjoy their lands without interruption. . . . [But] several tribes complain that their land is taken from them . . . their is sufficient evidence to show that those tribes do not complain altogether without cause. An avaricious disposition in some of our people to acquire large tracts of land and often by unfair means appears to be the principal source of difficulties with the Indians.

The committee's solution to the problem was further centralization of Indian affairs. They contended that Article IX called for Congressional control of Indian policy. Georgia and North Carolina's claims of state sovereignty had produced nothing but "confusion, disputes, and embarrassments." The powers for making war and peace with the Indians, purchasing their lands, evicting squatters, and fixing boundaries with them "appear to the committee to be indivisible," and rightly belonged to the Confederation Congress. Georgia and North Carolina's failure to keep peace with the Southern tribes was sufficient proof they were incapable of managing their own Indian affairs. The committee recommended, in conclusion, that Georgia and North Carolina cede their western lands to Congress and accept a centralized national Indian policy. As for the requested military aid, "Congress can never employ the forces of the Union in any cause, of the justice of which they are not
fully convinced."\(^{53}\)

On August 9, Nathan Dane's committee on Northern Indian affairs issued a report that carried the new policy recommendations one step further. The report reviewed the dismal state of Northern Indian affairs, noting the war posture of the angry Northern tribes, Brant's confederacy, and the Indians' repudiation of the treaties of Forts Stanwix, McIntosh, and Finney. The committee recommended a reappraisal of American Indian policy. If total war was to be avoided, the United States would have to start all over again. A new treaty should be negotiated with all of the Northern tribes, as per Brant's demand. Moreover,

instead of a language of superiority and command; may it not be politic and just to treat the Indians more on a footing of equality, convince them of the justice and humanity of the United States as well as their disposition to promote the happiness of the Indians? and instead of attempting to give lands to the Indians to proceed on the principle of fairly purchasing them and taking the usual deeds.\(^{54}\)

Thus, for the first time in the new nation's history, Congress advocated acquiring Indian lands by bona fide purchase of title.\(^{55}\) Faced with the collapse of the aggressive 1783-1786

\(^{53}\) *Journals of the Continental Congress*, XXXIII:455-63.

\(^{54}\) Ibid., pp. 477-81; Horsman, *Expansion and American Indian Policy*, p. 41; Horsman, "Indian Policy in the Old Northwest," p. 41.

\(^{55}\) This return to the old British policy represents an Anglicization of American Indian policy. Washington, of course, had advocated purchase four years earlier in his September 7 letter to Duane. But Congress thought, as did Schuyler, that even purchase was unnecessary. Thus Congress finally accepted Washington's unheeded advice.
policy and an Indian war, the Eastern Nationalists transformed American Indian policy and attempted to make it more equitable. Expansion was still the goal, but the Northeasterners planned for the post-1787 expansion to be less ruthless than the unrestricted flood of migration that followed the Revolution. Now expansion was to be slow and organized, and into territories where a solid government was waiting. Of course this "new" expansion necessitated Indian land cessions, but they were to be obtained from the Northern and Southern tribes by fair purchase in honest negotiations. After selling some of their lands, the Indians would live on the millions of acres to the west of the American settlements. There would be plenty of land for all—or so the Eastern Nationalists thought.

No one in 1787, particularly the Eastern Nationalists, had any idea of the proportions the westward movement would take. Over the next quarter of a century hundreds of thousands of American pioneers crossed the Appalachians and settled in the Mississippi Valley. The red man's civilization was inevitably crushed by this expansion. The Confederation decision to purchase Indian lands in 1787 was a step in the direction of an equitable Indian policy, but viewed in the total perspective its effects were miniscule. Americans may have salved their consciences by introducing purchase money into their transactions with the Indians, but the fact remains that the Indians did not want to sell their lands at all. It mattered little to
the Indians whether the loss of their ancestral domains was occasioned by sale, coercion, or outright seizure. The conflict between white Americans and native Americans over land had no solution. The introduction of purchase money by the Americans only tended to shadow that unalterable fact.\textsuperscript{56}

The 1788-1789 American Indian policy is a good example of this phenomenon. To be sure, Congress reintroduced the practice of purchasing Indian lands. But they all but ignored the other recommendations of the Northwest Ordinance and the Dane committees calling for "Justice and humanity" and the "utmost good faith" in dealing with the Northern and Southern tribes. Resultantly, there was little, if any, change in the overall relationship between whites and Indians. In the winter of 1788-1789 Ohio territorial governor Arthur St. Clair negotiated two treaties with the Northern tribes at Fort Harmar. The treaties of Fort Harmar were dictated, and their terms were nearly identical to those of Forts Stanwix, McIntosh, and Finney. The only difference was the payment of $9,000.00 to

\textsuperscript{56}See Jordan, White Over Black, p. 350: "During the post-war years of governmental drift and economic depression, moreover, the rhetoric of natural rights became increasingly irrelevant to the nation's problems. Americans found the philosophy of natural rights, bedrock of the Revolution, could not be made to serve as the cornerstone for effective government." See also, Sheehan, Seeds of Extinction, p. 11: The humanitarians of the early national period could "be accused of treating the natives more like a precious abstraction than a living human being. For the Indian it wanted only the best, but that meant ultimately the elimination of the tribal order, for which the Jeffersonian age must bear its share of the responsibility. Its crime was a willful failure of the intellect but not of the will."
the Northern Indians. Again, many of the tribes did not attend the councils, and those who did were coerced into signing. Money was given to salve the Indians' anger and the Americans' consciences. American Indian policy had not changed. The only difference was that the Americans now had an excuse not to feel guilty.

In the South the new Confederation policy did little to remedy the chaos of the 1780s. North Carolina and Georgia continued their aggressive behavior towards the Southern tribes and the Confederation Congress was powerless to stop them. Secretary of War Knox accused North Carolina of "the most unprovoked and direct outrages against the Cherokee Indians," concluding that "all other tribes will have good grounds not only according to their own opinion but according to the impartial judgements of the civilized part of the human race for waging perpetual warfare against the citizens of the United States." The Americans did not secure treaties with the Southern tribes until 1792. But these treaties, Northern and Southern, were only stop-gap measures. The frontier breathed a sigh of relief and awaited the policy of the new federal government.  

57 For the Treaty of Fort Harmar (1788-89), see Mohr, Federal Indian Relations, pp. 128, 133, 137-38; George Morgan to Sam Adams, 1792: "we attempted to patch the business at Fort Harmar where but few of the natives attended and none were fully represented; here the treaty was negotiated and speeches and explanations made to the Indians in the French language through a Canadian interpreter who had to guess at his meaning for he can neither write nor speak the language so as to make himself understood in any matter of
The policy of the 1790s was much the same as the old. Although the conservative Federalists would have liked to limit expansion onto Indian lands,\(^{58}\) they were powerless to stop the dynamic force of the westward movement. With the rise of the Jeffersonians, the frontier settlers gained a more sympathetic hearing in Congress. And in the long run, the frontiersmen were always the \textit{de facto} architects of American Indian policy. Full-scale war soon broke out on the Northern frontier, climaxing in Anthony Wayne's victory at Fallen Timbers in 1795. The Southern Indians' resistance collapsed after Andrew Jackson's victory at Horseshoe Bend in 1814. Thus the Eastern Nationalists' plans for an orderly and peaceful westward advance came to naught. The number of Americans who cared whether or not the United States expansion entailed honor and fair treatment of the Indians dwindled to relatively nothing. By the 1830s, treaties, wars, and Indian 'removal' had effectively cleared the eastern half of the Mississippi Valley of its original inhabitants. The extirpation of their western brethren was left to a new generation of Americans.

\(^{58}\)For Federalist Indian policy, see the Epilogue, below.
CHAPTER V

SALES OF THE PUBLIC LANDS

To hit upon a happy medium price for the Western lands, for the prevention of monopoly on one hand, and not discouraging useful settlement 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. People have got impatient, and, though you cannot stop the road, it is yet within your power to Mark the way; a little while, and you will not be able to do either.

George Washington to Richard Henry Lee, 1784\(^1\)

Land has always been of utmost importance in the American experience. It lured millions of emigrants from Europe, and sent them westward to populate the continental United States. In America, land became the avenue to opportunity—opportunity to achieve prosperity, prestige, and the social and political equality that accompanied them. As soon as Americans learned the 'art' of acquiring Indian title, they began to devise methods for parceling out their vast domain. Colonial Americans, particularly those in the Middle and Southern colonies, established precedents for cheap or free

\(^1\)Washington to Lee, December 14, 1784, in Sparks, Writings of George Washington, IX:81.
land, and preemption and "squatter's rights." When Great Britain, in its quest for colonial revenues, tried to change this policy, the colonists objected strenuously. Objections to British land policy were one of the many grievances that led to the Revolution in 1776.

The National Domain became a reality when the Confederation Congress acquired the state land cessions and Indian title to the Old Northwest in the 1780s. Although the thirteen individual states adopted radical land policies in the 1780s, the Confederation Congress followed a different route. The need for revenue resulted in a Congressional policy of using public land sales to fund the national debt. Congress still had considerable options in land policy, however. Most of these choices revolved around the "New England" vs. "Southern" systems of land disposal. Was settlement to advance slowly by compact groups onto 30,000-acre "townships," as in New England? Or would settlement be in a less organized manner onto smaller individual lots, as in the South? These were the opposing views around which the land policy debate revolved. The members of the two sides varied, but basic

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2There are numerous works which discuss Confederation land policy, but many are superficial and repetitive. The books used for this essay are Payson J. Treat, The National Land System, 1785-1820 (New York, 1910); Pattison, American Rectangular Land Survey System. See also Henry Tatter, "State and Federal Land Policy During the Confederation," Agricultural History IX (October 1935); Amelia Clewley Ford, Colonial Precedents of our National Land System as It Existed in 1800 (Madison, 1910). The latter is a doctoral dissertation done under Frederick Jackson Turner.
patterns emerged. The debate was between Northeasterners and Southerners; land speculators and western settlers; conservatives and liberals; Eastern Nationalists and a Southern-Antifederalist alliance.  

Thomas Jefferson and Hugh Williamson wrote a Southern-oriented Land Ordinance of 1784, but Congress never accepted it. Many Eastern Nationalists opposed this Southern plan, and demanded a land system more akin to the New England mode of land disposal. As the two factions debated in 1785, their differing philosophies toward westward expansion became obvious. While the South advocated rapid, and loosely organized expansion, the Easterners insisted on a very slow, gradual westward advance--closely regulated by a strong national administration.

3For the basic dichotomy over land legislation, see Roy M. Robbins, Our Landed Heritage: The Public Domain, 1776-1936 (Lincoln, 1962), p. 9: "The fact is that much of the history of the national land system centers around the struggle between these two forces of squatterism and speculation, between the poor man and the man of wealth... the opening of vacant lands to the westward always stimulated a peculiar democratic levelling influence... but the forces of order, on the other hand, contended that free land would destroy the political and economic values upon which the government was founded." See also Turner, Frontier in American History, pp. 25-26: "Efforts to make this domain a source of revenue, and to withhold it from migrants in order that settlement might be compact were in vain. The jealousy and fears of the East were powerless in the face of the demands of the frontiersmen.... The reason is obvious; a system of administration was not what the West demanded; it wanted land." Also Tatter, "Land Policy During the Confederation." Tatter calls the Confederation Congress's policy "rank imperialism." This Progressive interpretation of East vs. South and West; Rich vs. Poor; Privilege vs. Democracy, etc. is, of course, oversimplified. But when it is refined and the exceptions pointed out, however, its basic premises still hold true. This writer considers himself to be a "tempered" Turnerian.
government. Whereas the South looked forward to new western states entering the Union, the Northeast feared this would result in a decrease in their economic and political supremacy. Both sides wanted revenues from public land sales, but for opposite reasons. The Eastern Nationalists believed land sales would provide an independent revenue, thus strengthening the national government. Southerners and Antifederalists favored land sales in order to avoid the impost and taxation schemes of Morris and the Nationalists. The opposing sides did finally compromise, however, and passed the Land Ordinance of 1785. This revenue measure was a victory for the New England system of land development. Yet the issue was far from settled. Widespread squatting and illegal settlement during the 1780s and '90s lead to a collapse of the Confederation land policy. It soon became obvious that "New England township planting" would not work in the trans-Appalachian West.

Is it consistent with good policy or free government to establish a perpetual revenue?

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4 For the political implications of the land question, see Henderson, Party Politics, pp. 368-77. According to Henderson the New England system "was opposed by libertarians who objected to such corporate arrangements. The advocates of corporate development did not necessarily oppose expansion, but their policy coincided with that of the constrictions. By the same token, democrats and advocates of rapid expansion often joined forces for different reasons. Libertarians who favored minimum restrain might find common cause with speculators who wanted a free hand to exploit the land. . . ."
the idea of Congress selling out
the unlocated lands has sometimes been
dropped, but we have always met the hint
[with such] determined opposition that I
believe it will never be proposed. I am
against selling the lands at all. The
people who migrate West . . . will be sub­
ject to their proportion of the Continental
debt until paid. They ought not to be
subject to more. They will be a people
little able to pay taxes. There is no
equity in fixing upon them the burden
of this war, or any other proportion than
we bear ourselves. By selling the lands
to them, you will disgust them, and cause
an avulsion of them from the common Union.
They will settle the lands in spite of
everybody.

Thomas Jefferson, 1776

The thirteen American colonial governments faced the
problem of land sales, distribution, and settlement in the
seventeenth and eighteenth centuries. The challenges of
creating a land policy were met in various ways, but basic
patterns emerged. The Royal and Proprietary colonial
governors sought to gain substantial revenues from their
vast domains. This is particularly true of the proprietors,
like Penn and Lord Baltimore, who entertained ideas of re­
establishing some sort of feudal or manorial system wherein
they could "quitrent" lands to "vassals" in the American
wilderness. But efforts to collect quitrents and sell lands
usually proved futile. There was considerable trespassing
and squatting on Crown lands, and colonial governors found
it impossible to police their vast frontiers. By the

eighteenth century, "preemption" (first choice when the lands were put on sale) for squatters, the "headright" system, and land grants to those who provided an Indian buffer all came to be. Thus, much land in colonial America was either cheap, or given away for free. As colonial American society evolved, cheap or free land became one of its marked characteristics. But irregardless of price, the colonial governments needed surveys, boards of land policy, and land offices to manage their domains. They needed some sort of administrative apparatus for locating and parceling out lands to settlers and buyers. Two diverse systems were adopted by the Northern and Southern colonies, and each system catered to the exigencies of its particular section. The two modes of land administration became known, respectively, as the "New England" and "Southern" systems.\(^6\)

The "New England" land system was well suited to the prudent society of the Puritan Northeast. It centered around the concept of settlement in groups; individual migration and squatting was strictly forbidden. If a number of people

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desired to leave their town, they were required to incorporate and apply to the colonial legislature for a tract of land, or "township," usually near or adjacent to their present residence. These townships were previously surveyed rectangles, often six miles square (thirty-six square miles), with individual lots one mile square within. A group of settlers could remove to a township if they agreed to make improvements, build schools, and establish a church. The New England system thus provided for compact settlements, orderly migration, protection against Indians, and mutual help during the severe Northern winters. It was perfectly suited for the New Englanders—a people who in the seventeenth century tended towards community life because of their lifestyle and the exigencies of their situation.

An entirely different land system evolved in the society of the American South. In the Southern colonies, the less hostile Indians, mild climate, and plantation type of agriculture favored scattered settlements and development of country over town. People did not settle in groups, but rather as individual farmers. They located lands and claimed them indiscriminately instead of in contiguous parcels. Since there was no prior survey, settlers simply obtained a warrant (known also as certificates, caveats, and grants) for a specified amount of land from the colonial government. After so doing,

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the settler could pick and choose the land he desired from any that was unsettled, and stake a claim—usually by marking several trees with a tomahawk; hence "tomahawk rights."

After describing his bounds on the warrant, the settler registered the purchase and took possession of the land. This style of "indiscriminate location" was well suited to the individual settler, and was adopted by the backcountry yeoman as well as the planters of the Southern colonial frontier.^^

Both Northern and Southern systems had their advantages and disadvantages. While the New England system provided for secure title and orderly settlement, the Southern mode encouraged initiative and resourcefulness, and put no restraints on liberty. While the former encouraged community life, the latter led to individual plantations and an independent backcountry yeomanry. One possible disadvantage of the Northern system was that it restrained the freedom of those who wished to set out on their own. On the other hand,

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^Treat, National Land System, p. 24; Treat, "Land System Under the Confederation," p. 10; Hibbard, Public Land Policies, pp. 36-37; Robbins, Our Landed Heritage, p. 7. The Middle Colonies also practiced the Southern mode of distribution. See David Howell to Jonathan Arnold, February 21, 1784, in Pattison, American Rectangular Land Survey System, p. 39. Howell favored this system because, "In this way the good land is looked out and seized upon first, and the land of little value and of all shapes and sizes, left in the hands of the public. But this, I am told, soon rises in value, and is bought by the owners of the adjacent good lands, in their own defence." Perhaps the greatest advantage of the Southern mode is that it catered, realistically, to the inclination of the pioneers to settle along the rich creek beds, leaving less fertile lands vacant.
the loosely structured Southern system led to improper surveying and inaccurate records. This caused a multitude of conflicting claims and legal disputes as well as monopolization and fraud. Both the New England and Southern modes of land distribution contained positive and negative elements, and each was the product of the culture from which it evolved. Perhaps the only similarity between the township system of the Northeast and the indiscriminate location system of the South was that they both provided their respective westward settlers with the opportunity to settle on good lands, usually at a low price if not for free.⁹

The availability of cheap lands ended temporarily prior to the American Revolution, when the British Lords of Trade turned to land sales in their quest for colonial revenue. The Proclamation of 1763, Orders-in-Council, and the Quebec Act (1774) all contained provisions aimed at prohibiting settlement beyond the Appalachians so as to promote the sale of Crown lands to the East. The British set exorbitant rates (for example, five pounds sterling per acre in New Hampshire) to insure high proceeds from these sales. But the colonists were outraged, and refused to obey. They continued to settle illegally on Crown lands, and many removed to the trans-Appalachian West. English land policy was not only a financial failure, it was one of the grievances enumerated in

⁹Treat, National Land System, pp. 24-26; Robbins, Our Landed Heritage, p. 7.
the Declaration of Independence.\textsuperscript{10}

Throughout the Revolutionary and Confederation period, the thirteen United States adopted their own radical land codes. The Virginia assembly declared in 1776, "that all persons who are actually settled on any unlocated or unappropriated lands in Virginia shall have the preemption or the preference in the grant of such lands." Thomas Jefferson announced the same year that he was "against selling the lands at all." One year later the Virginians granted all squatters the right of preemption at two and one-half cents an acre. This liberal policy was similar to those in most of the other states throughout the late 1770s and 1780s. North Carolina granted settlers up to 640 acres (with an additional 100 acres for a wife and each child) at forty schillings an acre, and Pennsylvania sold its western lands at thirty-four cents an acre. New York was selling its upstate land at twenty cents to one dollar an acre, with credit, while Massachusetts reduced its Maine lands to fifty cents an acre. Maryland joined in granting preemption rights, and nearly all of the other states' policies favored cheap lands and easy

\textsuperscript{10}Ford, \textit{Colonial Precedents}, p. 84; Robbins, \textit{Our Landed Heritage}, p. 1; Rohrbough, \textit{Land Office Business}, p. 6; Hibbard, \textit{Public Land Policies}, p. 144; Tatter, "Land Policy During the Confederation," pp. 177-78. Tatter contends that Confederation land policy was modeled after the policy which Great Britain tried to institute prior to the Revolution--a policy that contradicted colonial precedents and the policies of the thirteen states during the Confederation era.
credit. While these radical land codes were partly a manifestation of Revolutionary ideology, they were not without precedent. As noted, cheap or free land was a common feature of many of the colonial land systems. Indeed, one historian contends that no principle in the history of the public lands in America is older or of more general application than that of giving away the public domain.¹¹

While the thirteen states created radical land sales programs during the late 1770s and 1780s, the Confederation Congress adopted a far different policy. Before 1784, the Congress had no land policy at all, as there was no National Domain. Not until Congress acquired the various state land cessions and Indian title (1783-1785) did the National Domain come into being. Prior to the creation of the National Domain, however, several proposals emerged concerning public lands policy. These plans were indicative of the course that Confederation land policy would follow. The Confederation Congress was destitute of funds, numerous "banditti" were settling the West, and the officers of the Continental Army

¹¹Shaw Livermore, Early American Land Companies (New York, 1939), p. 132; Robbins, Our Landed Heritage, p. 10; Tatter, "Land Policy During the Confederation," pp. 180-81. Massachusetts legalized squatting in Maine, but mostly because the Maine lands belonged to the Tories. In Vermont, the settlers used "squatter's rights" as their legal basis in declaring themselves independent from New York, New Hampshire, and Massachusetts. The Republic of Vermont's land policy was radical. See also, Ford, Colonial Precedents, pp. 83, 89, 95; Robbins, Our Landed Heritage, p. 9. Virginia's Kentucky lands were often given away, as was the case in North Carolina and Georgia. The "cheap land" thesis is that of Amelia Clewley Ford.
were clamoring for their land bounties and back pay. These conditions figured importantly in three separate land policy proposals made to Congress between 1781 and 1783. By examining the Peletiah Webster Plan, the "Financier's Plan," and the "Army Plan," one can view the origins of the first Confederation land policy.

One of the first proposals for a national land system was in a pamphlet published in 1781 by Peletiah Webster, a Philadelphia essayist and political thinker. Webster decried proposals by some Eastern constrictionists to sell or mortgage the trans-Appalachian West to Britain or Spain, saying, "It would be like killing the goose that laid an egg every day in order to tear out at once all that was in her belly." Instead he viewed the public domain as a valuable source of revenue, and proposed land sales and settlement via a mode that closely resembled the colonial New England system of land administration. Webster's plan called for prior survey into townships, sale at auction to the highest bidder (one Spanish dollar per acre minimum), gradual settlement of one tier of townships at a time, salt and mineral reserves for the federal government, and mandatory improvements by each purchaser. Webster aimed at discouraging squatting and preemption, "For I esteem this very wrong and injurious to the public, which rather deserves punishment than reward."

Peletiah Webster's desire to use the National Domain for revenue purposes was echoed by Theodoric Bland and Alexander
Hamilton on July 5, 1783. They introduced a resolution in Congress, the "Financier's Plan," which proposed that land revenues be used to finance the Confederation government. Like Webster, the advocates of the Financier's Plan called for the New England township system, prior survey, and sales by auction. And they proposed specifically that additional land bounties be paid to all army officers in lieu of the "half pay and arrears" owed them. The resolution proposed awarding $30.00 worth of land for every dollar owed by Congress. Thus both the "Webster Plan" and the "Financier's Plan" advocated a revenue-oriented land policy based on the New England system of land administration.  

One of the most influential groups in determining Confederation land policy was the officer corps of the Continental Army. Because of the military land bounties awarded during the Revolutionary War, these men had a great stake in the distribution of the National Domain. The ancient policy of awarding land for military service was practiced extensively during the Revolution, when both Congress and the state governments awarded lands to their respective soldiers and officers. Virginia was one of the most generous, allotting

200 acres to privates, 400 to non-commissioned officers, 5,000 to Colonels, and 1,500 acres to general officers.\textsuperscript{13} Other states were nearly, if not more liberal. Pennsylvania's officers received 2,000 acres while in North Carolina they received 12,000. The national government was not to be outdone, however, and in September of 1776 the Continental Congress attempted to encourage enlistments in the Continental Line by offering land bounties to volunteers. Privates received certificates for 100 acres, Colonels got 500 acres, and Major-Generals, 1,100. The fact that at this time there was no public domain from which these lands could be drawn does not appear to have restrained the Continental Congress's generosity. Neither did the fact that the Indians controlled all of the trans-Appalachian West. Congress assumed that when the time came, the states would donate the necessary land and the Indian title would be extinguished.\textsuperscript{14}

\textsuperscript{13}Virginia stipulated that its soldiers could collect on their bounties in the "Virginia Military Reserve," to be composed of lands included within Virginia's claims by her colonial charter. Many of the claims were satisfied with lands in Kentucky, but Virginia's intention that all of the lands granted to soldiers be "good" lands (i.e., river bottom land) caused complications for the Virginia cession of 1784. Virginia refused to cede her claims to the area NW of the Ohio unless Congress promised to reserve "good" lands in the Ohio country for Virginia's soldiers who were unable to locate "good" lands within the boundaries of that state. Congress finally accepted this provision, and the Virginia Military District in Ohio became a reality on the Land Ordinance of 1785.

As the war drew to a close, many of New England's Continental Army officers banded together to plan the most effective use of their military land bounties. Many of the officers were impoverished by the war and wary of the impending return to civilian life. Some believed the nation was ungrateful for their services, and looked to the West and western lands for a "fresh start." Yet the officers' disgruntlement had political ramifications that reached far beyond the issue of public lands. Their experiences in the Continental Line left them little respect for the weak Confederation government. The Continental Army officers were, almost to a man, Nationalists who favored a strong centralized government. During the 1780s, ex-officers like Washington, 

15 The connection of the Continental Army with the Nationalist faction in Congress was first suggested by Jensen in The New Nation. The best treatment of the subject is in Kohn, Eagle and Sword. Kohn contends that the Continental Army officers' corps formed the nucleus for the Nationalist effort and went on to join the Federalist party during the 1790s. Although the main concern of his book is the army's efforts to create a strong military establishment (i.e., standing army) in America, he alludes to several matters which concern western lands. Some Continental Army officers who were important Nationalists were General George Washington, Henry Knox, Rufus King, Timothy Pickering, John Marshall, Jonathan Dayton, Arthur St. Clair, Benjamin Lincoln, Rufus Putnam, Henry Knox, Charles Cotesworth Pinckney, William Duer, Alexander Hamilton, James McHenry, and David Humphreys.

These officers undoubtedly favored a strong national government. This is largely because of the many administrative problems encountered by the army because of the alleged impotency of the Confederation. Lack of pay, supplies, recruits, etc. caused many problems, and most of those problems were blamed on the Congress. Knox said, "Americans will have fought and bled to little purpose if the powers of government shall be insufficient to preserve the peace." See Kohn, Eagle and Sword, p. 11. To argue for a peacetime army in 1783 was to favor giving the national government added authority, a symbol
Arthur St. Clair, Timothy Pickering, Rufus King, Samuel Holden Parsons, Rufus Putnam, Alexander Hamilton, and Henry Knox retained their military friendships and comaraderie. They formed the Society of Cincinnati, a fraternal organization of officers aimed at maintaining these bonds of friendship while at the same time speaking out on political issues of the day. The Cincinnati, as it was called, was denounced by Sam Adams, Jefferson, and others as a political pressure group and "military aristocracy" (membership in the Cincinnati was passed down to the eldest son in each family). Because of the Society of Cincinnati's great interest in the West, Jefferson attempted unsuccessfully to insert a provision into the Ordinance of 1784 prohibiting citizenship in the West to any person holding an hereditary title. The Society of Cincinnati grew, however, and in the 1780s was a major force behind the "Army Plan" of land policy submitted to Congress in the Newburgh Petition of 1783.16

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of ultimate sovereignty--the power of the sword. Militias, on the other hand, were creations of the states and were opposed by the Nationalists. It is no coincidence that studies of Pennsylvania and New York debates over the ratification of the Constitution show a distinct dichotomy between Continental Army and militia veterans.

If one accepts the Jensen-Kohn thesis, the importance of the army in creating the national Western policy (Washington's influence, as well as that of King, Pickering, Knox, Schuyler, the Newburgh Petitioners, and the Ohio Company) is an important factor in the overall Nationalist tone of that policy as it stood by 1787.

16Kohn, Eagle and Sword, p. 13: "By maintaining the associations of the war, the Cincinnati proved an institutional and emotional bond between the Continental Army and the [Nationalist] faction." Jefferson wrote Washington in 1784 that
The officers' first try at influencing Congressional land policy took place at the army cantonment of Newburgh, on the Hudson, in December of 1782. One historian has called the Newburgh Convention a "conspiracy." He contends the "Newburgh conspiracy was the closest an American army has ever come to revolt or coup d'etat."\(^\text{17}\) This is debatable.

he opposed the Cincinnati because the order's philosophy ran counter to the idea of the "equality of man . . . & particularly the denial of preeminence by birth." The nation's foremost civilian Revolutionary also maintained that the society created "a distinction between the civil and the military." See Ford, *Writings of Jefferson*, III:464-70. San Adams' views on the Cincinnati can be found in two letters to Elbridge Gerry in April of 1784 in Henry Alonzo Cushing, ed., *The Writings of Samuel Adams* (New York, 1908), IV:298: "I look upon it to be as rapid a Stride toward an hereditary Nobility as was ever made in so short a Time. . . ."

"It appears wonderful that they could imagine a People who had freely spent their Blood & Treasure in Support of their equal rights & Liberties could so soon be reconciled to the odious hereditary distinctions of Families. This Country must be humiliated and debased to a great Degree, before they will patiently bear to see Individuals stalking about with their assumed Honorary Badges & proudly boasting "These are the Distinctions of our Blood." Adams applauded Jefferson's attempt to exclude the Cincinnati from citizenship in the West: "I hope Congress will not fail to make this an indispensable condition" of the Ordinance of 1784. According to Freund ("Military Bounty Lands," p. 27), Jefferson was well aware of the political implications of the "Army Plan" and the role of the Society of Cincinnati in those plans. This was the rationale behind his efforts to prevent the rise of a military "aristocracy" in the West. See also Kohn, *Eagle and Sword*, p. 12: For "most Federalists . . . the attraction and fascination with armies went much deeper. Federalists viewed society as an integrated, stable organization in which individuals deferred to their superiors . . . they emphasized order, tradition, natural distinction among men. . . . Strikingly these same values personified the eighteenth century military officer."

\(^\text{17}\)Kohn *Eagle and Sword*, p. 17. For a discussion of the Newburgh "conspiracy," see Jensen, *New Nation*, pp. 72, 76-77. The longest treatment is in Kohn, *Eagle and Sword*, Chapter I.
The Newburgh petitioners were certainly very vocal in their demands for back pay, a stronger central government, and a permanent standing army. Of importance to this essay, however, is the Newburgh officers' demand, in a petition to Congress, for federal lands in the West. General Rufus Putnam and Colonel Timothy Pickering drafted this so-called "Army Plan" of Newburgh calling for "A New State Westward of the Ohio." They proposed to people the Ohio country with loyal army veterans who would defend the territory against Indians and "banish forever the idea of our Western territory falling under the domination of European powers." The Army Plan called for a tract of about 17,500,000 acres, to be managed in the New England style of land development. It would be surveyed prior to settlement and divided into townships six miles square, with reserves for the ministry and schools. Two hundred eighty-five officers signed the Newburgh Petition (no enlisted men or non-commissioned officers signed). None were Southern, 235 were from New England, and 90 percent belonged to the Society of Cincinnati. Congress

Kohn calls the affair "one of the most bizarre and little understood events in American history." "At the very moment of victory, the officers' corps responded to an anonymous appeal from one of its members and met to consider mutiny against constituted civilian authority. . . ." The "anonymous" appeal was probably written by Captain John Armstrong. It summarized the various grievances of the army in strong terms, and concluded: "We have borne all that men can bear--our property is expended--our private sources are at an end, and our friends are wearied out and disgusted with our incessant applications. . . . Any further experiments on [the army's] patience may have fatal effects."
received the petition on June 16, 1783 with an attached letter of endorsement from George Washington:

I am induced to give my sentiments thus freely on the advantages to be expected from this plan of colonization, because it would connect our government with the frontiers, extend our settlements progressively, and plant a brave, a hardy, and respectable race of people as our advanced post, who would be ready and willing (in case of hostility) to combat the savages and check their incursions.18

Despite this pressure from the army, Congress did not convey bona fide title for military bounty lands until 1796. By this time some of the veterans were dead, others had sold their counties to speculators, and the idea of settling the Northwest with Revolutionary veterans had lost its original enthusiastic support. Nearly all of the Revolutionary land bounties found their way into the hands of speculators and profiteers. The main reason the army is linked with early settlement of the Ohio Valley is that many of those land speculators were former Revolutionary officers. Some of the Newburgh leaders—Rufus Putnam, Arthur St. Clair, Samuel Holden Parsons, Timothy Pickering, Benjamin Tupper, and Winthrop

18 The Newburgh Petition appears in several forms. The final document sent to Congress is "Rufus Putnam's Plan for a Western State (1783)," in Hulbert, Ohio in the Confederation, p. 56. Washington's endorsement is in ibid., p. 64. Pickering's notes were doubtless used in the formulation of this proposal. See his "Proposition for Settling a New State by Such Officers and Soldiers as Shall Associate for that Purpose" in Pickering, Papers of Timothy Pickering, Reel 53, #134. Also, ibid., #148; Freund, "Military Bounty Lands," p. 21; Ford, Colonial Precedents, p. 56; Archer B. Hulbert, The Records and Original Proceedings of the Ohio Company (Marietta, Ohio, 1917), pp. xxiv, xli; Treat, National Land System, p. 21.
Sargent—formed the nucleus of the Ohio Company, a settlement-speculation firm discussed below. The Ohio Company and land-jobber John Cleve Symmes were the only parties able to obtain lands in exchange for military bounties during the 1780s.¹⁹

Notwithstanding the Peletiah Webster plan, the Financier's Plan, and the Army Plan, Congress could not begin to formulate a land policy until the state land cessions and Indian treaties led to the creation of the National Domain. This occurred during 1783-1785. With the Virginia cession and the Indian treaties at Forts Stanwix, McIntosh, and Finney, Congress at last had a public domain in the Old Northwest for which it could legislate.²⁰ But how would that domain be administered?

¹⁹Treat, National Land System, pp. 237, 238-39, 244-45. In 1788 the bounties were rendered transferable. After that, nearly all of the bounties fell into hands other than those of their original holders. When Congress created the national military reserve during the 1790s, it remained largely empty. Rudolph Freund's "Military Bounty Lands and the Origin of the Public Domain" is the best treatment of the subject. While acknowledging that hardly any actual veterans settled the West using their Revolutionary bounties, Freund insists that the policy was a success. The speculators who ended up with the land, he maintains, were instrumental in the settlement of that region and should be given credit for same. See Freund, "Military Bounty Lands," pp. 15, 17, 29, 31.

²⁰The Virginia cession contained an important clause as far as land policy was concerned. It declared that all lands ceded "shall be considered as a common fund for the use and benefit of such of the United States as have become, or shall become members of the Confederation . . . and shall be faithfully and bonafide disposed of for that purpose, and for no other use or purpose whatsoever." Jefferson (in the land Ordinance of 1784) changed the stipulation a little to require the land revenues be used for the extinguishment of the public debt and "for no other purpose whatsoever."

The role of the Old Southwest in the public domain was confused until the Georgia and North Carolina cessions were obtained. Although North Carolina ceded in 1787, it was not
Would the land be sold in large chunks to speculators, or would sales benefit the small farmer? In the long run, the Confederation's financial distress was the main determinant of the course followed. Robert Morris, Alexander Hamilton, and other Nationalists viewed the National Domain as a valuable source of revenue for funding the national debt. They believed that the central government would be strengthened if it could acquire an independent income from land sales. They were opposed by Antifederalists and Southerners like David Howell, William Grayson, and Jefferson, who favored cheap or free land for actual settlers and feared growing centralization of the national government. By 1783, however, even Jefferson and Howell had come to view the public domain as a "precious resource" for extinguishing the national debt. The reasons for this reversal were political as well as economic. In the first place, most Southerners eagerly awaited new western states, which they believed would add to their strength in Congress. They were willing to compromise over land sales in order to expedite settlement and statehood. At the same time, Antifederalists believed that substantial land revenues would weaken Morris' Nationalist argument for the necessity of a tariff, or impost. The Nationalists' opponents hoped that lucrative land sales would mean the

until 1802 that Georgia made its cession. For this reason much of Confederation land policy, and the entire western policy for that matter, pertains only to the area Northwest of the Ohio River.
national debt, contrary to Hamilton and Morris' plan, could be extinguished, not funded. As David Howell wrote in 1784,

But the price of the land is the chief question, after all. If the liberties of this country are preserved, it will, in my humble opinion, be done by paying, and not by funding, the national debt. I am, therefore, of opinion with those who are for making the most of what we have to carry to market. 21

The quest for revenue, then, led the Confederation Congress away from colonial precedents of cheap or free land. Contrary to colonial practices and practices adopted in all of the thirteen states' individual land policies, the Confederation Congress decided to sell public lands as a source of revenue. Ironically, the policy Congress chose to follow was similar to that of the British Lords of Trade during the pre-Revolutionary period. The Confederation Congress, like Great Britain, needed money badly; the public lands seemed to be the answer to its problem. But the desire for revenue

21 Treat, National Land System, pp. 1-7; Tatter, "Land Policy During the Confederation," p. 184; Kohn, Eagle and Sword, p. 55; Howell to Arnold, February 21, 1784, in Hubbert, Ohio in the Confederation, p. 73. For another Anti-federalist's view, see Richard Henry Lee to Sam Adams, May 20, 1785, in Ballagh, Letters of Richard Henry Lee, II:359: "I hope we shall shortly finish our plan for disposing of the western lands to discharge the oppressive debt created by the war & I think if this source of income be rightly managed, that these republics may soon be discharged from the state of oppression and distress that an indebted people must invariably feel."

The political motivations of the Nationalist faction in Congress are discussed in Henderson, Party Politics, pp. 369-77: "As the land was sold, Congress would receive an independent revenue--that critical element of sovereignty so clearly grasped by the Nationalists who failed to secure that object through fiscal centralism."
was about the only facet of the land question over which there was any agreement. Great differences of opinion remained over the mode of distribution. How would the lands be surveyed? Would there be a minimum purchase requirement? What about the place of sale, the price per acre, and the availability of credit? Would the lands be sold indiscriminately or progressively in contiguous parcels? Inherent in all of these questions was the overriding debate between the New England and Southern systems of land disposal. Congress had to decide whether westward expansion was to proceed in a corporate fashion, under close supervision of the national government, or be allowed to run its own course. This great question faced Congress as it began, in 1784, to create the first national land policy.\(^\text{22}\)

Some gentlemen looked upon it as a matter of revenue only, and that it was true policy to get the money without parting with the inhabitants to populate the country and thereby preventing the lands in the 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... But others are apprehensive of the consequences which may result from the new States taking their position in the Confederacy. They, perhaps,

\(^{22}\)Tatter, "Land Policy During the Confederation," p. 183.
wish this event may be delayed as long as possible.

William Grayson to George Washington, 1785

The Confederation Congress began work on a national land policy in the Spring of 1784. Financial distress, pressure from the army officers, fear of British and Spanish encroachments, and increasing westward migration all combined to convince Congress of the need for a national land policy, as well as an overall strategy for American expansion westward. They realized the need for an inexpensive mode of selling lands in the West; packaging them up into parcels to satisfy the veterans, pioneers, and land speculators while increasing federal revenues. The task of creating a national land system fell originally to Thomas Jefferson and Hugh Williamson. Jefferson was quite interested in development of the West, and had figured importantly in drafting the territorial government Ordinance of 1784. On March 2, 1784, the day following acceptance of the Virginia cession, Congress appointed Jefferson, Williamson, David Howell, Elbridge Gerry, and Jacob Read to a committee "to devise and report the most eligible means of disposing of such part of the Western lands as may be obtained from the Indians by the proposed treaty of peace and for opening a land office."\(^{24}\)

\(^{23}\)Grayson to Washington, April 15, 1785, Treat, National Land System, pp. 32-33.

"An Ordinance for Ascertaining the Mode of Locating and Disposing of Lands in the Western Territory" was first read before Congress on May 7, 1784. This report is usually referred to as the Jefferson-Williamson Land Ordinance of 1784, as both Thomas Jefferson and Hugh Williamson were instrumental in its creation. In essence, the Jefferson-Williamson plan was a 'reformed' Southern system of land distribution. However, there was one important "New England" addition to the report: prior rectangular survey. Jefferson and Williamson made this reform to prevent overlapping claims, and to provide for security of title within the context of a Southern mode of land sales and distribution. At the same time, the Land Ordinance of 1784 called for low minimum purchase price a relic of the young nation's need to make a commodity of its land, and hastily map and sell it, even before it was explored or surveyed. It is one of the first examples of the peculiar importance of packaging in America." Jefferson's interest in the West is discussed in Chapter 3 above. For his attitudes towards land speculation, see Boyd, Papers of Jefferson, VII:504: "I never was nor am now interested in one foot of land on earth, off the waters of the James River." See also, ibid., p. 147.

The original report of the committee is in Journals of the Continental Congress, XXVI:356. Also in Boyd, Papers of Jefferson, VIII:140-48. Only recently has Hugh Williamson received any credit for his role in the Land Ordinance of 1784. Williamson's role is discussed in Pattison, American Rectangular Land Survey System, p. 37. Williamson was a scientist and a mathematics professor, and his travels in Europe gave him added perspective in land surveying techniques. See Williamson to Governor Martin, July 5, 1785, in Burnett, Letters of the Continental Congress, VII:563-64. Williamson supported the proposed Land Ordinance of 1784: "However as I happen to have suggested the plan to the committee it is more than probable that I may have parental prejudices in its favor..."
and the use of warrants (certificates, caveats, etc.) for individuals to locate their own claims. This was a modified form of indiscriminate (as opposed to contiguous) location. Jefferson and Williamson succeeded in inserting New England's prior survey mode into the administrative framework of the Southern colonial land system. And Jefferson wrote, "The method of sale heretofore practiced by several [Southern] states and now practiced by Congress has never been defeated and cannot be defeated."  

Although rectangular survey had considerable precedent in the Northeast, the Jefferson-Williamson grid was unique. Their plan called for the use of "hundreds" and "geographical miles" whereas the traditional New England grid was usually divided into six mile square townships using statute miles. The Ordinance stated that land "shall be divided into hundreds of ten geographical miles square, with each mile containing 6086 feet and four tenths of a foot. . . . These hundreds shall be divided into lots one mile square each, or 850 acres and four tenths of an acre. . . . " The introduction of hundreds as the basic unit of land distribution, although soon abandoned in favor of the New England 'township,' was one part of Jefferson's grand scheme to introduce the decimal

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26 Pattison, American Rectangular Land Survey System, pp. 43, 230; Treat, "Land System During the Confederation," p. 11. Much of the technical aspect of the rectangular survey system has been explained to me (patiently) by my friend, Chris Huck of the University of Montana Department of Forestry.
system into American usage. The idea of rectangular units did remain, and formed the base upon which the national land system was built.  

27 Boorstin, "Packaging a Continent," p. 244. The introduction of rectangular survey "explains why the 20th. century United States startles the air traveler by the rectangular symmetry of its fences and roads... The American land... has thus remained one of the largest monuments to a priorism in all human history. And in a country which is a byword for adaptability and empiricism!" See Pattison, American Rectangular Land Survey System, pp. 37, 43. Pattison's book (a doctoral dissertation from the University of Chicago) is the definitive work on the origins of the survey system. It interprets technical as well as political aspects of the problem.

Jefferson was quite interested in the 'hundreds' unit of measurement, as well as all decimal units. The hundred was originally the subordinate division of the shire or county in England. Jefferson attempted, without success, to introduce the 'hundred' into America throughout his life. See Ford, Colonial Precedents, p. 65. Jefferson's attraction to decimal units is evidenced by an ordinance he conceived in 1784 in "Notes on the Establishment of a Money Unit and of a Coinage for the United States." Much of our contemporary decimally oriented coinage, with its 100 cents, quarter dollars, and tenths of dollars, etc., is based on Jefferson's proposals. It is only natural that he turned to decimal arithmetic in devising a land mode. See Jefferson to Hopkinson, May 3, 1784, in Burnett, Letters of the Continental Congress, VII:512. Jefferson observed: "In the scheme for disposing of the soil an happy opportunity offers of introducing into general use the geometrical mile, in such a manner as that it can not possibly fail of forcing its way on the people. However, this bearing some relation to astronomy and to science in general, which certainly have nothing to do with legislation, I doubt whether it can be carried through... but I hope it will be forseen that should we introduce so heterodox a facility as the decimal arithmetic, we should all of us soon forget how to cypher. I have hopes that the same care to preserve an athletic strength of calculation will not [allow us]... to banish all this cunning learning, to adopt the dollar for our unit... This is surely an age of innovation, America the focus of it!..." In administration, the 1784 report is drawn almost verbatim from the Virginia legislature's 1779 land law. See also Treat, National Land System, p. 26; Boyd, Letters of Jefferson, VII:148.
Another provision of the Jefferson-Williamson Land Ordinance of 1784 stated that all surveyed regions would be admitted ultimately into the Confederation as sovereign states. The law called for appointment of surveyors by Congress and listed technical directions for the mode of surveying. Surveys were not to be progressive, but rather by the "hundreds most in demand." Finally, a system of purchase allowed prospective buyers to purchase a warrant for a hundred or lot (one square mile) and then go out and indiscriminately locate their land. The price of land appears to have been a source of controversy as the Land Ordinance of 1784 does not specify any figures. The only evidence of Jefferson's sentiments is found in a letter which suggests "the third of a dollar an acre" as a fair price. The emphatic stipulation that revenues from land sales should be applied to the "NATIONAL DEBT . . . AND TO NO OTHER PURPOSE WHATSOEVER" seems to indicate a certain discomfort with the idea of selling the land at all.28

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28Burnett, The Continental Congress, p. 600; Ford, Colonial Precedents, p. 70: "The system of rectangular surveys was therefore a gradual evolution under conditions peculiar to Colonial life, modified in regard to boundary lines by the reforming doctrinaire mind of Jefferson." Freund, "Military Bounty Lands," p. 29; Pattison, American Rectangular Land Survey System, pp. 40, 42, 66. This plan to permit the direct sale of lots meant, according to Rufus King, giving up "the Plan of Townships." Also, Treat, National Land System, p. 27.

Congress never adopted the Jefferson-Williamson Land Ordinance of 1784. When it took a vote on May 28, only one state (North Carolina) supported the plan. Many in Congress were waiting until the Indian treaties were finalized before they would take a stand on land policy. More important, many Northeasterners disliked the Southern nature of the Jefferson-Williamson Land Ordinance. Jefferson's departure for Europe that year thwarted whatever momentum the report may have had. The main contribution of the 1784 plan is its establishment of prior rectangular survey as a tenet of national land policy.
The Jefferson-Williamson Ordinance furnished a rough base upon which was built the 1785 national land system, but with important differences. The Land Ordinance of 1784 was much more Southern than any future Confederation law would be. Its warrant system threw open all western lands to direct claim by individual lots, whereas the New England system required that lots be assigned only through the agency of proprietors and speculators, in whom title to an entire township was invested. Moreover, this 'first come, first serve' mode of 1784 accorded no preferential treatment to large investors or those holding military bounties. Congress would never adopt such a measure, especially when revenue was the aim of national land policy. The Jefferson-Williamson Land Ordinance of 1784 may have been a 'reformed' Southern system, but it was not 'reformed' enough to meet the approbation of the Confederation Congress.29

Almost a year passed before Congress once again addressed the question of the public domain. The immediate catalyst was the cessions from the Northwest tribes in the treaties of Forts Stanwix, McIntosh, and Finney. Yet the encroachments of squatters, the demands of the Revolutionary officers, and

29Pattison, American Rectangular Land Survey System, pp. 83-84. David Howell wrote in February 1784, "We wait with impatience for the result of the negociations with the Indians. It is expected that Congress, before they rise, will be enabled to open their land office." See also, Burnett, Continental Congress, p. 625; Rohrbough, Land Office Business, pp. 7-8; Lee to Livingston, April 30, 1785, in Ballagh, Letters of Richard Henry Lee, II.
financial distress all served to stress the need for a national land system. It is no coincidence that the financial crisis was particularly acute during the period in which the Confederation Congress devised a mode for sales of the public domain. The annual state requisitions were due, and the scarcity of funds led most to agree the public lands were a "fine fund for extinguishing the public debt." But as before, this was about all they agreed on. During the ensuing debates, David Howell wrote, "The Land Ordinance ... proves to be the most complicated and embarrassing Subject before Congress since peace has taken place." The debates were heated, and "as much has been said and wrote about it as would fill forty volumes." Indeed, William Grayson later commented that "If the importunities of the public creditors, and the reluctance to pay them by taxation either direct or implied had not been so great I am satisfied that no land Ordinance could have been procured." 30

On March 16, 1786, Congress read the Jefferson-Williamson Land Ordinance again, probably as a starting point for discussion, and referred the land question to a grand committee composed of one member from each state. This committee included Hugh Williamson and David Howell (both of whom had assisted in drafting the Land Ordinance of 1784), but was

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dominated by Easterners and Nationalists. The two most influential members of the committee were Nationalist Rufus King of New York and Antifederalist William Grayson of Virginia. King led the effort to replace the Jefferson-Williamson Ordinance with a pure New England plan. Grayson, the chairman of the committee, proved to be the great expeditor. He pushed for compromise in the face of great differences of opinion, and secured passage of a land bill even thought it contained what he considered to be "exceptional measures." 

Perhaps the most influential person in the creation of the Land Ordinance of 1785 was not even serving in Congress at the time. This was Colonel Timothy Pickering of Massachusetts. Pickering had long been interested in western lands as a speculator and proponent of the "Army Plan" of 1783.

31 Journals of the Continental Congress, XXVIII:114. Members of the committee were Pierse Long (New Hampshire), Rufus King (Massachusetts), David Howell (Rhode Island), William Samuel Johnson (Connecticut), Robert R. Livingston (New York), Archibald Stewart (New Jersey), Joseph Gardener (Pennsylvania), John Henry (Maryland), William Grayson (Virginia), Hugh Williamson (North Carolina), John Bull (South Carolina), and William Houston (Georgia).

32 Pattison, American Rectangular Land Survey System, pp. 82, 85.

33 Pickering, Timothy Pickering Papers, introduction; Jensen, New Nation, p. 336. Prior to 1785, bad luck in his land investments tended to lessen Pickering's esteem for the frontier populace. He purchased 10,000 acres in the Wyoming Valley of Pennsylvania and moved there to administrate his lands and serve as justice of the peace and administrator of deeds. The local squatters did not care for Pickering, however, and assaulted him and kept him prisoner for several weeks. After losing all his investment, Pickering left the
On March 1, 1785 he wrote Elbridge Gerry an urgent letter requesting information about the land policy debates in Congress. In this letter to Gerry, Pickering spoke of their land speculation interests, and suggested the kind of policy he wished Congress to adopt:

As you have expressed your wishes to be concerned in the purchase of lands on the other side of the Allegheny Mountains thro' our agency, we think it very material to your interests as well as our own that we be informed, if possible, what plan Congress will probably adopt in disposing of those lands which lie West of the Ohio. If they mean to permit the adventurers to make a scramble for them (as has been the case in this State [Pennsylvania] & Virginia) it will behoove us to engage seasonably with some enterprising, but confidential character, to explore the country and make locations. But I would rather suppose Congress would fall on a more regular plan—as that of surveying a district or districts for a State or States, dividing the same into counties & townships—and then selling the townships at public auction. . . .

Pickering, of course, was advocating a New England system of prior survey and sale by townships at auction. This system would suit more adequately the needs of Eastern land jobbers like himself, who wanted to speculate in western lands without necessarily residing in the West. The New England system was also productive of the corporate and regulated settlement that most New Englanders and Eastern Nationalists desired. Pickering

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34 Pickering to Gerry, March 1, 1785, in Pickering, Timothy Pickering Papers, Reel V, #347; Also in King, Correspondence of Rufus King, I:72.
advocated survey and sales of one state at a time:

In this way the settlement of the Country may be effected with regularity— with much more safety than in the desultory way practised in the two States [Pennsylvania and Virginia] before mentioned— and with much greater advantage to the United States. . . . But if Adventurers shall be permitted to ramble over that extensive Country, and take up all of the most valuable tracts, the best lands will be in a manner given away, and the settlers thus dispersed, it will be impossible to govern; they will soon excite an Indian war; to the destruction of multitudes of the settlers and to the injury of the public. . . . But if there must be a scramble, we have an equal right with others and therefore the information desired in the beginning of this letter may be of essential importance. Your answer to this letter will much oblige your Sincere friends, who wish to advance your interests to their own.35

Gerry answered Pickering immediately and told him to write land committee member Rufus King. Pickering wrote King a lengthy letter on March 8, expressing ideas similar to those above. He advocated a New England system, gradual settlement, sale by auction with a minimum purchase and price, natural resource reserves for the federal government, and land reserves for the Army, education, and religion. He proposed some changes in the technical aspects of surveying and asked that surveyors be required to record information on the quality of lands so as to aid "purchasers in the more distant states." King answered Pickering on April 13 and thanked him for his "ingenious communications." He enclosed the first draft of the Land Ordinance of 1785: "You will see

35Ibid.
thereby that your views have had weight with the committee who reported the ordinance, and I have only to add that I shall hold myself particularly obliged to you for these communications on the subject. . . ." Pickering replied on April 30 that the land ordinance met with his "approbation—if for no other reason because the principles of it coincide with the ideas I had previously conceived and communicated to you."36

As the Pickering-King correspondence indicates, the first draft of the Land Ordinance of 1785 was nearly a pure New England system of land administration. The grand committee's report, "An Ordinance for Ascertaining the Mode of Disposing of Lands in the Western Territory" (April 14, 1785) was, in fact, identical to the colonial New England system except it did not include requirements for settlement and improvements. The law called for prior survey of seven mile square townships, the minimum area of purchase. After survey, the land was to be auctioned off in the respective states at a minimum price of $1.00 per acre, with no credit. Other provisions included the appointment of surveyors and stipulation

36 Gerry to Pickering, in King, Correspondence of Rufus King, I:43; Pickering to King, March 8, 1785 in Pickering, Timothy Pickering Papers, Reel V, #351-A. With Jefferson's system, investors would have to pay "adventurers who undertook to explore the County & make locations for them" and charged "monstrous deductions;" sometimes 1/2 the original price of the land. See King to Pickering, April 15, 1785, in Correspondence of Rufus King, I:46. See also, Pickering to King, April 30, 1785, in ibid., p. 91.
of surveying techniques, mineral reserves for Congress, and land reserves for Congress, the Army, schools and churches. As Monroe wrote Jefferson, the new land Ordinance "deviates I believe essentially from the one at Annapolis" (the Land Ordinance of 1784). Congress retained the Jefferson-Williamson rectangular grid but deleted its hundreds, geographical miles, and decimal divisions. The committee stripped the Jefferson-Williamson survey proposal of its original function as a control over the Southern land system. It abandoned the modified Southern system of indiscriminate location and replaced it with prior survey, and progressive seating. "The present plan," Grayson wrote Washington in April of 1785, "excludes all the formalities of warrants, entries, returns, and caveats." 37

After the grand committee read its report on April 14, Congress debated the proposed land law for over a month. One reason for the length of the discussion was lagging attendance—Grayson wrote there were "never above ten States on the floor and of these nine were necessary to concur in one sentiment." Congress had to 'shut down' several times during the debate because it could not reach a quorum of

37 Journals of the Continental Congress, XXVIII:251-57. The report appeared in Grayson's handwriting. Treat, "Land System During the Confederation," p. 11. One-seventh of the surveyed lands was to be held in reserve for the military bounties. Hibbard, Public Land Policy, pp. 38-39. Note that townships were seven miles square instead of the usual six. This was soon amended. Monroe to Jefferson, April 12, 1785, in Hamilton, Writings of James Monroe, II:71; Pattison, Land Survey System, pp. 86, 88, 92.
nine states. But the main reason for delay was "warm and unexpected" disagreements that arose over the proposed land law. Serious debates arose over the township system, method of sales, and the minimum price. "We have been this fortnight about a land ordinance," King wrote Elbridge Gerry on April 26, 1785. "Virginia makes many difficulties--the eastern States are for actual Surveys and sale by Townships, the Southern States for indiscriminate Locations, etc. What will pass, if anything does, is wholly uncertain."  

The division of the debate reflected the age-old differences between the New England and Southern land systems. Many Virginians and other Southerners were willing to accept prior rectangular survey (ala Jefferson-Williamson), but were opposed to predetermined location, "Township planting," compact settlements, and gradual migration. They tried to make it possible for settlers to purchase small amounts of land wherever they desired. David Howell, seconded by

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38 For the debates over the Land Ordinance of 1785, see Journals of the Continental Congress, XXVIII:234-47, 251-56, 264, 268n, 284-85, 290-91, 292-96, 298-303, 309-10, 316-17, 323, 326-29, 335-40, 342-43, 370-73, 378-81. A chronology of the debates is in Burnett, Letters of the Continental Congress, VIII:ix. Congress read the Jefferson report on March 4 and March 16, and the Grayson committee report a first time on April 14; April 29 saw Congress at a standstill with no quorum. On May 5 and 6, Congress read the Ordinance a second and third time; there was a lapse in representation until May 18 when debate was resumed. The Land Ordinance of 1785 was passed on May 20, 1785. The best records of the debate are found in the letters of committee chairman William Grayson in Burnett, Letters of the Continental Congress. See also Treat, National Land System, p. 34; Burnett, Continental Congress, pp. 624-25.
Williamson, moved the entire territory be opened to sale by one mile square sections. But this amendment, along with Grayson's proposal to reduce the size of sections by one-half, failed to muster enough support. Several amendments to lower the price to fifty cents or two-thirds of a dollar also failed to win the votes of nine states. Virginia's argument that the necessary $23,040.00 (the minimum amount with which any land could be purchased), would preclude sales to actual settlers failed to convince the Northeasters who sought large sales to land investors. On May 1 Grayson wrote Madison and accused the "Eastern people" of "being amazingly attached to their own customs, and unreasonably anxious to have everything regulated according to their own pleasure."

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39 Journals of the Continental Congress, XXVIII, see footnote #38. Treat, National Land System, p. 35; Treat, "Land System During the Confederation," p. 11; Pattison, Land Survey System, p. 93; Treat, National Land System, p. 37; Grayson to Washington, May 8, 1785 in Burnett, Letters of the Continental Congress, VIII:119: "The price is fix'd at a dollar the acre liquidated certificates, that is the land is not to be sold under that; The reason for establishing this sum was that a part of the house were for a half a dollar and another part for two dollars and others for intermediate sums between the two extremes, so that ultimately this was agreed upon as a central ground. If it is too high (which I am afraid is the case), it may be hereafter corrected by a resolution." King to Gerry, April 26, 1785, in Burnett, Letters of the Continental Congress, VIII: 104. Grayson to Madison, May 1, 1785 in ibid., VIII:109. Grayson to Madison, May 28, 1785, in ibid., VIII:129: "The Eastern people who before the revolution never had an idea of any quantity of Earth above a hundred acres, were for selling in large tracts of 30,000 acres while the Southern people who formerly could scarce bring their imaginations down so low as to comprehend the meaning of a hundred acres of ground were for selling the whole territory in lots of a
The Easterners, according to Rufus King, had good cause in defending the New England system and the proposed Ordinance. Sale by townships, he argued, would not injure the poorer classes and encourage land-jobbing, for this was not a problem in the "Eastern States," where the lands "were generally settled in that manner." Poor settlers could simply "band together" and buy a township. The Eastern Nationalists argued that the Southern system "would have a tendency to destroy all those inducements to emigration which are derived from friendship, religion, and relative connections," and that "the same consequences would result from sales in small quantities under the present plan." Auction sales in the East would prevent those settlers near the lands from gaining an unfair advantage, and monopoly would "cure itself," because speculators would be forced to sell to actual settlers before too long. But "if they should make money by ingrossing, the great design of the land office is answered, which is revenue--." Abandonment of "fractional" surveys and the warrant system would save the Confederation considerable time and money, while precluding the possibility of overlapping claims and disputes. Finally, "if the plan should be found by experience to be wrong, it can be easily altered by reducing the quantities and multiplying the surveys."

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meme square. In this situation we remained for eight days with great obstinancy on both sides..."

40 The New England argument in defense of the proposed Ordinance is paraphrased from the debate by William Grayson
Aside from the immediate reasons for Eastern support of corporate expansion via the New England system, one can find several important underlying factors. Of economic importance is the fact that many Eastern states had their own lands for sale, and were reluctant to diminish their value by throwing open vast parcels of cheap government land. At the same time, those Easterners who wanted to speculate in Ohio lands, like Pickering and the Army speculators, wanted only gradual expansion. If there were no controls, then highly priced "mid" western lands would be worthless; the pioneers would simply squat on lands farther West. Another economic motive was the belief that cheap western lands would draw off the Eastern labor pool, raise wages, and lower prices. But there were political motivations too. Besides their push for an independent national income through land sales, the Eastern Nationalists had good reason to act as they did. They feared the political consequences of new states entering the Confederacy, and sought to delay that possibility through a restrictive land policy. All of these considerations combined to move the Easterners and Nationalists toward a more conservative western policy. If westward migration was inevitable, then it should be gradual, orderly and closely supervised. George

in Treat, National Land System, p. 31; and Grayson to Washington, April 15, 1785, in Burnett, Letters of the Continental Congress, VII:95. The above quotations are from Grayson, not the New Englanders, as there are no other firsthand accounts of the debate available.
Washington, a Virginia Nationalist who subscribed to the Northeastern view, argued,

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 for one will have the direct contrary effects. . . . To suffer a wide-extended Country to be overrun with . . . scattered settlers, is in my opinion, inconsistent with that wisdom and policy, which our true interest dictates, or which an enlightened people ought to adopt.  

So after several weeks of debate Congress found itself in an extremely awkward position. It needed money, yet there was no agreement on a mode for selling the public lands. As both sides clung to their opposing views, it became obvious that a compromise was in order. Although they favored the Southern system, the Virginia delegates initiated a compromise because they believed it would benefit them in the long run. Any land sales at all (even sales under a New England system) would lead to eventual settlement of the West. And, as Herbert James Henderson has shown, the Virginians' "geopolitical" strategy of the 1780s was based largely upon anticipated political and economic benefits that would result

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from admission of new western states. Thus, the Virginians were willing to compromise over land policy, so long as some new western states (i.e., Kentucky, Ohio, and Tennessee) would enter the Confederation in the not too distant future. Grayson initiated the bargain in a motion that "would accommodate both the Eastern and the Southern States." Since no one could agree whether to sell by townships or sections, Grayson proposed to sell half the land one way and half the other. One-half of the alternating townships would be sold intact; the other half would be sold in sections of 640 acres—but only consecutively, and no second township was to be offered in sections until every section in the preceding one had been sold. This great stumbling block hurdled, the rest of the Ordinance began to fall into place. Congress deleted the land reserve for churches, and reduced the size of townships from seven to six miles square. The proposed Ordinance was read for a second and third time on May 5 and 6, but further objections and a lapse in representation postponed acceptance. Debate resumed on May 18, and the Land

42 For the Southerners' motivations, see Henderson, Party Politics, p. 377.

43 The religious clause was particularly obnoxious to Madison. See Madison to Monroe, in Burnett, Letters of the Continental Congress, VIII:624: "How a regulation so unjust in itself, so foreign to the Authority of Congress, so hurtful to the sale of public land, and smelling so strongly of an antiquated Bigotry, could have received the countenance of a Committee is truly a matter of astonishment."
Ordinance of 1785 finally passed on May 20—after five weeks of debates and haggling. Rufus King wrote Elbridge Gerry about the Ordinance just before its passage, and expressed his approbation: "I am pleased great benefits will result from it. You will find it bears strong features of an eastern system. When I tell you the History of this ordinance you shall acknowledge that I have some merit in the business."44

The final version of the Land Ordinance of 1785 is here recapitulated: Thirteen surveyors (one from each state) were to survey the Ohio country lands ceded by the Indians (the first "seven ranges"). The lands were to be divided into six mile square townships and one mile square sections or lots. The land was to be sold by townships and sections, alternately, at auctions in each of the thirteen states. The minimum price was $1.00 per acre, payable in specie or certificates. Congress granted Virginia a military reserve north of the Ohio, and one-seventh of all of the land was reserved for Revolutionary land bounty holders. One-third of all gold, silver, copper, and lead as well as four sections

44Grayson to Pickering, April 25, 1785, in Pickering, Timothy Pickering Papers, Reel 18, #234; Treat, Land Policy During the Confederation," p. 11; Hibbard, Public Land Policies, p. 39; Lee to Washington, May 7, 1785, in Ballagh, Letters of Richard Henry Lee, II: "I have now the honor to enclose you the Ordinance above alluded to, which meets the assent of nine States & every member of these Nine States except one Man, who keeps the Ordinance from passing by joint causes, as he alleges, of indisposition & dislike. . . ." The "one Man" was Rufus King. Rufus King to Elbridge Gerry, May 8, 1785, in King, Correspondence of Rufus King, I.
An Ordinance of 1785 providing for the national surveying system established the base line, or geographer's line, due west from the point at which the Ohio River intersects the western boundary of Pennsylvania. The first principal meridian later became the boundary between Ohio and Indiana. To accommodate settlers who were streaming into the area, the seven ranges were marked off in an exception to the normal surveying procedures.

William Pattison, American Rectangular Land Survey System.
of each township was reserved for Congress, while one section went for schools and education. The act reserved six townships for Canadian and Nova Scotian Revolutionary refugees, and for Christianized Indians. Congress prescribed the form of deeds and the method of obtaining bounty lands. The remainder of the Ordinance dealt with technical aspects of surveying and dividing the public lands. James Monroe provided perhaps the best summary of the Land Ordinance of 1785 in a letter to Madison that summer:

[The territory] is to be survey'd in townships containing abt. 26,000 acres each, each township marked on the plat into plots of one mile square; and 1/2 the country sold only in townships and the other in lots. 13 surveyors are to be appointed for the purpose to act under control of the Geographer, beginning with the first range of townships upon the Ohio and, running North to the Lakes, from [a point due north of] termination of the line which forms the Southern boundary of the State of Pena., and so on westward with each range. As soon as [7] ranges shall be survey'd, the return will be made to the Bd. of Treasury, who are instructed to draw them in the name of each State in the proportion of the requisition on each, and transmit its portion to the loan officers in each for sale at public provided it is, nor any part, sold for less than one dollar specie or certificates the Acre.45

Thus, out of conflicting interests came compromise and the drafting of the first American land policy. The national land system was not the creation of one man or section, but

45 The best summary of the final version of the Land Ordinance of 1785 is in Treat, National Land System, pp. 36-37. See also Harris, Land Tenure System, p. 390; Monroe to Madison, in Pattison, American Rectangular Land Survey System, p. 85.
rather several. If credit be given to individuals, then it must go to Jefferson, Williamson, Grayson, Pickering, and King. In weighing the attributes of the New England and Southern land systems, the Confederation Congress opted for a modified New England form. This system had advantages as well as disadvantages. The implementation of rectangular survey brought order to the huge task of allotting western lands. It provided for security of title and simplicity of conveyance. But on the other hand, the new land law seemed unrelated to the realities of westward expansion taking place at that very moment. Because it was a revenue measure, the Land Ordinance of 1785 made no provision for squatting or preemption. The law aimed at sales to speculators and land-jobbers; there were no credit or low minimum purchase stipulations. It was highly unlikely that any ordinary settler would have the $640.00 cash with which to purchase a section, nor would he want to buy from land investors who would be charging considerably more than the $1.00 per acre they had to pay. The requirement for sales of contiguous sections was completely foreign to those settlers who always sought the best lands along the river bottoms and streams. The Eastern Nationalists were sincere in their loyalty to "township planting," for it had worked well during the colonial period of their section's history. But the Southerners better grasped the nature of American westward expansion. In insisting on sales of small tracts, the Southerners were prophetic of the
eventual course of national land policy. It remained to be seen how well the Land Ordinance of 1785 would fare in the realities of the trans-Appalachian West in the 1780s.\footnote{Treat, \textit{National Land System}, pp. 36-37, 39, 179; Jefferson to Monroe, June 17, 1785, in Boyd, \textit{Papers of Jefferson}, pp. 8, 229. Jefferson originally disapproved of the Ordinance which superseded his own recommendations. "I am very differently affected towards the new plan of opening our land office. . . ." "To sell them at vendue [in auction] is to give them to the bidder of the day, be they many or few. It is ripping up the hen which lays the golden eggs. If sold in lots at a fixed price, as first proposed, the best lots will be sold first. As these become occupied it gives a value to the interjacent ones, and raises them, tho' of inferior quality, to the price of the first." However, after studying the final document, Jefferson seems to have changed his mind. In a letter to Monroe that summer he declared, "I am much pleased with your ordinance, and think it improved from the first in the most material circumstances." See Pattison, \textit{American Rectangular Land Survey System}, p. 103.}

In my opinion, it will never answer the End proposed, for before this formal and hitherto unheard of plan can be carried into Execution, the lands will be possessed by persons, who have already and are daily crossing the Ohio, in great numbers, so as to put the United States to more expense to dispossess them, than the soil will afterwards sell for.

Richard Dobbs Spaight to Governor Caswell, 1785

For my part I must acknowledge my faith of paying the Domestic Debt by regular sails of the Western Land was never very great. There is land eno' and that which is excellent. . . . But to me the Idea of running this out, and by the neat proceeds of its sails discharging any considerable part of the Debt is almost as chimerical as to count
upon the number of cod-fish and Whales in the ocean for that purpose.

George Thatcher to Pierse Long, 1788

Congress anticipated large revenues from sales under the Land Ordinance of 1785, and immediately made arrangements for surveying the Ohio Valley lands. The Confederation appointed thirteen surveyors to serve under United States Geographer Thomas Hutchins. They began their work in September of 1785, but Indian hostilities, hard winters, and the tedious mode of rectangular survey prolonged the process for several years. As early as 1786 Charles Petit wrote that Congress was growing impatient, and that "Some are for adhering to the ordinance of last year in the mode of laying out and selling the land. Others think it impractical and wish it to be radically changed." Although further efforts by Southerners to institute indiscriminate survey failed, several other amendments were made to the Land Ordinance of 1785. In order to expedite sales, Congress relaxed the survey stipulations, granted three months credit, and cancelled the thirteen separate state auctions, replacing them with one auction in New York City. As soon as the first four ranges were surveyed, the government opened up the region for sale to the highest bidders. But the results greatly disappointed the over-optimistic Congress. The auction yielded little more

THE SEVEN RANGES

William Pattison, American Rectangular Land Survey System.
than one hundred thousand dollars—far from sufficient for even one year's payment on the public debt. 48

This failure led Congress, over the next few years, to ignore the sales provisions of the Ordinance of 1785 altogether. In its quest for land revenues, the Confederation Congress turned to huge sales of cheap land to investors and speculators. From 1787-1788 the Ohio Company, James Flint, and Royal Parker, John Cleve Symmes, and William Duer and the secret Scioto Associates purchased over 6,000,000 acres of government land at pennies an acre. These sales also resulted in failure, however, as most of the companies either defaulted on their payments or went bankrupt. In the meantime, squatters and trespassers continued to pour onto the public domain. As it became clear that these actual settlers could not and would not pay large sums of money for land, Congress began to

48The "seven ranges" are directly West of the Ohio River. For the survey and surveyors of the seven ranges, see Treat, National Land System, p. 41; and Pattison, American Rectangular Land Survey System, p. 97. Pattison provides an excellent account of these early white explorers of the Ohio country wilderness. The interest in Ohio Valley lands by investors tended to influence the choice of surveyors from each state. Most of the surveyors chosen were well established gentlemen, who were quite interested in land speculation. They were knowledgeable, cultured, and looking to increase their fortunes. It is no wonder that they were referred to as the "Gentlemen Surveyors" by contemporaries. No less than five members of the surveying group were members of the Ohio Company. See William D. Pattison, "The Survey of the Seven Ranges," Ohio Historical Quarterly LXVIII (April 1959); Treat, National Land System, p. 43; Charles Petit to Jeremiah Wadsworth in Burnett, Letters of the Continental Congress, VIII: 361; Treat, National Land System, pp. 44-48; Harris, Land Tenure System, pp. 392-93; Rohrbough, Land Office Business, pp. 10-11; Pattison, American Rectangular Land Survey System, p. 155.
acknowledge the failure of a revenue-oriented land policy. The failure of the Land Ordinance of 1785 rendered Congress receptive to offers from speculators and land-jobbers. During the mid-1780s several land investment companies approached Congress, all eager to speculate in Ohio country lands. A list of their shareholders reads like the social and political register of New Jersey, Connecticut, Massachusetts, and New York. The Ohio Company was certainly the most prominent and firmly established of these groups. The Ohio Associates' origins went back to the Society of Cincinnati, the "Army Plan," and the Newburgh Petition of 1783. Although the company represented a minority of Northern army officers, it was the only group of veterans organized to collect on the Revolutionary military bounties. Their loyal services during the war, and their announced intent to settle the West, gave the Ohio Company a certain legitimacy not enjoyed by the other land speculation companies. The Newburgh Petition lay in abeyance from 1783-1787, but its proponents continued to correspond and confer. Benjamin Tupper, Rufus Putnam, Winthrop Sargent, and Samuel Holden Parsons formed the nucleus of this

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49 Treat, National Land System, p. 47; Kohn, Eagle and Sword, p. 100; Jensen, New Nation, p. 355. The land companies of the late 1780s had few if any ties to the pre-Revolutionary and Revolutionary Companies discussed in Chapter 3 above. These firms of the 1760s and 1770s-1783 period include the Susquehannah Company; Ohio Company (another one); Transylvania Company; Mississippi Company; Illinois Company; Illinois-Wabash Company; Vandalia Company; and the Muscle Shoals Company. The best treatment of this early speculation is Abernethy, Western Lands. See also Rohrbough, Land Office Business, p. 12.
group, and each retained an enthusiastic interest in western lands. Tupper, Sargent, and Putnam, all surveyors, surveyed lands in Massachusetts, Maine, and the Ohio country (Seven Ranges), and agreed that the Ohio lands would best suit their purposes. The group continued to speculate in military land bounties and public securities, and in January of 1786 called a meeting at the Bunch of Grapes Tavern in Boston where the Ohio Company of Associates was formed. They drew up articles of association, elected officers, opened up $1,000,000 worth of stock for sale at $1,000 a share, and selected Samuel Holden Parsons to negotiate a land purchase from Congress. Parsons was convinced "that public securities, if Congress a little alter their system, is [our] best estate." If he could only secure some government post in the West, "I will make the fortune of your family and my own till time shall be no more."^50

^50 Kohn, Eagle and Sword, p. 100; Hibbard, Public Land Policies, p. 41; Hulbert, Records of the Ohio Company, pp. xxxvii, xli; Pattison, "Survey of the Seven Ranges," pp. 137-38; Shaw Livermore, Early American Land Companies, pp. 134, 135, 309. Most of the members of the Ohio Company were also members of the Cincinnati, the Masons, and the American Union Lodge. The group originally assumed it would have to pay $1.00 per acre, as per the Ordinance of '85, but instructed Parsons to try and secure a more "advantageous" deal. See Jensen, New Nation, p. 355. The war service of the Ohio Company members gave them more leverage in negotiating than other interests. This is evidenced in the tone of their appeal, which appears in the Journals of the Continental Congress, XXXIII:428-29: "If these terms are admitted we shall be ready to conclude the contract. If not we shall have to regret, for a Numerous Class of our Associates, that the Certificates they received as Specie, at the risque of their lives and fortunes, in support of the Common Cause, must for a considerable time longer wait the tedious and precarious
The Ohio Company submitted its proposal to Congress in the Spring of 1787. Under ordinary circumstances Congress probably would have refused the offer, as it entailed a complete disregard of the Land Ordinance of 1785. But these were no ordinary times. Shay's Rebellion, the Jay-Gardoqui controversy, the Constitutional Convention, financial distress, lagging attendance, and the failure of the Ordinance of 1785 all combined to render the Confederation Congress confused and insecure. Under these circumstances, the offer of a million dollars for western lands seemed attractive. Yet there was still much opposition. As General Parsons was unable to make much headway, the Ohio Associates sent a shrewd Revolutionary chaplain, Rev. Manasseh Cutler of Ipswich, Massachusetts, in his stead. Cutler immediately launched an intense lobbying campaign, and offered Congress $250,000.00 down on 1,000,000 acres of land at about two-thirds of a dollar per acre. But Cutler found "a number in Congress decidedly opposed to my terms of negotiation, and some to any contract." There were many, he explained in a letter to a friend, who feared that land-jobbers would gain from so large a grant, at the expense of actual settlers. When Congress balked, Cutler tried a bluff. On July 17, 1787, he told the issue of public events . . . and that the United States may lose an opportunity of securing in the most effectual manner, as well as improving the value of western lands, whilst they establish a powerful barrier, against the irruptions of the Indians, or any attempts of the British power, to interrupt the security of the adjoining States."
delegates he would bypass Congress and buy state lands instead. This threat upset many in Congress who favored the sale, but the Ohio Company offer was not tempting enough to change its opponents' minds. Thus negotiations were at a standstill in mid-July when William Duer, the infamous Secretary of the Board of Treasury, entered the scene.  

William Duer was an American entrepreneur extraordinaire. He was the son of an English aristocrat, a former naval and army officer, close friend of Alexander Hamilton, member of the Continental Congress, an ardent Nationalist, and a member of the Cincinnati. Duer's business dealings were varied, but included war profiteering, and speculation in stocks, specie certificates, and military land bounties. In 1786 Congress appointed Duer Secretary to the Board of Treasury, the very center of the public business of the Confederation government. Although he was very secretive, there is enough evidence of Duer's dealings with Cutler and the Ohio Associates to make the "Scioto" land deal one of the better documented abuses of government power during the early

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51 Treat, National Land System, pp. 48-49. For Parsons' role in the negotiations, see Hall, Letters of Samuel Holden Parsons, pp. 495-514. Cutler replaced Parsons before the July 14, 1787 proposal was made. It is important to remember when considering the terms of purchase that even though we speak in terms of two-thirds of a dollar, etc. the inflated value of Continental securities, with which most of the land was being purchased, bring the actual price of lands down to around ten cents an acre. Joseph Stancliffe Davis, "William Duer, Entrepreneur, 1747-99," in Essays in the Earlier Histories of American Corporation (Cambridge, 1917), p. 132.
days of the Republic. The Scioto project has been called a "kind of illegitimate half-brother to the new Ohio Company." Duer offered secretly to assist the Ohio Associates in making Congress a proposition that was too tempting to refuse. Instead of 1,000,000, Cutler would offer to buy 5,000,000 acres of land from Congress. One and one-half million would belong to the Ohio Company, while the remaining three and one-half million acres would belong secretly to the Scioto Group, a company made up of Duer and some of the "principal characters of America." But Duer warned Cutler that it was "necessary or at least prudent" to keep the "separate purchases out of sight." In other words, Duer wanted to use the Ohio Company as a legitimate front to purchase land for one of his speculation schemes. In return for Cutler's coupling the Scioto and Ohio Company enterprises, Duer agreed to loan the Ohio Associates $143,000 and use his influence as Secretary to the Board of Treasury to secure a favorable contract. The deal was struck on July 20 after an "elegant" oyster dinner in Brooklyn. Cutler promised to keep the deal a "profound secret." The next day he, Winthrop Sargent, and their powerful new ally, Duer, began an intense lobbying campaign to "bring over my opposers in Congress."  

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Cutler found Congress much more receptive to a plan that offered over $5,000,000 in revenue. With "the assistance of Colonel Duer," he and Winthrop Sargent lobbied for passage of a plan which was "warmly debated" on July 23. One tactic of the Ohio Company was its announced support of Pennsylvanian Arthur St. Clair, the Nationalist president of Congress, for territorial governor of the Ohio country. Finally, a committee consisting of Rufus King, Nathan Dane, Egbert Benson, Edward Carrington, and James Madison gave the Board of Treasury the power to reach a final agreement with Cutler. This was exactly what Duer wanted. After the body for which he was secretary took over the negotiations, the affair went quite smoothly. Two separate contracts were signed in October of 1787. The first was between the Ohio Associates and Congress for one and one-half million acres. Two payments of $500,000 were to be made; the first due immediately and the second after the surveying was complete. At this time full title to its one and one-half million acres would be granted the Ohio Company. The second contract for three and one-half million acres was signed by Cutler, Winthrop Sargent, "and associates;" it of the transactions were secretive. One has to depend on indirect evidence, letters written by uninitiated correspondents, or letters written in distress. According to Davis, Duer was "a cautious man whose right hand often was not suffered to know what his left hand did." Hulbert adds that Duer often used secret codes, initials, nom de plume, shorthand, etc. to conceal his communications. In view of his government positions, Duer's business transactions were certainly a conflict of interests. Indeed, he was grimly prophetic when he expressed to John Jay, in 1777, the fear "that we shall not increase in virtue, as we may in years."
was supplemented by a secret contract signed with Duer a few days later. Six equal payments were due on this land, but not until the Ohio Company's original one and one-half million acres was bought and paid for. By signing two separate contracts, the liabilities of each company were greatly minimized. The Ohio Associates could carry out their original plan, allowing the Scioto Group additional time to sell its option and raise the installments. Most important, the failure of the Scioto Group would not affect the Ohio Company's title whatsoever. The land was to be paid for in specie, public securities, and military bounties. Considering the inflation rate on securities, the military bounties and allowances for bad land, etc., the Ohio and Scioto Companies received 5,000,000 acres of the Ohio Valley for about eight to nine cents an acre. As Cutler wrote in his diary in the Fall of 1787:

> By this ordinance we obtained a grant of near 5,000,000 acres of land, amounting to . . . one million and a half 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.53

53 Journals of the Continental Congress, XXXIII:399, 429-30. Since Congress had to approve the final plan, intense lobbying was necessary. See Davis, "William Duer, Entrepreneur," pp. 155-34, 137, 139. Cutler wrote, "My friends made every exertion in private conversation to bring over my opposers in Congress. In order to get at some of them, so as to work powerfully on their minds, we were obliged to
No comment need be made about the ethics involved in such a business deal. No mention of Duer appears in any of the letters of the members of Congress, nor in the Journals of that body. It seems that the members of the committee which expedited the sale (King, Dane, Carrington, Benson, and Madison) were well aware of the nature of the transaction, yet went ahead with it anyway. The reasons for engage three or four persons before we could get at them. In some instances we engaged one person, who engaged a second, and he a third, and so on to a fourth, before we could effect our purpose. In these maneuvers I am much beholden to the assistance of Colonel Duer and Major Sargent. The Matter was taken up this morning in Congress and warmly debated until 3 o'clock, when another ordinance was obtained. This was not to the minds of my friends, who were now considerably increased in Congress, but they conceived it better than the former; and they obtained an additional clause empowering the Board of Treasury to take Order upon the Ordinance, and complete a contract on the general principles contained in it, which still left room for negotiations." For the terms of the contract, see Davis, "William Duer, Entrepreneur," or Hulbert, "Scioto Group of Speculators," p. 505. Also, Treat, National Land System, pp. 50-51; Hulbert, Records of the Ohio Company, p. 1xx; Hibbard, Public Land Policy, p. 48. Some historians have intimated that Duer "bribed" Congressmen with offers of shares in the speculation, etc., but there is no evidence to substantiate this charge. As for Cutler and Sargent's legal relationship with the Scioto Group, there is also disagreement. Some say they were equal partners, and that Cutler and Sargent hoped to make some money off the Scioto deal. But Hulbert contends that they were involved in the deal in "name only." Whatever, when the Scioto venture went bankrupt the Ohio Company lost $80,000. The Ohio Company's main business with Scioto appears to have been only in the West—for instance, when the Galliapolis emigres arrived. If they were legally bound to Duer, no one pressed the issue—or Cutler and Sargent would have also gone bankrupt in the 1790s.

54 Every member of the committee was a Nationalist. See Hulbert, "The Scioto Group of Speculators," p. 73; Hulbert, Records of the Ohio Company, p. 1xxii, 1xxiii. Hulbert says, "To doubt the committee knew this is to misread everything that is written between the lines of the documents that are
approval of the Ohio Company sale are varied. Congress was in an extremely tenuous position in 1787. Domestic turmoil, instability, and a feeling of imminent disbandment all rendered Congress more remiss than it might have been in a less tumultuous period. The Confederation always needed money, and Cutler and Duer's scheme was quite tempting. Edmund Cody Burnett astutely summed up the situation:

Congress had long been dreaming dreams of the money to be obtained from these lands; now it was suddenly awakened to find the dreams come true. Real money and lots of it was actually dangling before their eyes; besides there was a fair promise that more, much more, was coming from like sources.

Those who predicted in 1783 that the National Domain would one day become a great source of revenue thought their predictions had at last come true. The Ohio Company's $5,000,000.00 offered security to an insecure Congress.⁵⁵

left to us of the transaction." But Congress felt that by "linking the democracy and willingness of performance of the Ohio Company of Associates with the financial strength of Duer's group of promoters, a very honorable and successful negotiation could be concluded.

⁵⁵Hibbard, Public Land Policy, p. 47; Hulbert, Records of the Ohio Company, p. lxx. See Antifederalist Richard Henry Lee to Washington, July 15, 1787, in Ballagh, Letters of Richard Henry Lee, II:425: "Our next object is to consider a proposition made for the purchase of 5 or 6 millions of Acres, in order to lessen the domestic debt. An object of great consequences this, since the extinguishment of this part of the public debt would not only relieve from a very heavy burden, but by demolishing the Ocean of public Securities, we should stop that mischievous deluge of speculation that now hurts our morals and extremely intrigues the public affairs." Burnett, Letters of the Continental Congress, VIII: xlili; Treat, National Land System, pp. 57-58. Treat argues the Congress is to be commended for extinguishing half a million of the public debt.
Moreover, the colonization plans of the Ohio Associates seemed prudent to Congress. The company intended "an actual, a large and immediate settlement of the most robust and industrious people in America"; men "who had no intention other than the Federal Government." This plan of orderly westward expansion was in the New England tradition, and enjoyed the approval of Easterners and Nationalists controlling Congress.\(^\text{56}\) Edward Carrington, a Virginia Nationalist, voiced his approval of the sale in an August, 1787 letter to James Monroe:

> 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 discription of Men who will fix the character and politics throughout the whole territory, and which will probably endure to the latest period of time. . . .

This Nationalist and Northeastern influence on western policy is also seen in the Northwest Ordinance of 1787, passed concurrently with the Ohio Company purchase. Manasseh Cutler and the Ohio Associates played a role in shaping the document. The Northwest Ordinance created a strong territorial government to insure the Ohio Company's political sovereignty and property

\(^{56}\text{Hibbard, Public Land Policy, p. 47; Jensen, New Nation, p. 355. Jensen contends that the rise of the Nationalists in the Constitutional Convention was also manifest in the Confederation Congress. "The ultimate success of the Ohio Company was due in part to the fact that once more the balance of power in Congress was shifting, a shift no better expressed than in the election of General Arthur St. Clair as president." As mentioned, the five committee members that determined the outcome of the Ohio Company's negotiations were all Nationalists, three of them Easterners.}
rights from encroachments by frontiersmen and squatters.\footnote{Carrington to Monroe, August 7, 1787 in Burnett, \textit{Letters of the Continental Congress}, VIII:631. See Manasseh Cutler, \textit{Description of Ohio} (Boston, 1896): "It is a happy coincidence that the Ohio Company are about to commence the settlement of this country in so judicious a manner. It will serve as a wise model for the future settlement of all the federal lands; at the same time that by beginning so near the western limit of Pennsylvania, it will be a continuation of the old settlements, leaving no vacant lands to be seized by such lawless banditti as usually infest the frontiers of countries as distant from the seat of government." For the Northwest Ordinance, see Chapter 7 below.}

Several other land speculation entrepreneurs approached Congress during the late 1780s. Royal Flint and James Parker (both members of the Scioto Group) proposed to purchase one million acres on the Wabash and Mississippi Rivers, and George Morgan and Associates wanted a million acres on the Mississippi. But neither of these deals materialized. The only other big land contract negotiated by the Confederation Congress was with John Cleve Symmes, a Nationalist Congressman from New Jersey and newly appointed judge in the Northwest Territory. Symmes was enthusiastic about the fertility of the Ohio country, and foresaw a fortune for "the lucky speculator who should buy lands from Congress for five Schillings an acre and sell it to immigrants at twenty." Symmes contracted for one million acres between the Great and Little Miami Rivers, on the Ohio. The contract was for two-thirds of a dollar per acre, but use of inflated securities, military land bounties, and allowances for bad land brought his
NOTES ON OHIO COMPANY LANDS

- Area granted to John Cleves Symmes.
- Lands purchased.
- Lands acquired through military warrants.
- Donation Tract.

NOTES ON MIAMI PURCHASE

- Area of original contract.

Identity of intersecting lines shown within Purchase:

The Ohio Country, 1787-1790


Pattison, American Rectangular Land Survey System.
actual purchase price down to that of the Ohio Company—about eight to nine cents an acre. 58

Thus by 1788, the Confederation Congress had, by amending the Land Ordinance of 1785, sold over 6,000,000 acres of the public domain to three land investment companies at a promised return of over $5,000,000.00 in specie and securities. Congress hoped there would be more big purchases, and announced the availability of lands in the Old Northwest to any purchaser willing to buy "not less than One Million of Acres in One body." An era of large scale private colonization seemed to be at hand. On paper the sales looked promising. In reality they proved to be negligible, for the attempt of the federal government to sell western lands through land speculators was a dismal failure. All three of the large purchasers of the 1780s failed to meet their payments to Congress, and two of them went bankrupt. Part of their problem was caused by the rise in the value of public securities after ratification of the Constitution. All the speculators planned to pay for most of their lands with securities they received for those lands. With the rise of these securities, however, the cost of lands went up, further applications ceased, and

58 Treat, National Land System, pp. 52-53; Hibbard, Public Land Policy, p. 50; Pattison, American Rectangular Land Survey System, p. 170; Hibbard, Public Land Policy, p. 43; Treat, National Land System, pp. 53, 64. One other sale that should be mentioned here was to the state of Pennsylvania. That state bought a 200,000 acre triangle of land between Lake Erie, New York, and Pennsylvania at 75 cents an acre. This purchase gave Pennsylvania additional frontage on Lake Erie. See Treat, National Land System, p. 63, for a graph summarizing all of the Confederation land sales to speculation companies.
the existing contractors were unable to make payments. The first company to go under was the Scioto Group. Duer had never planned on colonization; he wanted only to act as a middleman and sell his option on the lands to someone else at a profit. But Duer could find no buyers. His agent in Europe, Joel Barlow, compounded the problem by selling individual lots to French emigres. Six hundred of these Frenchmen arrived in the United States in 1790 to found the colony of Galliopolis--only to discover there was no title for the lands they had purchased. This ineptitude, the rise in the price of securities, and Duer's inaction all culminated when Duer and two of his associates were swept down in the New York financial panic of 1792. 59

59 Robbins, Our Landed Heritage, p. 11. For the securities question, see Treat, National Land System, p. 55, and Davis, "William Duer, Entrepreneur," p. 143. The confidence that accompanied the ratification of the Constitution increased the value of securities because everyone thought, correctly, that the new federal government would pay off in specie. After 1789 no one wanted to waste their securities on land when they could get silver and gold for them. See Thatcher to Long, April 23, 1788 in Burnett, Letters of the Continental Congress, VIII:726: "Not a great many purchasers have offered themselves, and few that have could give evidence of their ability, and of those that could, still a small number have, and probably ever will, comply with their contracts. Continental Securities have been for several years very low, perhaps lower than they will ever be hereafter should the proposed Constitution, or any other with the energy to discharge the Interest be adopted. Hence if purchasers found it difficult to discharge their contracts while public Securities have been sold from 6/ to 3/ on the pound, what probability is there of their being enabled after the adoption of the Constitution that shall secure their Redemption, and make them equal to Silver and Gold." Duer, the Ohio Associates, and Symmes all asked for retroactive reductions in the price of their purchases with these developments. As Davis commented in "William Duer, Entrepreneur," p. 224: "One cannot but comment in
The Ohio Company did partially colonize its tract, and founded the town of Marietta in 1788. However, the original plan of the Newburgh petitioners to settle en masse was never realized. By the 1790s the company was more or less a speculation firm, run by ex-army officers, selling Ohio Valley lands to newly arrived pioneers. Less than one-third of the 817 Ohio Company shareholders ever moved out West. Many difficulties eventually led to the Company's demise. The secret Scioto deal angered many members of the company, and disputes arose between immigrant and speculator stockholders. The Ohio Associates were hard-pressed to sell shares, and several original subscribers defaulted. Lack of business "know-how," the rise in the price of securities, the relatively poor quality of land, lack of immigration, and the Indian wars of the 1780s and '90s all drained the Company's energy. When its second payment of $500,000 came due in 1792, the Ohio Associates were unable to pay. Rather than forfeit passing, upon the ingenuity of the land purchasers who would urge the appreciation of the public securities as one reason for making a land grant for which those securities should be received in payment, and then when the appreciation had taken place would urge a reduction in price of lands corresponding to or exceeding the extent of that appreciation." (!) For Duer's bankruptcy, see Hulbert, Records of the Ohio Company, p. lxxxv; and Davis, "William Duer, Entrepreneur," pp. 144, 213, 249; Woodress, Life of Joel Barlow, p. 93; Treat, National Land System, p. 59. To relieve the French immigrants duped by the Scioto Associates, the Congress passed a relief act granting 24,000 acres to the French settlers at Gallipolis. See Hulbert, Records of the Ohio Company, p. lxxxix. One of Duer's last business deals before he landed in debtor's prison was a land speculation scheme with Henry Knox. Knox, Duer, and others bought Maine lands at ten cents an acre.
everything, they asked the Federal Congress for help, and Congress passed a Relief Act which lowered the price of the original purchase. The company received 750,000 acres for its original $500,000 in securities. In addition, the Federalist-controlled Congress granted the Ohio Associates 214,285 acres for military bounty warrants. Finally, it awarded them a donation tract of 100,000 acres for services rendered in settling the area and in fighting Indians. By 1795 the Ohio Company had begun to liquidate its holdings. It sold all company property, completed the surveys (as per its contract), and divided up its assets. Although the final dividends were small, the Ohio Company was spared bankruptcy by the federal government.60

John Cleve Symmes did not fare as well as the Ohio Associates, largely because of his own dishonesty. Symmes started off well enough, founding the town of Cincinnati in 1787. But in his zeal to make money, he continually sold lands that were not within the bounds of his purchase. Congress was initially cooperative, and agreed to grant Symmes the lands he had sold. It also passed a relief measure for

the judge similar to that afforded the Ohio Company. But Symmes continued to sell lands that did not belong to him. In 1802, Judge Symmes was arrested on three counts of fraud and soon went bankrupt.\footnote{Philbrick, \textit{Rise of the West}, p. 125; Treat, \textit{National Land System}, p. 60. Symmes also received a tract for educational purposes. Congress granted him the land he had been selling and took away his original grant. But Symmes wanted both. See ibid., p. 61. Congress had to finally grant pre-emption rights to those who had been frauded by Symmes--but the preemption went at $2.00 an acre. See Hibbard, \textit{Public Land Policies}, p. 51.}

Thus Congress's grandiose plans to sell western lands to fund the national government did not work. The original sales under the Land Ordinance of 1785 were negligible, drawing little more than $100,000 in revenue, and Congress's subsequent deals with the land speculators fared little better. Confederation land policy was undoubtedly a failure--but why? The answer lies in Congress's basic assumptions. That body was quite correct in predicting that westward expansion would increase, producing widespread demand for western lands. But it made a great mistake in assuming the settlers would feel obligated to pay for those lands! Where land was cheap, as in the individual states, pioneers would settle and make purchases. (Indeed, much of the settlement prior to 1820 was within the frontiers of the thirteen states, not the trans-Appalachian West.) But where lands were expensive, as in the public domain in the Ohio country, most of
those who migrated would simply squat and trespass. The frontier settlers would, in Jefferson's words, "settle the lands in spite of everybody." There is no better example of this than in the American tradition of squatting as manifested in the 1780s and '90s in the trans-Appalachian West. Tens of thousands of pioneers squatted and built homesteads on lands to which they had no legal title whatsoever. The futile efforts of federal troops to evict them were eventually abandoned.62

62For squatting and trespassing in the trans-Appalachian West, see Barnhart, Valley of Democracy, pp. 127-30; "Petition to Settle Ohio Lands (1784)," in Hulbert, Ohio in the Confederation, p. 95; "Petition of Kentuckians for Lands North of the Ohio River," in ibid., pp. 137-40; "Ensign Armstrong's Report to Col. Harmar, April 12, 1785," in ibid., p. 103. While the Land Ordinance of 1785 was under debate, 700 troops were dispatched to erect Fort Harmar in the Ohio wilderness. One of their main duties was the eviction of squatters from federal lands. In the spring of 1785, General Harmar ordered Ensign John Armstrong and twenty-six men to forcibly evict trespassers Armstrong described as "banditti whose actions are a disgrace to human nature." Ensign Armstrong ousted numerous families and burned their cabins and sheds. He arrested one Joseph Ross who was "determined to hold possession, and if I destroyed his house (said) he would build six more." When confronted by an armed group of seventy-five frontiersmen, Armstrong threatened to "fire upon them if they did not disperse." There was no bloodshed, but on April 11 the group petitioned Congress, stating, we were Visited by a command of men Sent by the Commandant at Fort McEntosh; with orders from Government on purpose to Disposess us and Destroy our Dwellings... by which order it now Appears our Conduct in Settling here is Considered by the Legislature to be prejudicial to the Common good; of which we had not the Least Conception till now; we are greatly Distressed in our present Circumstance; and we humbly pray if you in your Wisdom think proper to grant us Liberty; to Rest where we are and grant us the preference to our Actual Settlements when the Land is to be settled by order of Government. . . .
As time passed, it became obvious that New England "township planting" was not going to work in the trans-Appalachian West. This is not to say, however, that the Confederation land policy was a total failure. Some legal settlement did take place under the policy, and the Ohio Company and Symmes settlements formed the nucleus from which much of southern Ohio grew. More important, prior rectangular survey, a provision of the Land Ordinance of 1785, brought order and security of title to the national land system and has remained in that system until the present day. It was the purchase and location provisions of the 1785 Ordinance that were ill-suited to the frontier situation. With expansion and admission of new western states into the Union, these conservative stipulations were amended or defeated. By the early 1800s, the national government had begun to change its land policy to meet the needs of the Westerners. Preemption was first granted by the Federal Congress in 1799, and the Land Ordinances of 1803 and 1820 marked an evolution that culminated in the Homestead Act of 1862. Prior

Several other missions followed the Armstrong foray of 1785. Ebeneezer Denny (fall of '85) and Captain John Hamtramck (summers of 1786 and '87) were also sent to evict squatters, yet were unable to keep up with the continuing encroachment. In 1787, Secretary of War Knox warned Congress, prophetically, that "All future attempts to remove squatters may be abortive" because "their numbers may be so great as to defy the power of the United States." Indeed, by the 1790s the federal government had all but given up its efforts to evict squatters and trespassers from the trans-Appalachian West.
rectangular survey provided a solid foundation upon which these liberal land policies could be built, but the Eastern Nationalists' fear of the West, and their efforts to control westward expansion through a "New England" corporate style of settlement proved to be anachronistic. George Washington, a Nationalist himself, gave a prophetic assessment of the western situation in 1785:

A penetrating eye, on close observation, will discover thro' various disguises a disinclination to add new States to the Confederation, westward of us; which must be the inevitable consequence of emigration to, and population of that territory. . . . [But] as to the restraining of the citizens of the Atlantic States from transplanting themselves to that soil, when prompted by interest or inclination--you might as well attempt (while our Governm' ts are free) to prevent the reflux of the tides, when you had got them within your rivers.63

63 Washington to Grayson, May 8, 1785, in Burnett, Letters of the Continental Congress, VIII:118. For a general assessment of Confederation land policy, see Tatter, "Land Policy During the Confederation," pp. 185-86; Treat, "Land System Under the Confederation," p. 13; and Treat, National Land System, pp. 370-91. Treat believes the Confederation did a good job considering the circumstances. The frontiersman who could not afford government land simply ignored the policy, and "moved on again in advance of the civilization he could not endure."
CHAPTER VI
THE MISSISSIPPI RIVER DEBATE

However singular the opinion may be, I cannot divest myself of it, that the navigation of the Mississippi, at this time, ought to be no object with us. On the contrary, until we have a little time allowed to open and make easy the ways between the Atlantic States and the Western territory, the obstructions had better remain. There is nothing which binds one country or one State to another but interest. Without this cement the western inhabitants, who more than probably will be composed in a great degree of foreigners, can have no predilection for us, and a commercial connexion is the only tie we can have upon them.

George Washington to Richard Henry Lee, 1785

The object in the occlusion of the Mississippi on the part of these people so far as it is extended to the interest of their States . . . is to break up so far as this will do it, the settlements on the western waters, prevent any in the future, and thereby keep the States southward as they now are--or if settlements will take place, that they shall be on such principles as to make it the interest of the people to separate from the Confederacy, so as effectively to exclude any new State from it: To throw the weight of the population eastward and keep it there, to appreciate the vacant lands of New York and Massachusetts. In short, it is a system of policy which has for its object the keeping the weight of government and population in [the East] and is prepared by a set of men so flagitious, unprincipled, and determined in their pursuits as to satisfy me beyond a doubt they have extended their views to the dismemberment of the government.

James Monroe to Patrick Henry, 1786

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George Washington to Richard Henry Lee, August 22, 1785,
Following the American Revolution, the Spaniards in the Old Southwest watched the great migration of American pioneers over the Appalachian Mountains with growing alarm. "There is not time to be lost," wrote Martín Navarro, a Spanish official in New Orleans: "Mexico is on the other side of the Mississippi in the vicinity of the already formidable establishments of the Americans." This fear of American encroachment was manifested in a Spanish western policy bent on strangling United States settlements in the Mississippi Valley. In June of 1784, the Spanish government in New Orleans issued a proclamation closing the Mississippi River to all American citizens. The King of Spain sent Don Diego de Gardoqui to the United States to negotiate a treaty that would insure Spanish sovereignty in the Old Southwest.

The American reaction was far from unanimous. Southerners and Westerners angrily condemned the Spanish closure, insisting on America's right to navigate the Mississippi by virtue of the colonial charters and the Treaty of Paris of 1783. Gardoqui soon learned, however, that many Americans, especially the Nationalists in the Northeastern states, were not so enthusiastic in defending American rights to the Mississippi. They distrusted the squatters and "insolvent emigrants" who were crossing the Appalachians, and feared the growth of the West would

result in a loss of the economic and political dominance of the Northeastern states. Many of the Eastern Nationalists, including Gardoqui's American counterpart, Secretary of Foreign Affairs John Jay, were willing to surrender American use of the Mississippi for a number of years in return for a favorable trade treaty and military alliance. The Jay-Gardoqui negotiations and the Mississippi River Debate thus led to an inevitable conflict between the expansionist Southern party and the Northeastern anti-expansionists in the Confederation Congress. As a result, the Congress met a political impasse that had to be resolved by the Constitutional Convention of 1787. The Confederation Congress's political crisis could not be resolved and the Federal Constitution could not be written until there was a resolution of the East-South split over western policy. By viewing the Jay-Gardoqui controversy and the Mississippi River Debate one can view a crucial issue in the evolution of early American politics and in the creation of the first American western policy.¹

¹Spain is proud and extremely jealous of our approximation to her South American territory, and fearing the example of our ascendancy upon that country, is grasping forever at more territory, by way of security; and hoping to derive benefit to her system, from our want of

²Philbrick, Rise of the West, p. 164. For the political implications of the Jay-Gardoqui affair, see Henderson, Party Politics, p. 352.
system, our discord, and inattention. Hence we may expect from Mr. Gardoque, an apparent firm demand of the exclusive navigation of the Mississippi, with some tempting commercial offers to procure our assent to the loss of this very valuable navigation. . . .

Richard Henry Lee to Patrick Henry, 1785

When the American colonies declared themselves independent from Great Britain in 1776, great questions arose concerning Spanish-American relations in the Old Southwest, and specifically American navigation of the Mississippi River. Great Britain's theoretical claim to navigation rights (on the basis of the Treaty of Paris, 1763) was never really confirmed during the 1760s and '70s, largely because of the non-expansionist British western policy and the formidable Indian barrier in the trans-montane West. With independence and renewed American expansion, however, the question of navigation of the Mississippi was once again brought into dispute. The Spanish were a power to be reckoned with in the Old Southwest. Spain controlled the mouth of the Mississippi and claimed much of the southwestern trans-Appalachian frontier. The Franco-American alliance of 1778 brought Spain into the Revolutionary War against Great Britain, embroiled the United States in European diplomacy, and made the Mississippi River question even more cloudy. Spain was an extremely reluctant ally of the United States. As a great colonial power Spain could

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hardly be expected to support enthusiastically an American colonial independence movement. Spain was an ally of France, not the United States; the Spaniards declared war in order to recapture the island of Gibraltar from Great Britain. Spain looked with distrust upon American independence, and was particularly concerned about possible American settlements in the Mississippi Valley. Spain stood as a formidable barrier to American settlement in the southwestern frontier and American navigation of the Mississippi River.\(^4\)

When Spain first declared war against Great Britain, many Americans were willing to recognize its claims to the Old Southwest and exclusive navigation of the Mississippi River. From 1778-1780, commercial and trading interests in the Northeastern states favored recognizing Spanish claims in return for substantial military and economic aid. These New England interests were ably represented by American diplomat John Jay, who shared their distrust of Westerners, and feared an expanding West would lessen the economic and political weight of the Northeast.\(^5\) Had the Spanish catered to these Northeasterner


they might well have enjoyed substantial American support for their claims in the Old Southwest. But when John Jay went to Spain to seek loans and assurances of military aid, he received what Samuel Flagg Bemis has called "one of the most protracted painful snubbings ever accorded a distinguished envoy of the American government." This diplomatic affront was followed closely by the American victory at Yorktown in 1781, which greatly decreased the United States dependence on the Franco-Spanish alliance. Thus within a year Spain lost probable American guarantees to its claims to the Southwest and exclusive navigation of the Mississippi River. Jay later wrote that in order to obtain Spanish aid, he had originally considered surrendering American claims to East and West Florida and asking only for a free port on the Mississippi:

But when Spain afterwards declared war for objects which did not include ours, and in a manner not very civil to our independence, I became persuaded that we ought not to cede to her any of our rights, and of course that we should retain and insist upon our right to the navigation of the Mississippi.

At the Treaty of Paris negotiations the Spanish further

French envoy Gerard in 1778, 'the strength of the Confederacy lay in the North and that the North should be kept in the ascendancy by curtailing the territory in the Southwest' (Abernethy's paraphrase).

Bemis, Diplomatic History of the United States, p. 35.

Johnston, Correspondence of John Jay, I:327.
agonized the United States by instructing their delegate to try to convince the British to negotiate for a buffer state between the United States and the Spanish territory. This effort came too late, however, as the American diplomats at Paris were tired of the complications inherent in the Franco-Spanish alliance. The Americans ignored their allies and independently negotiated the Treaty of Paris of 1783. In this agreement, the United States received a highly favorable, but questionable western settlement. The boundaries granted the new American republic were huge. The Americans received a southern boundary of 31°, the Mississippi as a western boundary, and the right to navigate the entire length of that river. Spain was appalled. The 31° southern boundary and the Mississippi River western boundary included much of the Spanish Yazoo strip in West Florida, land which the Spanish traditionally held and had recaptured from the British during the Revolutionary War. The British granted navigation of the entire length of the Mississippi on the basis of a privilege awarded Britain by Spain following the Seven Years War (1763), but Spain's declaration of war against Britain had nullified that act. Thus Great Britain gave the United States treaty concessions which it had no right to give and, to make matters worse, a separate treaty between Spain and Great Britain (1783) made no mention of these contradictions. The stage was set for the inevitable Spanish-American conflict over the Old Southwest and navigation of the Mississippi during
the Confederation era. 8

Over 50,000 pioneers crossed the Appalachian Mountains during the first few years following the Treaty of Paris. As

they settled and began to farm the Ohio Valley, Kentucky, and Tennessee, their immediate concern was transporting agricultural surplus to eastern markets. Because of the difficulty of transporting freight over the mountains, the most practical route was down the Ohio and Mississippi to New Orleans, and then onward via ocean transport. It took less time to ship goods from Pittsburgh to Philadelphia in this way than to go overland! Most of the produce was shipped on flatboats, simple craft which could hold nearly fifty tons. Farmers banded together to build and stock these boats, organized a crew, and began a long, arduous journey down the river. After several months (forty or fifty days in the Spring) the flatboats reached New Orleans where the goods were sold and the boats broken up and sold for lumber.  

The Spanish watched these developments with ever-growing alarm. They believed American settlement south of the Ohio and navigation of the Mississippi were a direct challenge to

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9 Horsman, Formative Years, pp. 156, 158-59; Philbrick, Rise of the West, p. 336; Ferrell, American Diplomacy, p. 59; Whittaker, Spanish-American Frontier, p. 95. According to Whittaker, the volume of American commerce traveling down the Mississippi prior to 1784 was small. He states that no flatboats entered New Orleans from 1785-1787 when the Mississippi was closed, and that volume picked up steadily thereafter. The main problem with Whittaker's figures is that they are taken from Spanish records and do not include smuggled goods, which made up the bulk of the commerce. James Wilkinson and John Sevier, for example, are known to have made several unofficial visits to New Orleans with boatloads of goods. More important, the Spanish were concerned with potential use of the river should a precedent be established. Mississippi River commerce of the Early National Period would certainly demonstrate that their concern was well founded.
Spanish claims in the Old Southwest. Bernardo de Campo, a Spanish chargé de affaires, wrote from London in 1783 that swarms of Americans were crossing the mountains into the Mississippi Valley and would soon threaten Spain's southwestern possessions. The Spanish governor of Louisiana warned:

If . . . this vast and restless population come to occupy the banks of the Mississippi and Missouri, or secure their navigation, doubtless nothing will prevent them from crossing and penetrating into our provinces on the other side. . . .

The Spanish felt they had to take a stand—or else accept the likely possibility of an American takeover of the Southwest.10 But the Spanish were fortunate enough to have retained some American allies on the Southwestern question. Many of those who supported the Spanish in 1778 remained convinced that American expansion westward should proceed slowly, if at all. Gouverneur Morris believed "emigrations from the middle states to the Western country are already so great as to be injurious." "Policy would warrant delay," Rufus King wrote Jonathan Jackson, "but these western adventurers will not suffer it. They at this time hold a bold language, and are yearly making incredible accessions." Encouraged by these sentiments, the Spanish government formulated a policy to strangle American settlements in the trans-Appalachian West. On July 22, 1784 they issued a proclamation closing the Mississippi River south of the 32°

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parallel to all American citizens. The conflict between the United States and Spain had come to the fore. The ambiguous provisions of the Treaty of Paris would now have to be re-negotiated by the two conflicting powers.\(^{11}\)

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**Rufus King to Elbridge Gerry, 1786**

I have long entertained doubts concerning the line of conduct which Congress ought to pursue relative to the Territory of the U. S. Northwest of the Ohio, and am every day more confirmed in the opinion that no paper engagements, or stipulations, can be formed which will insure a desirable connection between the Atlantic States and those which will be erected to the Northwestward of the Appalachian or Allegheny Mountains, provided the Mississippi is immediately opened. . . . Should there be an uninterrupted use of the Mississippi at this time by the citizens of the U. S., I should consider every emigrant to that country from the Atlantic States as forever lost to the Confederacy. . . .

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**William Grayson to the Virginia Ratifying Convention, 1788**\(^{12}\)

I look upon this as a contest for empire. Our country [Virginia] is equally affected with Kentucky. The Southern States are deeply interested in this subject. If the Mississippi be shut up, emigration will be stopped entirely. There will be no new states formed on the western waters. . . . This contest of the Mississippi involves this great national contest; that is, whether one part of the continent shall govern the other. The Northern States have the majority, and will endeavour to keep it.

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\(^{11}\)Jensen, New Nation, p. 114; Rufus King to Jonathan Jackson, September 3, 1786, in Burnett, Letters of the Continental Congress, VIII: 458; Whittaker, Spanish-American Frontier, pp. 13, 68.

\(^{12}\)Rufus King to Elbridge Gerry, June 4, 1786, in King,
Spain sent Don Diego de Gardoqui to America as its "Encargado de Negocios" to resolve the seemingly irreconcilable claims of Spain and the United States. Gardoqui was a clever and able diplomat who had worked closely with the Americans during the Revolutionary War.\(^\text{13}\) The American negotiator was Secretary of Foreign Affairs John Jay. Jay had served in Paris in 1783, and was a major Confederation diplomat until appointed Chief Justice of the United States Supreme Court in 1788. Although Jay demanded American navigation of the Mississippi in Paris in 1783, he and many of his fellow Eastern Nationalists still entertained doubts about the prudence of an expansionist western policy. As a result, Jay was more sympathetic to the Spanish position than other American diplomats might have been. The Northeasterners' attitudes towards expansion would soon clash with the views of the South and the West on that subject, making for a warm sectional debate in the Confederation Congress over the Jay-Gardoqui negotiations.

The Jay-Gardoqui negotiations span the mid-1780s. Like many diplomatic affairs, they were long, tedious, and very confusing. John Jay termed the negotiations "dilatory, unpleasant, and unpromising." Much of the problem was the seemingly irreconcilable nature of the Spanish and American

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\(^{13}\) Gardoqui's duties included coordinating secret shipments of war materiel from Spain to the American rebels.
positions at the outset of negotiations. The Confederation Congress demanded the Spanish accept the Treaty of Paris of 1783. They instructed Jay to insist unequivocally on "the right of the United States to their territorial bounds [31°] and the free Navigation of the Mississippi, from the Source to the Ocean. . . ." To back up their demands, the Americans pointed to the Treaty of Paris, the sea to sea charters of the thirteen colonies, and the "natural right" of a nation owning land on a river to navigate the entire length of that river. The Spanish countered with a claim to all land southwest of the Tennessee, Ohio, and Flint Rivers, and exclusive navigation of the Mississippi River. They supported their claims by pointing to their separate treaty with Great Britain in 1783, the right of military conquest of territory belonging to a common enemy, their ownership of the entire west bank of the Mississippi, and the fact that all British privileges to the Mississippi, having been canceled by Spain's declaration of war, could not therefore legally be transferred to the Americans by treaty. If the United States would accept the Spanish position, the Spaniards offered a military alliance and a commercial treaty.


15Whittaker, Spanish-American Frontier, pp. 68, 73; Ferrell, American Diplomacy, p. 56; Philbrick, Rise of the West, pp. 171-72; Monaghan, John Jay, p. 256; Bemis, Diplomatic History of the United States, pp. 74-75, 78. For Gardoqui's instructions, see Whittaker, Spanish-American Frontier, pp. 70-71.
When negotiations commenced in 1785, the United States were at a distinct disadvantage. International law was on the side of the Spaniards, and the Americans had no military muscle to back up their claims. On the other hand, thousands of restless western settlers were daily crossing the mountains, pressuring the Spanish, and in the late eighteenth century Spain's position as a world power was undoubtedly on the decline. The Spanish needed American friendship in their disputes with Great Britain. Thus both sides had assets and liabilities in these intricate diplomatic maneuverings. The winning side would be that most adept at the art of diplomatic persuasion. Initially, both men clung to their government's positions, and the talks dragged on. Richard Henry Lee wrote George Washington in October of 1785, "The negotiation with Mr. Gardoqui proceeds so slowly and as yet so ineffectually that I may fancy the free navigation of the Mississippi is a point . . . that will not be hastily concluded upon." Gardoqui used flattery, gifts, and cajolery to win Jay over. He was particularly charming to Mrs. Jay, in hopes she would influence her husband's decisions. But Jay was bound by the Congressional instructions which forbade him to surrender the American right to navigate the Mississippi. He finally weakened, however, when he was made a most tempting offer. Gardoqui proposed a defensive alliance and a "most favored nation" status for the United States in trade (including trading privileges with Africa and the
Phillipines) in return for a postponement of the southern boundary dispute and American relinquishment of the use of the Mississippi for a minimum of twenty-five years. The prospect of a lucrative trade deal for the commercial Northeast was too much for John Jay to resist. The Mississippi River provision was not all that bad, he reasoned, for it would "save the right and only suspend the use during the term of the treaty." Moreover, Jay honestly believed this was the best settlement the United States were going to get. In May of 1786, he informed Congress the negotiations had reached an impasse, and requested that a committee be appointed "with power to instruct and direct me on every point and subject relative to the proposed treaty with Spain."  

Edmund Cody Burnett has compared the effect of Jay's announcement to that which might have occurred had a bomb been tossed into the halls of the Confederation Congress. That body immediately polarized as Southern Congressmen squared off against Northeasterners. Once again, the western question served to accent the sectional dichotomy in Congress, and split the Nationalist faction into Northern and Southern

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"It was immediately perceived," Monroe wrote Madison, "that the object was to relieve [Jay] from his instructions respecting the Mississippi and get a committee to cover the measure." Monroe believed "Jay has manag'd this negotiation dishonestly," and had been "negotiating expressly for the purpose of defeating the object of his instructions and by a long train of intrigue and management seducing the representatives of the States to concur in it." While the Southerners unanimously opposed Jay's proposal, the Easterners, especially Nationalists, voiced their approval. Most Eastern Nationalists were not averse to temporarily surrendering the navigation of the Mississippi, especially if it would increase the wealth of their section. Battle lines were drawn for the Mississippi River Debate, which raged in the Confederation Congress during the summer of 1786.

John Jay outlined his position in an address to Congress on August 3, 1786. The negotiations with Gardoqui, he said, were deadlocked, with no agreement possible. Spain would never consent to American navigation of the Mississippi River. The Spanish were, however, willing to offer a defensive alliance


18 Burnett, Continental Congress, pp. 654-55; Burnett, Letters of the Continental Congress, VIII:xxviii; Monaghan, John Jay, p. 258; Monroe to Henry, August 12, 1786, in Burnett, Letters of the Continental Congress, VIII:424. Monroe was so incensed that he disavowed his efforts to reach some sort of accommodation with the Easterners over territorial government and called for a return to the Ordinance of 1784. See chapter 7 below.
and a "most favored nation" trade status in return for United States surrender of navigation of the Mississippi for twenty-five years. "Why, therefore," Jay asked, "should we not (and for a valuable consideration too) consent to forbear to use what we know is not in our power to use?":

[I] oppose every idea of our relinquishing our right to navigate . . . Mr. Gardoqui strongly insists on our relinquishing it. . . the King will never yield on that point, nor consent to any compromise about it. . . . It is much to be wished that these matters had lain dormant for years yet to come; but such wishes are in vain; these disputes are agitating; they press themselves upon us and must terminate in accommodation or War, or disgrace. The last is the worst that can happen; the second we are unprepared for; and therefore our attentions and endeavors should be bent to the first.19

Timothy Bloodworth of North Carolina reported that by mid-August "the subject was . . . agitated with that warmth which might have reasonably been expected on a matter of such importance." The sectional cleavage was so great that many honestly feared a possible dissolution of the Confederacy.20 As the debate progressed, the arguments of the South became more clearly defined. The Southerners believed the "use of the Mississippi is given by nature to our western country, and no power on earth can take it away from them." James Madison called Jay's diplomacy "short-sighted" and "dishonorable;"


20Henderson, Party Politics, p. 294: Monroe wrote (August 12), "the Eastern people talk of dismemberment. . . .," and Theodore Sedgwick urged Northeasterners to "contemplate a substitute for union."
"a voluntary barter in time of profound peace of the rights of one part of the empire to the interests of another part."
The Southerners opposed any measure that would discourage immediate settlement of the West. They looked forward to new western states, and foresaw political allies in the trans-Appalachian region. They feared that in the proposed treaty, "The Eastern States are to receive the benefits . . . and the Southern States are to pay the purchase by giving up the Missecippey."  

Charles Pinckney of South Carolina keynoted the Southern argument in a speech probably delivered August 16, 1786. He called the Jay Treaty unnecessary: "Spain in her treaty proposes no advantages which we do not now enjoy, and can never be in her interest to curtail . . . she proposes nothing more than she will always be willing to grant you without a treaty." Pinckney argued further that closure of the Mississippi would greatly lower the value of western lands--lands from which Congress needed revenue to finance the government: "The sale and disposal of lands ceded in the Western territory has ever been considered by Congress as a sufficient

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fund . . . for discharge of the domestic debt . . . it is known that the value of the lands must altogether depend upon the right to navigate the Mississippi." More important, the surrender of the Mississippi would drive the Westerners from the Confederacy: "By using the first opportunity . . . to sacrifice their interests to those of the Atlantic States, can they be blamed for immediately throwing themselves into [Spain's] arms for that protection and support you have denied them?" Pinckney alluded to the need to strengthen the Confederation when he implied this treaty might prevent establishment of a badly needed central government. He argued that the South and the West would oppose "vesting that body with farther powers, which has so recently abused those they already possess." In conclusion, Pinckney stated,

> Upon the whole, as the present treaty proposes no real advantage that we do not at present enjoy, and it will always be in the interest and policy of Spain to allow . . . and as the suspension demanded may involve us in uneasiness with each other at a time when harmony is so essential to our true interests . . . let me hope that upon this occasion the general welfare of the United States will be suffered to prevail, and that the house will on no account consent to alter Mr. Jay's instructions, or permit him to treat upon any terms other than those he has already proposed.\(^{23}\)

Pinckney had spoken for the South and the West. Now attention shifted to the Northeastern rebuttal.

Two Eastern Nationalists, William Samuel Johnson of

\(^{23}\)Ibid.
Connecticut and Rufus King of New York, delivered the chief rebuttals to Pinckney. Johnson contended that both sections would gain from the proposed treaty, because "Trade beneficial to one part of the Union is beneficial to all, for we are one Body." As for the Mississippi, he questioned the American "right" of navigation: "That is mine which I have a right to Use and can Use. Can you say this of the Mississippi? . . . It is not yours to give. When you agree not to use it you have sacrificed nothing . . . you give up only a Right to go to War for 20 years. This is a benefit, not a loss." Rufus King concurred, adding the United States could secure navigation of the Mississippi later on, when they were stronger and in a more advantageous bargaining position. He noted that Britain and France were on Spain's side, and the Americans could not possibly go to war now. Moreover, the livelihood of the Northeast depended on commerce, and King insisted that without the proposed treaty the Eastern merchants would suffer. Nationalists Theodore Sedgwick and Arthur St. Clair concluded the Northeastern argument, with St. Clair observing, "This will check settlement of the Western country . . . . Our country is too thin of inhabitants . . . emigration therefore in our present situation is hurtful."  

St. Clair's sentiments were typical of many Easterners

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24 For the Eastern rebuttal, see Burnett, Letters of the Continental Congress, VIII:429, 438-40, 447-49.
who supported at least a temporary forbearance of the naviga-
tion of the Mississippi River. The attitudes of these
Easterners formed a consistent philosophy regarding the western
territories. This philosophy was not always espoused openly,
for to make it known, "would be impolitic for many reasons . . ."
Many of their views could not "with safety be now admitted."25
Yet by examining the political and economic motives of the
Easterners one can better understand their stance in the
Mississippi River Debate.

Political considerations figured importantly in the Eastern
appraisal of the West. Most Easterners, especially the Nation-
alists, doubted the "loyalty" of the squatters and banditti
of the West. Rufus King believed their "pursuits and inter-
est . . . will be so different and probably so opposite [ours],
that an entire separation must eventually ensue."26 And even if
the Westerners joined the Confederacy, Eastern Nationalists
entertained many apprehensions about their potential political
and sectional loyalties. Most of these Northeasterners agreed
with the South that new western states would support the South
in Confederation politics.27 By closing the Mississippi, the
Northeast hoped to slow western settlement and admission of


26Rufus King to Elbridge Gerry, June 4, 1786, in King, Correspondence of Rufus King, I:175

new western states, thus prolonging the Eastern dominance in national politics. As Grayson of Virginia observed, "The Northern States have a majority and will endeavor to keep it."\(^{28}\)

At the same time, the Mississippi question was of great economic importance to the East. The benefits which would result from the proposed Spanish trade deal were especially attractive during the post-war depression of the early 1780s. But what of other economic motivations? Many conservatives believed that westward migration "must in its consequences depopulate and ruin the Old States." Northeasterners believed immediate settlement of the West would drain the Eastern labor supply, thereby raising wages and diminishing consumers. By slowing settlement they hoped to insure economic stability: "If from our relinquishment at present [Spain] can retain for a number of years the exclusive navigation of the river, it is well--", Edward Rutledge assured Jay. "It will stop migration, it will concenter force, because the settlers can have no vent for the products of that country but down the Mississippi, and therefore I think they will not fond themselves of inhabiting her banks." King agreed. If the Westerners were "cut off for a time from any connections except with the Old States, across the mountains, I should not despair that a Government might be instituted so connecting

\(^{28}\)Whittaker, *Spanish-American Frontier*, p. 75.
them with the Atlantic States, as would be highly beneficial to them both, and bring considerable trade." Northeastern land speculators were in an untenable position. Most of them had invested in state lands or "mid" western lands. Thus they favored gradual settlement onto speculator-owned lands. They opposed opening the Mississippi because it would lower the value of their lands. Like most Northeasterners, they feared the economic consequences of immediate unrestricted American navigation of the Mississippi River. 29

These political and economic attitudes combined with other factors, most importantly the desire to avoid an Indian war, to instill in most Eastern Nationalists an intense fear of westward migration. These attitudes were well ingrained

29 Ibid., pp. 74-75; Jensen, New Nation, pp. 9, 171; Richard Henry Lee to George Washington, in Ballagh, Letters of Richard Henry Lee, II:426-27. Lee, a Virginia Antifederalist who became a staunch Federalist in the 1790s, supported the Eastern Nationalist western policy of the Confederation. Edward Rutledge to John Jay, in Johnston, Correspondence of John Jay, III:217; Rufus King to Elbridge Gerry, June, 1786, in King, Rufus King, I:178. A Virginia nationalist like Washington opposed navigation with a different twist. He envisioned a network of canals connecting Virginia with the trans-Appalachian West. See Sparks, Writings of Washington, IX:115; Bemis, Diplomatic History of the United States, p. 79; Bancroft, Formation of the Constitution, p. 125. For land speculation see Chapter 5, above. Also, Madison to Jefferson, March 19, 1787, in Hunt, Writings of James Madison, II:328: "It will be difficult, however, to get proper steps taken by Congress so many States having land of their own at market. It is supposed that this consideration had some share in the zeal for shutting the Mississippi . . . ." The irony of Eastern fears of economic repercussions from expansion is, of course, that in the 19th century New England's prosperity was based upon western raw materials, foodstuffs, and consumers.
in the American Secretary of Foreign Affairs, John Jay. Jay had never ventured south or west of Philadelphia, and feared the "western country will one day give us trouble." He doubted "whether after two or three generations [the Westerners] will be fit to govern themselves." His feelings about westward expansion are summarized in a letter to Thomas Jefferson:

Would it not be wiser gradually to extend our settlements as want of room should make it necessary, than to pitch our tents through the wilderness in a great variety of places, far distant from each other, and from those advantages of education, civilization, law and government which compact settlements and neighborhoods afford? Shall we not fill the wilderness with white savages—and will they not become more formidable to us than the tawny ones which now inhabit it?

Many historians contend that John Jay acquiesced to Gardoqui because it was the wisest and most rational policy to follow at that time. Jay believed the Americans could not afford a confrontation with the Spanish so soon after the Revolution. Gardoqui's offer seemed reasonable, especially since it included a favorable trade agreement and only a temporary surrender of navigation of the Mississippi. Yet it appears as though Jay could have secured more favorable terms in 1786. History contradicts Jay's assertion that, without

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31 See Bemis, Diplomatic History of the United States, p. 79; Monaghan, John Jay, p. 259.
his proposed treaty, "the Mississippi would continue shut. . . . The Spanish posts would be strengthened, and that Nation would there bid us defiance." 32 The relaxation of Spanish policy and the ultimate success of diplomat Thomas Pinckney at San Lorenzo in 1795 indicate the United States had more bargaining power in 1786 than John Jay seemed to realize. To be sure, Jay could not predict the future, but did he negotiate as aggressively as possible? Or did he betray the same weaknesses criticized so severely during the Jay Treaty controversy of 1794? It can certainly be argued that Jay's timid diplomacy combined with his doubts concerning westward expansion to play a large role in his decision to forbear the American right to navigate the Mississippi River for twenty-five years.

Thus a number of reasons motivated John Jay and many Eastern Nationalists to argue in favor of surrendering the Mississippi to Spain in August of 1786. After William Samuel Johnson and Rufus King finished their speeches, it was again the Southerners' turn to speak. A resolution introduced by the Virginia delegation (probably written by Monroe and Carrington) on August 18, summed up the Southern argument: "This treaty will not open to us a single port nor admit us into those now open upon better terms than we now enjoy." If Spain "fails in her present object . . . she will either come forward and grant the terms we require, or at least seek an

32 Journals of the Continental Congress, XXXI:483-84.
accommodation. . . ." The surrender of the Mississippi was "inadmissable" and Jay should be recalled, "as his sentiments are now known in Congress and differ so widely from the opinions of the several states, especially on the points relative to the Mississippi and the boundaries." Finally, the Virginians proposed the negotiations be transferred to Thomas Jefferson in Madrid, and the United States continue to demand the right to navigate the entire length of the Mississippi River.33

A month of heated debate had not changed anyone's mind. The same sectional split which initiated the struggle was manifested in the final vote. The Virginia resolution was defeated 7-5, and on August 29, 1786, Massachusetts moved to repeal Jay's original instructions demanding American navigation of the Mississippi River. This motion passed, 7-5, with all the states from New Hampshire to Pennsylvania in favor, and those from Maryland to Georgia opposed. Thus, John Jay

33Ibid., XXXI:574-95. For the move to transfer negotiations to Jefferson, see Henderson, Party Politics, p. 398. Southerners hoped to have Jefferson use his French connections as a liaison to the Spanish court. Jefferson was in favor of American expansion and endorsed navigation of the Mississippi. See Jefferson to Monroe, August 11, 1786, in Ford, Writings of Jefferson, IV:262-63: He opposed surrendering navigation because, "Such a supposition would argue not only an ignorance of the people to whom this is most interesting, but an ignorance of the nature of man, or an inattention to it . . . our best interests will be promoted by making all the just claims of our fellow citizens, wherever situated, our own . . . & making common cause even where our separate interests would seem opposed to theirs. No other conduct can attach us together; and on this attachment depends our happiness." See also Jefferson to Madison, June 20, 1787, ibid., II:481.
and the Northeasterners seemingly won the hard-fought battle over the Mississippi River question.  

It is my voice that we instruct our delegates, that with firmness they expostulate with Spain on this point and obtain an instant opening of this river to our trade. It is my voice, and there are two hundred thousand people west of the mountains (more inhabitants than there are in some of our states) who, were they present, would shout the same language.

Hugh Henry Brackenridge (representative of western Pennsylvania in the Pennsylvania state legislature) September 22, 1787

Although the Northeastern states won the major skirmish of the Mississippi River Debate, they lost the battle as a whole. One of their main problems was the provision of the Articles of Confederation pertaining to treaties: No diplomatic agreement could be made without the approval of nine states of the Confederation. To be sure, the East could muster seven votes to change Jay's instructions, but they could not possibly secure the nine votes necessary to ratify a treaty negotiated under those instructions. This hard political fact

34 Journals of the Continental Congress, XXXI:592; Burnett, Continental Congress, p. 658. After changing Jay's instructions, the East further antagonized the South by "locking up" the decision through a procedural ruling. See Henderson, Party Politics, p. 393.

combined with other important developments during late 1786 and 1787 to dampen Eastern enthusiasm for closing off the Mississippi.  

One important factor was the considerable public outcry, especially in the West, over Congress's August 29 reversal of Jay's instructions. Denunciations of Jay poured in from all over the country. "To sell us and make us vassals to the merciless Spaniards is a grievance not to be borne!", protested one Westerner, and the vast majority concurred. Several state legislatures received petitions protesting the "ruthless and disconsolate policy" of the Spanish and demanding Congress resist the Spanish closure. Thousands of western Pennsylvanians petitioned their state legislature, demanding it "give such instructions to the . . . Delegates in Congress, as may be favorable to the interests of this country." Hugh Henry Brackenridge, the delegate from western Pennsylvania, delivered an impassioned speech to the Pennsylvania state legislature demanding American navigation of the entire length of the Mississippi:

We will now use this language and say to Spain, you are unjust, and may as well deprive us of the great elements of light and air, as of this river. Shall I not taste because another has drunk? Shall I not breathe because another has breathed before me? Shall I not see because a ray of light has touched your eye?  

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37For western protest to the reversal of Jay's instructions,
This western discontent is just one aspect of the chaos the Mississippi River Debate brought to Confederation politics. Indeed, the Jay-Gardoqui affair created a Northeast-South deadlock in the Confederation Congress that finally had to be settled in the Constitutional Convention of 1787. One historian maintains the Mississippi question was a major catalyst for that Convention.\textsuperscript{38} The Jay affair convinced Virginia Nationalists like Madison, Carrington, and Arthur Lee that their plans for westward expansion had met an impasse in the Confederation Congress. They immediately moved to turn the Annapolis trade convention (September of 1786) into a forum for Constitutional reform. At the same time, Shay's rebellion motivated Eastern Nationalists to support the Federal Convention. Both Northeastern and Southern Nationalists feared the disunion and chaos symbolized by the Mississippi and Shay affairs. Yet their fundamental disagreement over westward expansion, new western states, and navigation of the Mississippi precluded any compromise, even in the Federal Convention. Not until Northeastern and Southern Nationalists reconciled their differences over western policy could there be a solution to the

The solution came in the summer of 1787, when the Confederation Congress and the Constitutional Convention debated simultaneously the Northwest Ordinance, slavery in the territories, and admission of new western states. Their solution, the "Compromise of 1787," is discussed at length in chapter seven, below. The importance of the Mississippi River Debate in the Compromise of 1787 is that it brought the fundamental disagreement over the West to the fore, and served as a catalyst for compromise.

That a compromise was in the making can be seen in the status of the Mississippi River question during late 1786 and 1787. The Northeasterners, anticipating the Constitutional Convention, decided not to antagonize the South by pressing for their original demands. Although Jay's instructions remained those of August 29, and Jay continued to negotiate with Don Diego de Gardoqui, by the Spring of 1787 it was obvious the talks had broken down. "The Spanish project sleeps," James Madison wrote Thomas Jefferson. "A late accidental conversation with Gardoqui proved to me that the negociation is arrested . . . it appears that the intended sacrifice of the Mississippi will not be made. . . ." In the Federal Convention, the Eastern Nationalists acquiesced to a

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stipulation requiring all treaties be approved by two-thirds of the Senate. The Southerners inserted this provision, according to Hugh Williamson of North Carolina, "for the express purpose of preventing a majority of the Senate . . . from giving up the Mississippi." Jay himself finally capitulated in September of 1788, when he recommended that "negotiations pass over in their present state to the new government."

One of the final acts of the Confederation Congress was to repeal Jay's August 29 instructions with a resolve that "the free navigation of the River Mississippi is a clear and essential right of the United States, and ought to be considered and supported as such."41

The Spaniards were angered and frustrated by their narrow defeat, and grew even more determined to prevent American growth in the Old Southwest. They definitely changed their policy, however: "They begin to be convinced," wrote James White of North Carolina, "the western country, are rather to be restrained by benevolence than violence." Faced with deadlocked negotiations and continuous pressure from the western settlers, the Spaniards in 1788 reopened the Mississippi to

Americans, stopped encouraging Indian raids, and offered to let Americans settle in Spanish territory with freedom of religion and no taxation or military service. In return, the Spaniards asked the immigrants to pledge allegiance to, and become citizens of, Spain. Through a liberal immigration policy and an open Mississippi, the Spaniards hoped to win the western Americans' loyalty, create an anti-American buffer state in the Old Southwest, and thus halt further encroachments from the United States of America. Several western Americans encouraged the Spanish in their new policy. Congressmen John Brown and James White of Kentucky and Tennessee, as well as John Sevier, James Robertson, and General James Wilkinson all listened attentively to Spanish overtures, and probably offered support. But their actions seem to have been motivated more by desire for trading privileges (in New Orleans) than loyalty to the Spanish government. Most Westerners were surely unwilling to exchange American rule for that of an autocratic Spanish regime. The so-called "Spanish conspiracy" of the late 1780s and 1790s died for lack of popular support.42

European diplomacy ultimately combined with American expansion and Spanish setbacks in the Old Southwest to bring

42 For the "Spanish conspiracy" of the late 1780s and 1790s, see Whittaker, Spanish-American Frontier, pp. 78-122; Thomas Perkins Abernethy treats this subject in From Frontier to Plantation in Tennessee. See also Philbrick, Rise of the West, pp. 175-76, 180; James White to Samuel Johnston, April, 1788, in Burnett, Letters of the Continental Congress, VIII: 724; Whittaker, Spanish-American Frontier, p. 80; Horsman, Formative Years, pp. 15-16; Bemis, Diplomatic History of the United States, pp. 81, 106.
about a victory for the United States in the Mississippi affair. Historians Samuel Flagg Bemis and Arthur P. Whittaker are at odds over just what caused the Spanish about-face. While Bemis points to Spain's European entanglements and problems with Great Britain, Whittaker insists that the pressure of American western settlement forced the Spanish to make concessions. There is evidence to support either hypothesis. As always, Spain and Great Britain were at odds in Europe. When, in 1790, Spain and Britain clashed in the Nootka Sound incident, war between the two seemed imminent. Strangely, the Spanish were very concerned lest the Americans ally with Great Britain to defeat them. Evidently the Spanish were not fully aware of the deteriorating relations between the United States and Great Britain which resulted from Jay's disastrous treaty in 1794. When the United States sent Thomas Pinckney to negotiate with Spain in 1795, he arrived at exactly the right psychological moment. The Spanish minister Godoy was so afraid of Great Britain he was willing to pay any price for American friendship. At the same time, the Spanish in the Old Southwest were daily feeling the pressure from advancing American settlement. They must have realized that the westward movement of the United States could not be contained much longer without war. The result of these two simultaneous developments was a treaty beyond

For the Bemis-Whittaker debate, see their respective works cited above. The debate is treated in Ferrell, American Diplomacy, pp. 73-77.
the Americans' greatest expectations. The Treaty of San Lorenzo (also known as Pinckney's Treaty of 1795) recognized the provisions of the Treaty of Paris of 1783. The United States received a southern boundary of 31°, a western boundary on the Mississippi River, and the right to navigate the entire length of that river with a port of deposit at New Orleans. The Old Southwest remained uneasy for several years, but the die was cast. In 1803, twenty years after the Treaty of Paris had started the conflict, the United States purchased the Louisiana Territory and gained sole possession of the Mississippi River. Despite the ill-advised diplomatic efforts of John Jay and the reluctant expansionists from the Northeastern United States, one more obstacle had been conquered in the American trek westward.

The Mississippi River Debate is thus an important subject in the study of Confederation politics and the creation of the first American western policy. In viewing the Jay controversy, one can see the sectional basis of Congressional politics, and the importance of the West in the opposing viewpoints of the Southern and Eastern parties in the Confederation Congress. As differences over western policy split the South and the Northeast, so too did they divide the Nationalist party of those two regions. Not until Southern and Eastern Nationalists

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reached an agreement over a western policy—over questions such as American navigation of the Mississippi River—would the Nationalist front ever unite to form a strong centralized national government. And this would not happen until July of 1787, when the Confederation Congress drafted a territorial government law for the western territories—the Northwest Ordinance of 1787.

CREATION OF THE AMERICAN COLONIAL SYSTEM:

THE NORTHWEST ORDINANCE OF 1787

Some of our fellow-citizens may think we are not yet able to conduct our affairs and consult our interests, but if our society is rude, much wisdom is not necessary to supply our wants, and a fool can sometimes put on his clothes better than a wise man can do it for him... .

Western Virginia statehood advocates' petition, December 9, 1783

In Congress, since my coming, we have passed an Ordinance for establishing a temporary government beyond the Ohio for the more perfect security of peace and property among the rude people who will probably be the first settlers there--The form of government, as you will see by the enclosed paper, is much more tonic than our democratic forms on the Atlantic are.

Richard Henry Lee to Colonel Henry Lee, July 30, 1787

George Bancroft once described the Northwest Ordinance of 1787 as an American state paper second in importance only to the Federal Constitution. The Northwest Ordinance formed the heart of the United States colonial system throughout the

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2 Bancroft, Formation of the Constitution.
late eighteenth and nineteenth centuries, and served as the governmental basis for the American continental empire. For nearly a century and a half after its passage, the Ordinance of 1787 received unanimous praise from American leaders and historians. It was hailed as a magnificent creation, responsible for spreading democratic institutions over the North American continent. Within the past fifty years, however, an historiographical debate has arisen over the Northwest Ordinance which is as stimulating as it is diverse.

The assault on the Northwest Ordinance came from what can be described as a 'second generation' of Progressive historians. In the late 1930s Theodore Pease argued in the Mississippi Valley Historical Review that the Ordinance of 1787 was not a democratic document at all, but rather autocratic and authoritarian. Merrill Jensen documented this thesis in his writings about the Confederation period, as have John D. Barnhart, Francis Philbrick, and Julian P. Boyd. These men point to Thomas Jefferson and David Howell's governmental Ordinance of 1784 as the truly democratic document of territorial government. The 1784 Ordinance, they say, was repudiated in 1787 and replaced by the Northwest Ordinance, which "furnished immediately a government that was altogether unrepresentative and undemocratic."³

More recently the detractors of the Ordinance of 1787 have been put on the defensive by two historians from the University of Wisconsin who have written about the Ordinance in a more favorable light. Robert Berkhofer, Jr. and Jack Eblen contend the change from Jefferson's 1784 plan to that of 1787 was a natural evolution brought about by the exigencies of the frontier situation. They argue that if the new system was colonial, it was only temporarily so; the territories all gained sovereignty in the course of time. Eblen insists, "politically controversial or deceitful motives" cannot be attributed to the framers of the Northwest Ordinance:

Their contribution to the Ordinance of 1787 did not emanate foremost from a desire either to further or frustrate whatever democratic tendencies there were on the frontier, but from their perception of what would constitute the most viable system of colonial government for the Empire in the West.4

Both sides in this historiographical debate agree that a change occurred from 1784 to 1787, but here the agreement ends and the conflicting value judgments begin. Jensen and company say the change was abrupt, undemocratic, and therefore bad. Eblen and Berkhofer say it was a natural evolution, practical,

4 Jack E. Eblen, The First and Second United States Empires, Governors, and Territorial Government, 1784-1912 (Pittsburgh, 1968), chapter 1; Eblen, "Origins of the United States Colonial System: The Ordinance of 1787," Wisconsin Magazine of History LX (Summer 1968); Berkhofer, "Origins of the U. S. Territorial System," pp. 231-62; Berkhofer, "Northwest Ordinance," pp. 45-55. I, for one, would like to have been a 'mouse in the corner' when these theses were presented at a Merrill Jensen seminar at the University of Wisconsin.
and therefore good. There is evidence to support either position. While the change in Ordinances led to an undemocratic and arbitrary territorial government, it certainly was the product of a natural evolution in that direction. The revisionists are probably correct in their assertion that the change was 'best' for all concerned, but that is beside the point (as Eblen has shown, most Westerners ignored the Ordinance of 1787 anyway, thus nullifying whatever impact it might have had). The purpose here is not to impose value judgments, but rather provide some notion of the political environment that produced the Northwest Ordinance of 1787—to view the Northwest Ordinance in the political context of the 1780s.

The basic division over the Ordinance of 1787, as in all Congressional debates over western policy, was between the Northeast (or the "East" as it was called in the 1780s) and the South. The Southerners were optimistic about expansion, and favored a democratic territorial government that would lead to new western states. The Easterners, especially the Nationalists, were not so optimistic. They believed in a strong, nationally-controlled territorial government. They wanted to limit the number of western states, and establish a strong federal presence in the trans-Appalachian frontier. Sometimes the Eastern Nationalists had to compromise with the Southerners, but as the South came to adopt a more 'national' political perspective in the middle and late 1780s, the Northeasterners encountered less opposition to their plans for the West. Prior to 1787, the Eastern Nationalists created
an Indian and land policy, and conducted diplomacy aimed at an orderly, federally-supervised westward advance. The Northwest Ordinance of 1787, with several compromises, was the culmination of the Eastern Nationalist western policy.

The Northwest Ordinance was a direct manifestation of the political environment of the day. Indeed, attitudes towards the West mirror the political ideology of Americans during the waning days of the Confederation. A plan for an autocratic colonial government in the West was the natural product of a nation that yearned for a more powerful and centralized national government.\(^5\) As national political attitudes grew more conservative, so too did attitudes towards the West. Yet there are seeming contradictions in the history of the Ordinance of 1787. Why, for instance, did a Southern-controlled Congress unanimously pass what was essentially an Eastern Nationalist governmental Ordinance for the western territories? During the 1780s it was always the Southern block that opposed the Eastern plans for the frontier, and the Jay-Gardoqui controversy of 1786 had split the Congress so thoroughly that compromise seemed impossible. Why then did a Southern Congress pass the Northwest Ordinance of 1787—a document which, among other things, permanently outlawed the institution of slavery in the territory north of the Ohio River? The answer to this

\(^5\)Berkhofer, "Origins of the U. S. Territorial System," p. 260: Arbitrary government during the initial stages of settlement, according to Berkhofer, "reflected the political currents of the day favoring centralization of government."
puzzle lies in the political context of the time—in the Southern drift towards Nationalism and in the intricate and confusing relationship between the Confederation Congress and the Constitutional Convention meeting concurrently during the Spring and Summer of 1787. By viewing the political events that led to the "Compromise of 1787," one can see that the debate over the West not only reflected the Nationalist ascendancy in Confederation politics, but was a catalyst for the triumph of Nationalism in the Federal Constitution of 1787.

Shall [the territorial governments] be upon colonial principles, under a governor, council, and judges of the United States removable at a certain period of time and they admitted to a vote in Congress with the rights of other states, or shall they be left to themselves until that event? James Monroe, 1786

Following the American Revolution most agreed that some sort of government was necessary to establish order in the West and administer the affairs of that country. The focus of this essay will be the evolution of a governmental ordinance for the West in the Confederation Congress. However,

6 Lynd, "Compromise of 1787," pp. 225-250; Henderson, Party Politics, pp. 408-20. Lynd's thesis that the Northwest Ordinance was the result of a compromise between North and South in the Confederation Congress and the Constitutional Convention figures importantly in Henderson's interpretation, and will be treated at length in section 3 of this essay.

7 Jensen, New Nation, p. 358.
Congress was not the only body attempting to provide government for the trans-Appalachian frontier. The history of the 1780s is full of instances of Westerners forming states, writing constitutions, and creating their own governments, Congress notwithstanding. Many western settlers took Thomas Jefferson literally when he wrote that Americans everywhere possessed "a right which nature has given all men, of ... going in quest of new habitations and there establishing new societies under such laws and regulations as to them shall seem most likely to promote public happiness." Of the numerous proposed western states, Vandalia, Transylvania, Westylvania, and Franklin are best known. The Ohio country actually had a "squatter governor" in 1787, and as early as 1785 Kentuckians were clamouring for independence, statehood, and their own government. Yet none of these statehood movements could succeed without approval of the Confederation Congress. With the creation of the National Domain in 1784, most Americans turned to Congress to see what provisions would be made for government in the West.  

\footnote{T}Turner, "Western State-Making," provides a good survey of the various western statehood movements. Ibid., p. 267. For the state of Franklin, see Thomas Perkins Abernethy, From Frontier to Plantation in Tennessee (Birmingham, Alabama, 1932); Randolph C. Downes, "Ohio's Squatter Governor: William Hogland of Hoglandstown," Ohio Archeological and Historical Quarterly XLII (April 1934):273-82. See Caleb Wallace (Kentucky) to James Madison, July 12, 1785, in Hunt, Writings of James Madison, II:149. "We conceive the people of this District do not at present enjoy a greater portion of Liberty than an American colony might have done a few years ago had she been allowed a Representative in the British parliament."

Many men have been credited with the creation of the American system of territorial government--Thomas Jefferson, David Howell, Timothy Pickering, Rufus King, James Monroe, Edward Carrington, Manasseh Cutler, and Nathan Dane, to name the most prominent. Yet no one man was responsible for the process that culminated in the *Northwest Ordinance of 1787*. That document was a product of evolution--an evolution that began with the British imperial government in colonial America. During the Revolutionary era Americans became quite aware of the dangers of colonial administration, and after declaring
independence, many agreed that the territories in the trans-Appalachian West should eventually be granted statehood and sovereignty. The Dickinson draft of the Articles of Confederation and Jefferson's draft of the Virginia state constitution both called for "free and independent states" in the West, and the Virginia cession of the Ohio country to Congress stipulated that the region be divided into numerous small states to join the Union eventually with equal rights. Although Congress squabbled for seven years over the Virginia cession, it did agree on a resolution stating,

That the unappropriated lands that may be ceded or relinquished to the United States by any particular State . . . shall be disposed of for the common benefit of the United States and be settled and formed into distinct republican States which shall become members of the federal union, and have the same rights of sovereignty, freedom, and independence as other states.9

Yet not all Americans agreed that new states should be created in the West. The above resolution barely received a majority of votes. And even those who favored new western states disagreed as to how they should be governed and incorporated into the Confederation. How many states should Congress create in the West? What sort of territorial government should they have? Were the settlers to run their own affairs, or would Congress exercise temporary jurisdiction? How long would they have to wait for admission into the Confederacy?

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Congress debated all of these questions in the early 1780s, and various governmental proposals emerged. Thomas Paine, Peletiah Webster, Theodoric Bland, Alexander Hamilton, and Timothy Pickering devised some of the more notable plans. With temporary approval of the Virginia cession in the Spring of 1784, the Confederation Congress gained jurisdiction over a huge public domain in the trans-montane West. Now Congress had to act. In a letter to an Indian affairs committee, George Washington warned that the West was being overrun by "lawless Banditti" who would soon cause an Indian war. Order must be established immediately in that region, warned Washington. Thus, on March 1, 1784 (the same day the Virginia cession was accepted), Congress appointed Thomas Jefferson to head a committee to draw an Ordinance of government for the western territories.¹⁰

The Ordinance of 1784,¹¹ drafted by Thomas Jefferson and David Howell and approved by Congress on April 23, 1784, was a radical document. It proposed to divide the trans-Appalachian West into fourteen new states, all eligible for eventual admission into the Confederation. The period of federal supervision would last only until the Westerners formed their own territorial

¹⁰ For early territorial government proposals, see section 1 of Chapter 5, above. Also, Berkhofer, "Origins of the U. S. Territorial System." Most of the early governmental plans are in Hulbert, Ohio in the Confederation. George Washington to James Duane (Indian Affairs chairman), September 7, 1783, in Sparks, Writings of George Washington, VIII:477-484.

¹¹ For the Ordinance of 1784, see section 2 of Chapter 3 above.
government, and there was no minimum population requirement for organization of those governments. The Ordinance called for local control during the entire territorial process and allowed admission into the Union when the respective states' populations reached that of the smallest of the original thirteen states (Delaware--60,000 in 1790). Congress defeated Jefferson's provision abolishing slavery in the territories (by one vote), yet the Ordinance of 1784 provided for white male suffrage long before any of the seaboard states legislated such a reform. A study of the Ordinance of 1784 leaves the impression that Jefferson and Howell were not so worried about the "lawless Banditti" of the frontier as some of their contemporaries.12

Although the Ordinance of 1784 passed on April 23, it remained a dead letter until replaced by the Northwest Ordinance three years later. Why was not the Ordinance of 1784 put into effect? The most obvious reason is that Congress did not exercise firm control over the West from 1783-1787. Indian hostilities, the tardiness of land surveys and sales, and Congressional financial straits all prevented implementation of Jefferson and Howell's Ordinance. More important, there was still serious disagreement over just how great a role the national government should play in the western territories.

Many Eastern congressmen voted for the '84 plan mainly because it met the requirements of the Virginia cession. These men wanted to decrease the number of new states and put some muscle into the law by adding federal controls. In April, Elbridge Gerry of Massachusetts had succeeded in amending the Ordinance of 1784, to wit:

Measures not inconsistent with the principles of the Confederation, and necessary for the preservation of peace and good order among the settlers in any of the said new states, until they shall assume a temporary government as aforesaid, may from time to time be taken by the United States in Congress assembled.

This amendment did not greatly affect the democratic tone of the Ordinance, however. Since there was no minimum requirement for the formation of "temporary government," the period of national control would not be very long. But a movement to increase the amount of federal control over the West had definitely begun.13

Ironically, many Americans in 1785 felt a curious sense of identification with Great Britain's colonial problems. Congress faced a double-edged sword: If, on the one hand, federal supervision of the West was too weak, lawlessness and anarchy would prevail; or worse, the Westerners might start a war with Britain or Spain. Yet if Congressional rule was too strict, the Westerners might revolt and declare themselves independent, just as

the seaboard states had done nine years earlier. Most Americans in the 1780s agreed that transplanting republican institutions in the West was going to be a tricky business. But they differed greatly over how the transplantation was to take place.¹⁴

The basic division over the West fit into the sectional context of Confederation politics. The Southern delegates were much more optimistic about the prospects of westward expansion than their Northeastern colleagues. Most Southerners supported the Ordinance of 1784 and Jefferson's Land Ordinance of 1784. They opposed the first draft of the Land Ordinance of 1785 and John Jay's attempt to surrender American use of the Mississippi River for twenty-five years. The Southern faction wanted to admit numerous new western states into the Confederacy as soon as possible, but their motives were based more on political considerations than noble agrarian premises. During the 1780s the West was being populated mostly by Southern pioneers in Tennessee, Kentucky, and southern Ohio. Thus Southern leaders fully expected the new western states to support the South in the sectional politics of the Confederation Congress.¹⁵

Easterners, almost to the man, agreed with this view of


the potential political loyalties of the new western states. Rufus King of Massachusetts believed that, in the Ordinance of 1784, "Congress had impoliticly laid [the West] out into ten States. . . . It is possible then that if this plan be persisted in by Cong's, 10 new votes may be added. . . ." to the Southern faction in Congress. Although some Northeasterners entertained hopes that at least one of the western states would adopt "Eastern politics," most were pessimistic. They wanted to reduce potential states and postpone their admission into the Confederation as long as possible. Politics was not their only rationale. Many Easterners saw the West as a potential economic threat—an escape for those who would otherwise man the factories and shops of the East. Westward expansion, they reasoned, would lead to higher wages, lower land prices, and competition in the form of a viable Mississippi River commerce.

Mr. George Clymer, a Nationalist from Pennsylvania,

thought the encouragement of the Western Country was suicide on the old States. If the States have such different interests that they cannot be left to regulate their manufactures without encountering the interests of other States, it is a proof that they are not fit to compose one nation.16

Many Easterners could not understand why anyone would want to leave the seaboard states to settle in the wild frontier.

They were puzzled by the "half-savage" pioneers, and deeply disturbed about their propensity for starting Indian wars. Constrictionists like Samuel Meredith of Pennsylvania believed, "it would prove a happiness to all settled parts of the Country if the Ohio were the boundary for a Number of years." Most Northeasterners, however, took a more pragmatic view. If westward expansion was indeed inevitable, then it would have to be closely supervised and regulated by the national government. Those who advocated an increased role for the central government, the Nationalists, pointed to the West as a prime example of the need for an expanded federal role. Consequently, the Eastern Nationalists in Congress began a movement to tighten national controls over the West. Their first priority was to reduce the number of projected western states, and make their admission into the Union more difficult. As Congress began to revise Jefferson's Ordinance of 1784, the Easterners found they had an effective, if unwitting, ally in young James Monroe of Virginia. It was in August of 1785 that Monroe set out on horseback for a five month fact-finding tour of the Northwest territory.17

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such district shall contain the number of the least numerous of the "13 original States for the time being" they shall be admitted into the Confederacy.

James Monroe to Thomas Jefferson
May 11, 1786

I have the honor to inclose 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 the uniformed and perhaps licentious people as the greater part of those who go there are, that a strong-toned government should exist, and the rights of property be clearly defined.

Richard Henry Lee to George Washington
July 15, 1787

James Monroe was twenty-eight years old when he went West in the summer of 1785. During his tour, Monroe saw much of the Ohio country, interviewed settlers and military commandants, and he even sat in on some Indian treaty negotiations. While out West, Monroe formed some opinions about that region, some of them astute and some rather strange. He returned in December and wrote Thomas Jefferson, "My several routes westw'd, with the knowledge of the Country I have there obtain'd, have impressed me fully with a conviction of the impolicy of our measures respecting it." 19


Monroe's observations were twofold. First of all, he felt the federal presence in the West should be increased during the initial stages of territorial government. He was "clearly of the opinion that to many of the most important objects of a federal government their interests, if not oppos'd, will be but little connected with ours." He therefore advocated a strong national presence, making the West "subservient to our purposes." Secondly, Monroe thought the number of states should be decreased:

A great part of the territory is miserably poor, especially near the lakes Michigan & Erie & that upon the Mississippi & the Illinois consists of extensive plains w'h have not had from appearances & will not have a single bush on them for ages. The districts therefore within w'h these fall will perhaps never contain a sufficient number of Inhabitants to entitle them to membership in the Confederacy, and in the mean time, the people who may settle within them will be gov'd by the resolutions of Congress in w'h they will not be represented. . . .

Why Monroe thought a "great part" of the Ohio and Mississippi valley was a 'barren plain' unable to support a substantial agricultural population is puzzling. Yet his call for fewer states had some credence. As a Southerner, Monroe wanted western states incorporated into the Union as soon as possible. Jefferson's proposed states were so small that it would take a long time for them to equal the population of the smallest of the thirteen original states (Delaware in 1786). To be sure, the Jefferson-Howell grid would provide many more western votes, but not for a long time, and "perhaps never. . . ."
Monroe was evidently willing to sacrifice long-term advantage for more immediate benefits. Thus he recommended Virginia change its cession and Congress redivide the Northwest territory, provided "that the sd territory be divided into not less than two nor more than five States."\(^{20}\)

By 1786 most Congressmen believed that the Confederation government should play a more powerful role in the western territorial governments. This development paralleled growing Nationalist attempts to increase the overall powers of the central government. At the same time most Congressmen, Northeastern and Southern, believed that the number of projected states in the West should be reduced. Their motivations, however, were diametrically opposed. The South wanted to reduce the number of new states in order to expedite their admission. The Northeast wanted to decrease the number in order to lessen their future political muscle. Since the question of just how and when new western states would be admitted into the

\(^{20}\) Barrett, *Evolution of the Ordinance of 1787*, p. 33; Burnett, *Continental Congress*, p. 651; Peterson, *Jefferson and the New Nation*, p. 284; Monroe to Jefferson, January 19, 1786, in Hamilton, *Writings of James Monroe*, I:117-18. This letter is of vital importance in understanding the evolution of the Northwest Ordinance. See also Monroe to Jefferson, May 11, 1786, in Hamilton, *Writings of James Monroe*, I:126-27. The state land cessions, particularly Virginia's, figured importantly in all discussions of future states in the West. The Virginians stipulated that numerous states (150 miles square) be erected in the West. Otherwise their deed of cession was null and void. That is why Monroe tried to persuade Virginia to change the cession—for unless they did there could be no public domain, much less a governmental ordinance. Although Congress accepted the Virginia cession in March of 1784, it was not until 1786 that Virginia changed the cession to conform to the new Congressional standards. Thus the cession controversy actually dragged on for 10 years.
Confederacy had not yet arisen, a rather artificial unity existed on the issue of territorial government. Nearly all the members of Congress agreed that changes were necessary, and this unity led to the passage of an April resolution, by Nathan Dane of Massachusetts, calling for appointment of a new committee to rewrite the Ordinance of 1784.21

The new committee on territorial government, consisting of James Monroe (chairman), William Samuel Johnson, John Kean, Charles Pinckney, and Rufus King, issued its report on May 9, 1786.22 Much of this May 9 report survived one and a half years of debate to constitute the governmental articles and part of the articles of compact of the Northwest Ordinance of 1787. The Monroe report provided a constitution for western territorial government. The governmental structure was quite similar to the British colonial governments of the seventeenth and eighteenth centuries. The May 9 report applied only to the ceded lands of the Old Northwest, and made them into one governmental unit until three to five states were formed.23

To summarize, the road to statehood passed through two stages of governmental evolution. The first stage was unrepresentative. 


23 Eblen, First and Second U. S. Empires, p. 39: "It was partially to gain the initiative and forestall attempts to reduce the number of states to two that Monroe had introduced his proposal in 1786 for a three to five way division of the territory."
The territory was to be governed by a congressionally appointed governor, assisted by a secretary, council, and court of three judges. In this first stage, the territorial governor had absolute executive and legislative authority. The second, "representative" stage began when the population of the territory reached 500. In this stage the residents could elect an assembly (with one representative for every fifty people) and send one non-voting representative to Congress. Voters and officials had to own property to vote and serve. This stage was similar to the British system in that the territorial governor had an unqualified veto on all legislation and convene, prorogue, and dissolve the assembly at will. The new state could not be admitted into the Confederacy until its population reached that of the smallest of the original thirteen states.

Congress did not act on the Monroe report during the Spring of 1786. During this interlude some interesting correspondence occurred between Monroe and Thomas Jefferson, who was serving as American minister to France. Monroe sent Jefferson a copy of the proposed Ordinance, assuring him "The most important principles of the Act of Annapolis [the Ordinance of 1784] are you observe preserv'd in this report." In an emotional reply of July 9, Jefferson disagreed with his friend and defended the

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24 Burnett, Continental Congress, p. 652. The 500 population minimum for the second stage and the representative ratio (1:50) were not in the May 9 report but were added as amendments that summer.

1784 plan. His objections to the May 9 report centered around the proposed decrease in the number of western states. Jefferson and others adhered to Montesquieu's basic tenet that republican institutions could flourish only in areas small enough to preserve the homogeneity of interests and lifestyles of the inhabitants. Jefferson feared that powerful, centralized, i.e., non-republican governments would be necessary to administer the affairs of large territories. Thus, to Jefferson's reasoning, the Westerners "will not only be happier in states of moderate size, but it is the only way in which they can exist as a regular society." If Congress encouraged, temporarily or permanently, authoritarian regimes in the West, "They will end by separating from our Confederacy and becoming its enemies."

In conclusion, he stated,

Upon the [1784] plan we treat them as fellow citizens. They will have a just share in their own government, they will love us, and pride themselves in an union with us. Upon the latter [the May 9 report] we treat them as subjects, we govern them, and not they themselves; they will abhor us as masters and break off from us in defiance.26

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26 Monroe to Jefferson, May 11, 1786, in Hamilton, Writings of James Monroe, I:126-27; Jefferson to Monroe, July 9, 1786, in Boyd, Papers of Jefferson, IX:112-13; Berkhofer, "Origins of the U. S. Territorial System," pp. 244, 257-60. Berkhofer contends that too much emphasis has been placed on this letter. Furthermore, "all the letters usually cited to prove Jefferson's opposition to extension of Congressional authority during the early stages of government, when read in the context of his ideological geography, refer more to the proposed alteration in the size of the new states than to the nature of their government." I believe the size of states directly affects their government, temporarily or permanently, "in the context of his [Jefferson's] ideological geography." Boyd, Papers of Jefferson, XVII:163.
Jefferson's letter had not yet arrived when James Monroe himself began to have some reservations about the progress of the territorial question. Indeed, by July of 1786 Monroe was convinced that his May 9 report had, if anything, opened Pandora's Box. Monroe's apprehensions were kindled by the Jay-Gardoqui negotiations over the Mississippi River in the Spring and Summer of 1786 which precipitated a Northeast-South split in Congress over western policy.\(^{27}\) Whereas both sections had earlier agreed that the number of potential western states should be reduced, it was now apparent that their motivations had been quite different. William Grayson of Virginia attempted, in July of 1786, to amend the May 9 report so as to allow for a minimum of five states in the Old Northwest, but the weight in Congress had shifted to the Northeast. New committee appointments gave the Easterners a majority on the territorial government committee, and rumor had it the new members planned to make the statehood provision even more prohibitive. Monroe felt he had been betrayed, and wrote Jefferson that the Easterners,

manifested a desire to rescind every thing they have heretofore done in it, particularly to increase the number of Inhabitants which shou'd entitle such States to admission into the Confederacy & to make it depend on their having one 13th. part of the free inhabitants of the U.S. This with some other instructions they wish to impose on them evinces plainly the policy of these men to keep them out of the Confederacy altogether.\(^{28}\)

\(^{27}\)Lynd, "Compromise of 1787," p. 235.

\(^{28}\)Barrett, Evolution of the Ordinance of 1787, p. 39;
Monroe even went so far as to suggest that the May 9 report be discarded and the territorial question be left "upon the ground of April 23rd 1784" [the Ordinance of 1784]. By mid-summer of 1786 the Northeast-South breach seemed irreparable. The animosity between Virginia and Massachusetts was particularly intense. Monroe advised Jefferson,

The Massach. delegates . . . are without exception the most illiberal I have ever seen from that State. Two of these men whose names are Dane and King are elected for the next year. . . . The former is I believe honest but the principles of the latter I doubt.

This conflict directly affected the territorial government Ordinance, which "hath not been decided on & hath only been postpon'd in consequence of the inordinate schemes of some men alluded to as to the whole policy of the aff'S of that country." Thus, when Monroe left Congress in late summer of 1786 he had good reason to regret having ever been involved in the territorial question.29

The new Northeastern committee on territorial government, consisting of William Samuel Johnson (chairman), Melancton Smith, Charles Pinckney, John Henry, and Nathan Dane issued a new report on September 19, 1786.30 Using Monroe's May 9

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29 Monroe to Jefferson, July 16, 1786 in Hamilton, Writings of James Monroe, I:140-42.
30 Journals of the Continental Congress, XXXI:699-703;
report as a basis, the new committee made some innovations that greatly broadened the nature of the Ordinance. Eastern Nationalist Nathan Dane's legal skills are evident in the verbiage of the document. He wrote provisions for equal conveyance of estates (land inheritance), obligation of contracts, property rights, and what amounted to a territorial bill of rights guaranteeing religious freedom, jury trial, and habeas corpus. But the committee also moved to slow down the statehood evolution. It raised Monroe's 500 minimum population requirement for the second stage to 5,000, and changed the representative ratio from 1:50 to 1:5000. Most important, the Northeasterners increased the population requirement for statehood to one-thirteenth of the population of the original states, provided "the consent of so many states in Congress is first obtained as may at that time be competent to such admission." The first part of the new statehood provision would have kept Michigan out of the Union until after 1880, and Wisconsin until 1900. And the second part of the new provision was so ambiguous that it would have enabled Congress to keep new western states out of the Union altogether. 31

The innovations of the Northeastern committee were so repugnant to the South that compromise was impossible during

Joanne, Henry, Smith, and Dane were from the Northeast. Johnson and Dane were Nationalists.

the Fall of 1786. Southerners were concerned about the western question, and Jefferson wrote Madison,

This measure, with the disposition to shut up the Mississippi give me serious apprehensions of the severance of the Eastern and the Western parts of our confederacy. It might have been made the interests of the Western states to remain united with us, by managing their interests honestly and for their own good. But the moment we sacrifice their interests to our own, they will see it better to govern themselves.

Seven months passed before Congress again resumed debate over the territorial Ordinance—but an eventful seven months at that. During the Winter of 1786-1787 the Jay-Gardoqui negotiations over closure of the Mississippi River continued with no settlement and the Massachusetts state militia suppressed Shay's Rebellion. Most important, the Nationalists succeeded in their campaign to replace the Articles of Confederation, and scheduled the Constitutional Convention to meet in May of 1787. Yet there was still no government for the western territories. In early Spring several memorials from the inhabitants of the Illinois country combined with renewed Southern interest to prod Congress into action once again.  

On April 26, 1787 Congress re-read the September 19 report and reassigned it to a new committee also dominated by the Northeast. It submitted a new report on May 9, 1787, exactly one year after Monroe's original report. The governmental

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provisions remained intact (indeed, they had not changed noticeably since Monroe's first draft), but the Easterners filled some loopholes and assigned specific terms of office to territorial officials. Now the governor and judges were to share the legislative function during the first stage, and adopt the laws of one of the thirteen original states. The report made the territories responsible for a share of the federal debt and forbade higher taxes on nonresident landowners. But in debate which probably took place May 10, the Southerners succeeded in deleting the "one-thirteenth" population requirement from the statehood clause.  

Congress scheduled the Ordinance for a third reading and a vote on May 11, but did not act on it again until July. One reason for the inaction was that Congress had no quorum from May 11 to July 4. The Constitutional Convention was meeting in Philadelphia and many Congressmen served in both bodies.  

Still, the basic reason for the failure to pass the territorial Ordinance was deadlock. Since the South defeated the "one-thirteenth" clause on May 10, the Ordinance had no statehood provision. Easterners and Southerners still could not agree on a method for admitting new states into the Union. Not until Congress reconvened in July was the Northwest Ordinance again taken up, and then it passed in just three days. But

34 Ibid.; Barrett, Evolution of the Ordinance of 1787, p. 43; Eblen, First and Second U. S. Empires, pp. 36-37.

35 Burnett, Continental Congress, p. 681.
what happened between May and July? Why were the Congressmen able finally to complete the Ordinance over which they had haggled for three years?

Until recently, most historians have linked the passage of the Northwest Ordinance with the appearance in Congress of Rev. Manasseh Cutler, an agent for the Ohio Company of New England. The Ohio Company was comprised of a group of Eastern Revolutionary War officers who pooled thousands of military land bounties and petitioned Congress for 1 and 1/2 million acres in the Ohio Valley. They hoped to colonize the Ohio country and sell their lands for a substantial profit. The fact that nearly all Ohio Company members were Eastern Nationalists who favored a 'corporate,' federally supervised mode of expansion (in the colonial New England tradition) has led many historians to hypothesize that the Ohio Company was responsible for the arbitrary nature of the governmental provisions of the Northwest Ordinance.36 Recent scholarship, however, has taken much of the wind out of this "Ohio Company thesis." It appears the governmental provisions of the Northwest Ordinance were not altered substantially after Monroe's May 9, 1786 report. To be sure, the Ohio Company members found an autocratic territorial government much to their liking. But they cannot be credited with the drafting of such a government, because much of the legislation was on record prior to

36For this view, see Pease, "Ordinance of 1787," p. 167; and Jensen, New Nation, p. 358.
Cutler's arrival in New York in 1787.\(^{37}\)

While Manasseh Cutler was not solely responsible for the Northwest Ordinance, he did have a role in its passage. There is substantial evidence that Cutler met with Nathan Dane and others in July of 1787 to discuss government in the territories. The Ohio Company speculators were naturally interested in the territorial question, and Cutler wrote on July 10 that he had received a copy of the proposed Ordinance "with leave to make remarks and propose amendments." This amended copy of the Ordinance is in the Cutler family records, and it appears that Rev. Cutler was responsible for provisions of the articles of compact of the Northwest Ordinance relating to Indians, religion, and education. Thus Cutler played a minor role in the drafting of the Ordinance of 1787. However, the real importance of Manasseh Cutler and the Ohio Company was in the passage of the Ordinance. Cutler's offer, in behalf of the Ohio Associates, of hundreds of thousands of dollars was quite tempting to the bankrupt Confederation Congress, yet the Ohio Company made a territorial government a condition of purchase. Without a governmental Ordinance there could be no money. So the Ohio Company's offer served as a spur to the reluctant Congress, pressuring them to reach a compromise. There were other more important motivations, however, and just how Congress reached a compromise will be discussed at length.

\(^{37}\)Eblen, First and Second U. S. Empires, p. 37.
in the final section of this essay. 38

For whatever reason, the Confederation Congress burst into activity in early July. A score of Southerners left the Constitutional Convention for New York on July 2 and, on July 4, established the first congressional quorum in over two months. They wasted no time. A reconstituted, Southern-controlled committee composed of Edward Carrington (Chairman), Richard Henry Lee, Melancton Smith, John Kean, and Nathan Dane finished drafting the Ordinance of 1787. Dane wrote,

We tried one day to patch up M[onroe]'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 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. 39

38 Ibid.; Barrett, Evolution of the Ordinance of 1787, pp. 69-70, 72; Henderson, Party Politics, p. 411; Burnett, Continental Congress, p. 682. Cutler also amended the Ordinance by including an anti-slavery proviso in the articles of compact. This idea, however, was not original with him and I believe that by July 10 numerous Congressmen were talking about abolishing slavery in the Northwest. The significance is that Cutler knew about the slavery proviso before he left for Philadelphia the evening of July 10. As will be discussed in the third section, Cutler's greatest role in the passage of the Northwest Ordinance was his service as a messenger to the Constitutional Convention that led to the Compromise of 1787.

39 Dane to King, July 16, 1787, in King, Correspondence of Rufus King, I:289-90. The reconstituted committee consisted of two Nationalists (Carrington and Dane), two
On July 13 the Confederation Congress passed the Northwest Ordinance of 1787. The governmental provisions, bill of rights, and legal verbiage were essentially unchanged, although Nathan Dane added property qualifications for all elected officials. The most important additions lay in the articles of compact. The Northeast and South had finally agreed on a statehood provision. The Old Northwest was to be divided into no less than three and no more than five states, to be admitted into the Union "whenever any of the said States shall have sixty thousand free inhabitants." Moreover, "such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than sixty thousand," if Congress approved. This sudden agreement on a statehood plank, after three years of haggling, is quite surprising, but not so surprising as the Antifederalists (Lee and Smith), and Kean, an Independent. Lee, who later joined the Federalists, was a strong supporter of the Eastern Nationalist western policy.

40 Journals of the Continental Congress, XXXII:333-343. The only negative vote was cast by Abraham Yates, a parochial Antifederalist from New York. Yates' rationale is unknown, although Dane wrote that "In this case, as in so many others, he appeared not to understand the subject at all." Yates was so adamantly opposed that I have tried to learn his reasoning, but could not find anything.

41 Eblen, First and Second U. S. Empires, p. 38. Although Monroe's original report applied only to the Northwest, the idea was dropped and does not appear in either the September 19 or May 9, 1787 revisions. The concept of a Northwest Ordinance was not again incorporated until July of 1787. This has led Lynd to believe that the boundary was drawn because of the slavery proviso in the document. See section 3, below.
sixth article of compact, which stated,

There shall be neither involuntary servitude in the said territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted: Provided always, That any persons escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid.

Fugitive slave law notwithstanding, this slavery provision was quite radical and unexpected. Congress had not discussed slavery in the territories since the 1784-1785 session, and even committee chairman Nathan Dane confessed,

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. 42

In only one week in July of 1787 the Confederation Congress was able to complete a task that had dragged on since 1784. To be sure, most of the Northwest Ordinance was already written. Monroe had provided the governmental provisions and

42 Journals of the Continental Congress, XXXII:343; Eblen, First and Second U. S. Empires, pp. 32, 36-37, 38, 40; Barrett, Evolution of the Ordinance of 1787, pp. 47, 60, 77; Pease, "Ordinance of 1787," p. 179; Dane to King, July 16, 1787 in King, Correspondence of Rufus King, I:290. Actually, there was considerable anti-slavery sentiment among the Eastern Nationalists throughout the 1784-1787 period. The Easterner needed a vehicle to express that sentiment, however, and the Northwest Ordinance provided that vehicle. See Pickering to King, March 8, 1785, in King, Correspondence of Rufus King, I:284, and Barrett, Evolution of the Ordinance of 1787, p. 29.
Nathan Dane the bill of rights and several of the articles of compact. Yet the Northeast-South split over the number of states and the statehood provision had seemed irreparable. What caused the sudden burst of energy and spirit of compromise in July of 1787? Most historians have either glossed over the subject, or relied heavily on the "Ohio Company thesis." They credit Congressional lust for money as the main stimulus. But the "Ohio Company thesis" leaves many questions unanswered. For instance, how was the severe Northeast-South breach over western policy, accentuated by the Jay-Gardoqui negotiations, ever resolved? How did the Easterners and Southerners ever reach an agreement on the number of possible western states and admission procedure? Moreover, why did a score of Southern politicians leave the Constitutional Convention and travel 90 miles to New York City for the purpose of passing a colonial governmental Ordinance drawn in its final stage by a New Englander under the stimulus of an Eastern land company? And most important, why did an overwhelmingly Southern Congress unanimously pass an Ordinance which, in its final form, prohibited slavery north of the Ohio River?! To answer these difficult questions one must, again, turn to the political developments of the time. By viewing the Northwest Ordinance in the context of the debates of the Constitutional Convention one can conceive the relationship between the Ordinance of 1787 and the Federal Constitution. And by studying the debates of
the Confederation Congress and the Constitutional Convention one can understand the crucial role that the Northwest Ordinance of 1787 played in what Staughton Lynd has termed the "Compromise of 1787."\(^{43}\)

This brings to my recollection what I was told by Mr. Madison and what I do not remember ever to have seen in print. Many individuals were members of both bodies [the Constitutional Convention and the Confederation Congress], and thus were enabled to know what was passing in each--both sitting with closed doors and in secret sessions. The distracting question of slavery was agitating and retarding the labor of both, and led to conferences and inter-communications of the members, which resulted in a compromise by which the northern or anti-slavery portion of the country agreed to incorporate, into the Ordinance and Constitution, the provisions to restore fugitive slaves; and this mutual and concurrent action was the cause of the similarity of the provision contained in both, and had its influence, in creating the great unanimity by which the Ordinance passed, and also in making the Constitution the more acceptable to the slaveholders.

Edward Coles (former secretary to James Madison), 1856\(^{44}\)

When Edward Coles wrote the above passage he emphasized the fugitive slave question, probably because the Fugitive


\(^{44}\)Lynd, "Compromise of 1787," p. 228. This quotation was originally in Edward Coles, History of the Ordinance of 1787 (Philadelphia, 1856), pp. 28-29. A similar theory is in Peter Force, Life, Journals, and Correspondence of Rev. Manasseh Cutler, L.L.D. (Cincinnati, Ohio, 1888), II, Appendix D, p. 419.
Slave Act was one of the burning issues of the 1850s. The fundamental importance of Coles' statement, however, is his assertion, by way of James Madison, that "conferences and intercommunications" took place between the Confederation Congress and the Constitutional Convention over the nature of the Northwest Ordinance and the Federal Constitution. This idea has been fully researched by Professor Staughton Lynd, who hypothesizes that there was a connection in the drafting of the Ordinance and the Constitution. In order to ease the sectional tensions which had stymied both documents, a compromise was reached whereby the South received the "three-fifths" rule in the Constitution and liberal statehood provisions in the Northwest Ordinance, as well as tacit recognition of slavery below the Ohio River in the latter. The Northeast received a guarantee of a minimum of three states in the Ohio territory, and prohibition of

45 Lynd, "Compromise of 1787," pp. 225, 245: "This essay takes issue with Professor Max Farrand's belief that the three-fifths compromise was of secondary importance in the proceedings of the Convention, and that the question of the West was separate from the sectional conflict between North and South. . . . One is therefore led to inquire whether consultation between Congress and Convention preceded the drafting of the Northwest Ordinance on July 9-11; whether the nature of the Ordinance was such as to ease the sectional tensions then troubling the convention; and whether the essential features of the Ordinance were reported to members of the Convention in time to influence its voting on July 12-14. Since the answer to all of these questions is probably yes, I think one can justifiably present the hypothesis that there occurred in 1787 a sectional compromise involving Congress and Convention, Ordinance and Constitution, essentially similar to those of 1820 and 1850." See also Henderson, Party Politics, pp. 408-420.
slavery (and therefore the "three-fifths" clause) north of the Ohio River. Lynd observes that on July 10 the Constitutional Convention was in a severe sectional deadlock over the issues of slavery and proportional representation, just as the Confederation Congress was in a deadlock over the statehood provisions of the Northwest Ordinance. But on July 12 the Constitutional Convention passed the "three-fifths compromise," and the following day the Confederation Congress unanimously passed the Northwest Ordinance, outlawing slavery in the Ohio country. Is this a coincidence? William Grayson wrote James Monroe that the slavery article in the Northwest Ordinance was agreed to by the South for the purpose of preventing tobacco and indigo production in Ohio, "as well as for sev'l other political reasons." What were the "political reasons" to which Grayson alludes? To find out, we must turn to the proceedings of the Constitutional Convention and the Confederation Congress and explore the intricate relationship between these two bodies in the Summer of 1787.

The Northeast-South factionalism over the West in the Confederation Congress was also present in the Constitutional

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46Lynd, "Compromise of 1787," pp. 225-238, 249. Grayson to Monroe, August 8, 1787, in Burnett, Letters of the Continental Congress, VIII:631-32. Henderson, Party Politics, p. 413: "Only by perceiving the Northwest Ordinance in the context of the proceedings of the Constitutional Convention can one properly understand its passage, and only by viewing the debates of the Convention as an extension of Congressional factionalism can one understand why the convention had such a vital influence on the Ordinance."
Convention. Recent scholarship indicates that the Virginians and the Southerners wielded much more power at the Convention than previously believed. It was Virginian Nationalists like James Madison, Edward Carrington, and Arthur Lee who took the initiative in 1787, and most effectively advocated the Nationalist program in Philadelphia. But unlike Eastern Nationalism Virginia's Nationalism had a sectional bias that was inextricably linked to slavery and the West. Virginia's Nationalism took the form of the "Virginia Plan" of May 29, which called for proportional representation in both houses of Congress and a slave census for purposes of taxation and representation. The Virginians advocated proportional representation, the heart of the Nationalist program, not only because of their republican political tenets, but because of their vast Kentucky holdings and visions of a number of Southern-dominated states in the western frontier. The Southerners foresaw a day when they would dominate the politics of the new nation. But Southern ascendancy depended upon proportional representation (with a slave census), and speedy incorporation of Western states into the Union. Thus the issue of proportional representation was closely bound to the issue of the West. Without new Western states, this Southern "geo-political" strategy was nullified. And the Constitutional Convention, like the Congress, was split over the West.47

47Henderson, Party Politics, pp. 414-418.
In June and July of 1787 the Constitutional Convention hotly debated the questions of slavery census, proportional representation, and the West. Although historians have traditionally viewed the Convention division as one of "small states" vs. "large states," the events of June and July evidence another pattern: Northeast vs. South. As James Madison wrote,

the States were divided into different interests not by their difference in size, but by other circumstances; the most material of which resulted partly from climate, but principally from the effects of their having or not having slaves.48

Gouverneur Morris, Elbridge Gerry and Rufus King led the Eastern faction in the fight. Nationalist Morris opposed proportional representation, especially in the West, because he felt it would insure eventual Southern and Western dominance:

He thought the rule of representation ought to be so fixed as to secure to the Atlantic States a prevalence in National Councils. The new States will know less of the public interest than these. . . . Provision ought therefore to be made to prevent the maritime States from being hereafter outvoted by them. He thought this might be easily done by irrevocably fixing the number of representatives the Atlantic States should respectively have, and the numbers which each new State will have . . . [the West] would not be able to furnish men equally enlightened to share in the administration of our common interests. The busy haunts of men, not the remote wilderness, was the proper school of political talents. If the Western people get power

into their hands, they will ruin the Atlantic interests. . . .49

The Southerners disagreed. After hearing Morris' July 5 speech, James Madison retorted, "To reconcile the gentl'n with himself, it must be imagined he determined human character by the points of the compass." In a reply to Morris, George Mason of Virginia admitted,

According to the present population of America, the Northern part of it has a right to preponderate; and I cannot deny it. But unless there shall be inserted in the Constitution some principle which will do justice to the Southern States hereafter, when they shall have three-fourths of the people in America within their limits, I can neither vote for the system here nor support it in my state. The Western States as they arise must be treated as equals, or they will speedily revolt.50

Several days later Elbridge Gerry again took up the Eastern attack regarding new western states. He was for "admitting them on liberal terms, but not for putting ourselves into their hands." Gerry feared the Westerners would "oppress commerce and drain our wealth into the Western country. To guard against these consequences," he thought it necessary, "to limit the number of new States to be admitted into the Union, in such a manner, that they should never be able to outnumber the Atlantic states." Gerry's motion to this effect, seconded


by Rufus King of Massachusetts, was defeated. Yet there were still no grounds for compromise.\footnote{Koch, ed., Madison, Notes on the Debates, pp. 288-89; see also ibid., pp. 245, 266-67, 552; Bancroft, Formation of the Constitution, p. 263; Henderson, Party Politics, pp. 416-17.}

The Constitutional Convention debated over the West in late June and early July of 1787. On July 2 the Convention held a short recess to search for a compromise. At this same time the North Carolineans and Georgians left the Convention and traveled to New York City to join the Virginians in Congress. It seems likely they did so in order to finish the Northwest Ordinance--the Southerners wanted some assurance that new western states would be equitably incorporated into the Union. Early July is also the time when the "conferences and intercommunications" to which Edward Coles alludes probably took place. Besides Coles' statement, there is circumstantial evidence to support this hypothesis. Many of the representatives serving in the Confederation Congress in 1787 were also members of the Constitutional Convention. The Convention adjourned for three days on July 2 because of the deadlock. When the Confederation Congress reached a quorum on July 4, Gorham, King, Johnson, Blount, Few, Pierce, Hawkins, and Madison were among those seated, and all of them had just arrived from Philadelphia with news of the Convention. In addition, Hamilton, Cutler, Richard Henry Lee, and Gouverneur Morris arrived from
Philadelphia between July 3 and 5. If Congress thus knew the affairs of the Convention, the opposite was also true. On July 10, after perusing the Northwest Ordinance and making several amendments, Rev. Manasseh Cutler "thought this the most favorable opportunity to go on to Philadelphia." Cutler arrived there in the midst of the slave census debate, one day before the crucial vote of July 12. Gouverneur Morris had adjourned the Constitutional Convention July 11 on a note of despair; the division over slave representation seemed irresolvable. That night Cutler consulted with the Virginia and Massachusetts delegates at the Indian Queen Tavern and probably told them about the slavery provision in the Northwest Ordinance. The next morning, July 12, Gouverneur Morris announced a new plan to "bridge" the sectional conflict. The "three-fifths" compromise passed on July 12, and the Northwest Ordinance, with its slavery article, passed in Congress the following day, July 13, 1787.52

If one accepts Lynd's hypothesis, what then were the motives which led Southerners and Easterners to support the Northwest Ordinance of 1787? The Southerners, who controlled

52Henderson, Party Politics, pp. 416-17; Lynd, "Compromise of 1787," pp. 227-28; Barrett, Evolution of the Ordinance of 1787, p. 70. Another person who may have helped implement the Compromise of 1787 was Alexander Hamilton of New York. On July 12 Hamilton arrived in Philadelphia from New York for a short, unofficial visit with his friend, Gouverneur Morris.
Congress in July of 1787, thought the Northwest Ordinance would provide a guarantee of future Southern political power through rapid admission of new western states and application of the "three-fifths" rule to the region southwest of the Ohio. To be sure, there would be only three to five new states in the Northwest, but the prospect of immediate allies (via the new lower population requirements for statehood) was very tempting to Southern Congressmen. The Virginia delegates wrote Governor Randolph,

Indeed, if it is thought Material to the interest of the Southern States that their Scale be Strengthened by an accession from this quarter, that object will be better secured by the New, than the old plan [Ordinance of 1784], because upon the former there may be an early admission of a state, but upon the latter such an event must be long, or forever postponed.

In addition to allies in the Northwest, Southerners looked forward to a block of slaveholding states in the Southwest territory. The July 13 version of the Ordinance applied only to the Ohio country. Since it outlawed slavery in

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Footnotes:

53 Four of the eight states present were Southern, the temporary president was William Grayson of Virginia, and three of the five committee members who drafted the Northwest Ordinance in its final stages were Southerners (Lee, Carrington, and Kean). See Lynd, "Compromise of 1787," pp. 225-26.


55 See footnote #41. The Southwest Ordinance of 1789 was identical to its predecessor except the slavery provision was deleted.
just the Northwest, the Ordinance of 1787 was interpreted by nearly everyone as a tacit endorsement of slavery in the Southwest territory. Insomuch as the new Constitution stated that the "three-fifths" rule would apply to "the several states which may be included within this union," Southerners were naturally quite pleased. Reading this clause in conjunction with the liberalized statehood admission procedures of the Northwest Ordinance, the South thought, with good reason, that it was the victor in both questions of slave representation and in equal representation for western states. Indeed, Grayson later commented that the Northwest Ordinance "passed in a lucky moment," leaving Massachusetts "extremely uneasy about it." And Nathan Dane wrote King in mid-August that "the Eastern states . . . gave up as much as could reasonably be expected."56

But both sides gain something in a compromise, and the Compromise of 1787 was no exception. The Northeast may have made concessions regarding statehood requirements, the fugitive slave clause, "three-fifths" rule, and slavery in the Southwest, but it had good reasons for supporting the Northwest Ordinance. Most important, the Easterners succeeded in barring the institution of slavery (and the three-fifths rule)

56 Lynd, "Compromise of 1787," pp. 231-32, 244, 246-47; Dane to King, August 12, 1787, in Burnett, Letters of the Continental Congress, VIII:636.
from the Ohio country. Moreover, there was a possibility of only three new states emerging from the Northwest, and the territory now had an autocratic territorial government to delay the statehood process as long as possible. Some Easterners were not entirely pessimistic about their political prospects in the West. Dane considered the 60,000 population requirement "too small, but, having divided the whole Territory into three States, this number appears to me to be less important." Thus Dane assumed that only three new states would evolve. Even if they all supported the South, Northeasterners would retain control of the Senate. And some Northeasterners entertained notions of political allies in the West. Dane reasoned,

The Eastern State of the three will probably be the first and more important of 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.57

The announced intention of the Ohio Company of New England to colonize the Old Northwest lent credence to Dane's supposition. Many conservatives believed the Ohio Company would introduce into the Old Northwest "a description of men who will fix the character and politics throughout the territory, and which will probably endure to the latest period of time." The Ohio Company's presence, in combination with a strong

57Lynd, "Compromise of 1787," pp. 246-47; Dane to King, August 12, 1787, in King, Correspondence of Rufus King, I:289-90. The emphasis is my own.
handed territorial government, could restrain if not nullify any Southern political muscle in the Northwest territory. Indeed, the first five territorial officials in the Ohio country were all Eastern Nationalists, and three were members of the Ohio Company. Could the appointment of territorial officials have also been part of the Compromise of 1787? No evidence exists to confirm such an idea. But it is clear that Northeast as well as South had justification for supporting the Northwest Ordinance and the Compromise of 1787.58

The ambiguities of the Compromise of 1787 are apparent. The South thought five states would be created in the Northwest, the Northeast predicted three. Southerners thought the region would solidly support the South, but the Easterners hoped at least one state would adopt "Eastern politics." The South hoped for immediate admission of new states, while the Northeast intended to delay the process as long as possible. The Northeast and South each had their own different and contradictory rationales for supporting the Ordinance of 1787, but since only time would tell what political course the Old Northwest would follow, both sections could support an Ordinance that would lead to settlement and eventual statehood. In place of a West vaguely attractive or dangerous, the Northwest Ordinance made available a West

described by Staughton Lynd as "just sufficiently specific that each section could read in it the fulfillment of its political dreams."\(^{59}\)

The great irony of the whole affair is that the Confederation notions of the future American political balance were exactly backwards. The South thought its power would lay in all of the West and in the House of Representatives. In fact, its strength lay in just the Southwest and in the Senate. By struggling for proportional representation and admission of western states, the South not only created its future political opponents,\(^{60}\) but at the same time approved one of the landmark documents of American Negro freedom! It is unfair, though, to expect the men of the 1780s to have been prophets. If the Southerners were mistaken, so too were their colleagues from the Northeast. No one knew what would happen in the West, so they compromised and hoped for the best.\(^{61}\)

The Compromise of 1787 led to the drafting of the Federal Constitution and passage of the Ordinance of 1787, two of the most important of all American state papers. Both

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\(^{60}\) To be sure, all of the early national West backed the Jeffersonians and Jacksonians and was therefore allied with the South. But during the sectional crises of the 1840-60 period, the Northwest allied with the Northern Whigs and eventually the GOP. Who was that man from the Illinois territory, anyway?

\(^{61}\) Lynd, "Compromise of 1787," p. 249.
these documents are truly products of their time, and by viewing them one can view the political dialog of the late 1780s. The intricate relationship between the Ordinance and the Constitution added to the "covenanted" quality the Virginia cession had given the former. There was no provision whatsoever for admission of new states in the Federal Constitution aside from the statement, "New states may be admitted into the Union." Without the Northwest Ordinance there was no basis for expansion and creation of the American Western Empire. This is why Bancroft said the Ordinance of 1787 stood second in importance only to the Constitution itself. The relationship between the Northwest Ordinance and the Constitution, and the circumstances under which the Northwest Ordinance passed, gave that document a quasi-constitutional quality and the character of truly fundamental legislation. 62

To summarize, the Northwest Ordinance of 1787 was not written by any one person. It had distinct British colonial origins, and evolved in a series of stages in the Confederation Congress during the 1780s. In its final form, the Ordinance of 1787 bore the stamp of many men, but three stand out: Thomas Jefferson and James Monroe of Virginia and Nathan Dane of Massachusetts. The drafting of the document

was begun in the Southern faction and ended up among the Eastern Nationalists. At the same time, the colonial system of the British was transformed into a highly democratic form by Jefferson, but then came back to an unrepresentative form of government controlled by an autocratic territorial governor. The western territories were to pass through three stages of development that distinctly paralleled the evolution in the British colonial system, but as Monroe observed, there was one "remarkable and important difference." After the territories reached a specified population, "they shall be admitted into the Confederacy."\(^6^3\)

The debate over whether the Northwest Ordinance was democratic, or 'should' have been democratic rages on. The neo-Progressives point to the imposition of a governor and judges, absence of elections, absolute veto of the governor, absence of the rule of law, and the absence of the rule of common law.\(^6^3\)

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\(^6^3\) Burnett, *Continental Congress*, p. 685; Eblen, *First and Second U. S. Empires*, p. 18; Berkhofer, "Origins of the U. S. Territorial System," p. 261; Pease, "Ordinance of 1787," p. 168; Eblen, *First and Second U. S. Empires*; 42, 44-45: "The American colonies passed through three stages that roughly but distinctly parallel the three stages of the Ordinance of 1787. During the seventeenth century the colonies passed through a stage of strong executive control that can be equated with the first stage of the Ordinance. The first two-thirds of the eighteenth century was a period of executive eclipse and the real emergence of a strong representative government authorized in the Ordinance's second stage . . . after 1763 the colonies moved into a period of rebellion that led to independence. The Ordinance sought to avoid rebellion by providing for quasi-independence through statehood as the third stage." Eblen notes that one reason for the arbitrary nature of the Ordinance was the considerable French and alien population residing in the territories. Monroe to Jefferson, May 11, 1786, in Hamilton, *Writings of James Monroe*, I:126-27.
and high property qualifications for suffrage and officeholding. They conclude that "Jefferson's Ordinance . . . was abolished in 1787 by the land speculators and their supporters who wanted Congressional control of the West so that their interests could be protected from the actions of the inhabitants." The revisionists counter that, in a nation's history, brief periods of colonialism are inconsequential. The importance of the Northwest Ordinance, they say, is that it eventually led to statehood and full rights of citizenship. In the interim it administered the affairs of the frontier in an organized and efficient manner. "Thus the 1787 document should be considered more an extension and replacement than a repudiation of the Ordinance of 1784."\(^{64}\)

The revisionists Eblen and Berkhofer are probably correct in their assertion that the Northwest Ordinance was a "viable system of colonial government." It was very orderly and efficient, if only on paper. The Eastern Nationalists were very good at this sort of thing. The creation of the national bureaucracy and administrative systems under Hamilton and the Federalists during the 1790s is the classic

\(^{64}\)Jensen, *New Nation*, p. 354; Pease, "Ordinance of 1787," p. 169; Barnhart, *Valley of Democracy*, pp. 133-34: "If the Ordinance of 1787 is compared with the Virginia Bill of Rights of 1776, it is obvious that protection to only a limited number of rights were assured to the settlers of the Northwest Territory." Boyd, *Papers of Jefferson*, pp. 17, 164; Berkhofer, "Origins of the U. S. Territorial System," p. 261; Eblen, *First and Second U. S. Empires*, pp. 44, 47.
example of their organizational abilities—and the Northwest Ordinance fits well into this Nationalist bureaucratic tradition. Yet Jensen, Philbrick, Boyd, and Barnhart are correct in saying that the Northwest Ordinance provided for an undemocratic, authoritarian regime in the West. Was this "good" or "bad"? Some would say it does not really matter, since most Westerners negated the arbitrary nature of the Ordinance of 1787 by simply ignoring it. The purpose here has been to place the Northwest Ordinance in the political context of the 1780s. And the fact that Congress, in 1787, reinstated in the West a colonial system similar to that against which the thirteen original states had themselves revolted in 1776 seems a good indication of just how the political ideology of the American Revolution had evolved

Initially, Westerners protested loudly over the autocratic nature of their territorial government. Governor Arthur St. Clair, for example, was constantly at odds with the settlers of the Northwest territory, who claimed he was "cloathed with all the powers of a British nabob." St. Clair opposed statehood for Ohio until 1802 when he was dismissed from office by President Thomas Jefferson. But this sort of violent opposition diminished as Westerners learned that the territorial governments were strong only on paper. Jack Eblen states that the final result "was a quick repetition of the slow loss of the pre-Revolutionary royal governor's powers, even though the territorial governor's office was stronger in law." The West was too big to rule with an iron hand, and Westerners were not ideally obedient subjects. Most Westerners just ignored the territorial governments. Moreover, the genius of the Northwest Ordinance was that its undemocratic features were only temporary. Federal supervision lasted just long enough to help the territorial settlers through the difficult early years. Then their territories were able to take an equal place among the United States of America. See Eblen, First and Second U. S. Empires, pp. 47-50.
in thirteen years.

Political ideas and attitudes changed greatly during the 1780s. Edward Carrington talked of this evolution in June of 1787 when he wrote Jefferson about the proceedings of the Constitutional Convention:

The ideas here suggested are far removed from those which prevailed when you [were] amongst us, and as they have arisen with the most able, from an actual view of events, it is probable you may not be prepared to expect them. They are however the most moderate of any which obtain in any general form amongst reflective and intelligent Men.66

Times had changed. Radical notions of decentralized authority and local control were no longer in vogue. The new ideology "amongst reflective and intelligent Men" called for a strong national authority and a centralized federal government. Nationalism had prevailed, and a study of Confederation western policy provides an excellent means for viewing the rise of the centralist impulse. The change in attitudes towards the West reflects an overall change in the political ideology of many Revolutionaries.

But the West was far more than just a mirror of the rise of Nationalism. Indeed, the West and the western question was a direct catalyst for adoption of the Nationalist program in 1787-88. Without the western question, the South may never have supported the Federal Constitution.67 It was


67The thesis that the West was a catalyst for Southern
largely because of their political aspirations in the West that Virginia and the South endorsed the heart of the Nationalist program—proportional representation. And it was to insure admission of new western states into the Union that the South compromised and accepted Eastern Nationalist proposals for three to five states in the Old Northwest. Southern advocacy of a colonial territorial governmental Ordinance was quite natural for a section that had adopted Nationalist notions of centralized authority. Times had changed. If Carrington could seriously say to Jefferson, "the negative which the King of England had upon our Laws was never found to be materially inconvenient," then he could certainly endorse the Northwest Ordinance of 1787. And it was the Northwest Ordinance that led to adoption of the Nationalist program in the Federal Constitution of that year.

Nationalism is part of the "geo-political" interpretation of Virginia politics by Henderson, Party Politics, pp. 415-18: The "Southern delegates in the Convention overwhelmingly took a "large-state" position on the issue of proportional representation in both houses. . . . That Virginia led the "nationalist" force in the Convention—a force composed of four Southern States out of five and just two Northern states out of six present (8 in all) was due not only to her supremacy in population among the thirteen states, but also to her vast Kentucky holdings and her involvement in the settlement of the Northwest. That "small" states such as Georgia and North Carolina should have joined Virginia on the very foundation of the nationalist plan, proportional representation, also testifies to the ubiquitous influence of Southern geo-political strategy for the West in Convention proceedings. . . . The Virginia-Pennsylvania bloc epitomized in the two persons of Madison and James Wilson (who disagreed with Morris regarding the West) can be understood as a triumphant core region manifestation of the Virginia Congressional policy of the past year. Indeed the Pennsylvania alliance was crucial to disarm to destructive sectional dichotomy which had obtained during the Jay-Gardoqui affair."
CHAPTER VIII

CONCLUSION: THE RELUCTANT EXPANSIONISTS

The state of society has an influence not less than climate. Our back country people are as much savage as the Cherokee. I believe . . . that were it not for the commercial cities on the sea coast even the use of a plough would far to the westward be forgotten.

David Ramsay, 1785

It was always my fear that our Western Territory, instead of proving a fund for paying our national debt, would be a source of mischief and increasing expense, but the expense is not the worst part of it. It has given such a spring to the spirit of emigration, too high before, that though it is pregnant with the most serious consequences to the Atlantic States, it can not now be held back.

Arthur St. Clair to John Jay, 1788

The great accomplishment of the Confederation Congress was the creation of the first American western policy. From 1783 to 1787 Congress mapped an overall strategy for westward development. Congress first established federal control of the National Domain in 1784, and drafted the revenue-oriented Land Act of 1785 to provide money for the national government.

Indian affairs culminated in the Ordinance of 1786, and the Dane committee reports of 1787, and during that same time John Jay negotiated with Don Diego de Gardoqui to try and settle the diplomatic problems in the Southwest. Finally, in July of 1787 the Confederation Congress instituted a strong territorial government in the West under the Northwest Ordinance of 1787. All of the various aspects of the western policy fit together in a consistent and coordinated plan, because most of the men who drafted the legislation subscribed to similar notions about the West, and agreed as to what would be the wisest policy for that region. The creation of the first American western policy was largely the work of the Eastern Nationalist faction in the Confederation Congress. Although Southerners had some input, it was mainly the Eastern Nationalists who legislated for a slow, orderly westward advance, closely supervised by the federal government. By examining the political, economic, and social bases of Eastern attitudes towards the West, one can better understand why they acted as they did.

Political motivations have been discussed at length in these essays and need only to be reviewed at this time. If power is the ultimate goal of any political movement, then political motivations played a major role in Eastern Nationalist western policy. Conservatives had always seen the frontier element as a threat to their political fortunes. Colonial legislatures often gerrymandered districts so as to
insure coastal dominance, and after the Revolution Easterners fought efforts to move state capitolts to the West. In the Confederation Congress the Eastern Nationalists pursued a similar strategy because they feared that voters in the West would not be receptive to their brand of political conservatism. They were right, of course. Westerners were opposed to the centralist tenets of the Eastern Nationalist political doctrine. This became obvious during the struggle over ratification of the Constitution. In most of the state conventions, the "up-country agricultural regions" and Westerners voted almost solidly against ratification. The Westerners were not sympathetic to the Constitution or Nationalism, and were particularly repelled by the Northeast's conservative brand of Nationalism. After the Constitution passed, Westerners quickly moved into the Jeffersonian camp. Thus Northeasterners had sound political reasons for acting as they did during the Confederation period.²

the West have also been treated in the preceding essays. The Eastern Nationalists were greatly concerned lest westward expansion result in a reversal of their economic supremacy. Most predicted expansion would cause a drain of labor supply and consumers, with a resulting drop in prices and increase in wages. The East was still almost entirely devoted to commerce; manufactures had not yet become the overriding economic factor. Not until the large-scale development of factories and manufacturing in the nineteenth century did Northeasterners come to see the West as a valuable source of raw materials and a ready market for Eastern products. In the 1780s the West, and the Mississippi River commerce in particular, seemed threatening and potentially dangerous. At the same time Eastern land speculators were in a delicate position. Some had invested in lands in the original thirteen states (such as in Western Pennsylvania and up-state New York) and opposed all expansion for fear it would lower their land prices. Yet others like Pickering, and the Ohio associates had invested in the lands bordering the Ohio River. They wanted expansion, but very carefully controlled expansion onto speculator-owned lands. If the floodgates were opened, their lands would greatly depreciate (and this is eventually what happened—none made the fortunes they had anticipated). Thus the West seemed an economic threat to the Northeast. The trans-Appalachian frontier, populated by fugitive debtors and paper money
advocates, posed a threat to fiscally conservative New England, and to the commercial interests and speculators who formed its economic base.

Social attitudes and class conflict are important ingredients in the conservative view of the West. As Francis Philbrick and others have shown, there existed from colonial times "misapprehensions concerning border communities, which were the basis of strong social prejudices against them."\(^3\) One constant source of irritation was religion. The Eastern Nationalists had a strong puritan strain, and in the eighteenth and early nineteenth centuries were nearly all Congregationalists, Episcopalians, and Presbyterians. It is no marvel that these pious New Englanders frowned on a segment of the population attracted to the Methodists and Baptists, or to no religion at all. At the same time, the Northeast was solidly opposed to slavery, and embraced humanitarian notions regarding the American Indian. The implication of a South-West alliance as it affected the 'peculiar institution' was certainly a bone in the Northeasterners' throats. Moreover, the Westerners' propensity for trespassing on Indian lands, and the resulting violence and warfare were

denounced constantly as barbarous and cruel by outraged Northeasters. All of these factors combined with long-standing class prejudices to instill a great contempt among Easterners for those "lawless Banditti", "squatters, insolvent emigrants, and demagogues," and "white savages" who populated the trans-Appalachian West. 4

Class prejudices against Westerners are evident in the correspondence and public papers of the period. The upper classes in both sections were offended by the rude settlers of the frontier. These attitudes are particularly evident among New Englanders, largely because of their isolation from the trans-Appalachian West. The Northeasters were appalled at the manners and conduct of the border settlers. People who "looked rude in their manners and dress" gave most Easterners "an unfavorable opinion of the country." They assumed that anyone anxious to leave the security and comforts of the seaboard must be the scum of society. "Under the pressure of poverty, the [jail], and the consciousness of public contempt, [they] leave their native places, and betake themselves to the wilderness," observed Timothy Dwight. Benjamin Rush agreed:

The first settler in the woods is generally a man who has outlived his credit or fortune in the cultivated parts of the state . . . as he lives in the neighborhood

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of Indians, he soon acquires a strong tincture of their manners. His exertions, while they continue, are violent, but they are succeeded by long intervals of rest. His pleasures consist chiefly in fishing and hunting . . . . Above all he revolts against the operation of laws. He cannot bear to surrender up a single natural right for all the benefits of government.

This comparison of the settlers to Indians, and assertion of their laziness is found in nearly all Eastern Nationalist and Federalist comments about the pioneers. Jay called them "white savages;" David Ramsay said they were "as much savage as the Cherokees;" Samuel Holden Parsons referred to them as "our own white Indians;" and Pickering wrote King, "They are little less savage than the Indians; and when posessed of the most fertile spots, for want of Industry, live miserably."^5

These sorts of attitudes made Easterners very concerned about Confederation western policy. Nathan Dane wrote Timothy Dwight, "our frontier inhabitants from New Hampshire to Georgia . . . will give us much trouble in a few years if we do not treat and govern them with much prudence and good policy." But what was that "good policy" to be? What was the most prudent course? Some Eastern Nationalists were avowed constrictionists. They were against all expansion. Men like Rufus King were "opposed to encouragement of western emigrants," and Paine Wingate of Massachusetts doubted "whether, in our day, 

that country will not be a damage to us rather than advan-
tage." Wingate believed it would have "been as well for the
Indians to have kept their own territory." But these men
were in the minority. Most Northeasterners were expansion-
ists--but reluctant expansionists, to be sure. Their aim
was to control westward expansion through a strong national
government. This is why Nationalism and the centralist im-
pulse are so important to an understanding of Confederation
western policy. Western policy was one of the major avenues
for increasing the power of the central government during the
1780s. Through land policy, Indian affairs, diplomacy and
territorial governments, the Eastern Nationalists of the Con-
federation era moved towards a centralized state. But they
could not achieve their goal without the help of the South.

The South, and particularly Virginia, is of key impor-
tance in understanding the adoption of an Eastern Nationalist
western policy. Why did the South support the Eastern mea-
sures? The answer is twofold, and can be found largely in
the realm of politics. First, the Southerners (especially
the Virginians) were vitally interested in western develop-
ment. According to Henderson, their entire "geo-political
strategy" of the 1780s was aimed at securing the economic

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and political benefits that would come with expansion and new western states. Southern desire for new states led them to compromise with Northeasters over the West. They accepted many notions about that region that were essentially "Eastern Nationalist" because they believed that any expansion was better than none. Since the Northeast had an 8 to 5 majority in Congress, the Southerners' hopes all lay in the future. The second political consideration can be found in a shift in political philosophy. Nationalism and the centralist impulse were in the ascendency during the middle and late 1780s. The Nationalist faction, which had originally been a Northeastern phenomenon (Morris, Hamilton, Jay, King, Pickering, Livingston, etc.), began to gather a large Southern following. Indeed, by 1787 Virginia, not New England, was the leader of the centralist movement, with Washington and Madison as prominent Nationalist spokesmen. Attitudes towards the West changed with the evolution in political philosophy. This tempering of the Southern position became evident during the land policy debate of 1785, when the South accepted a modified "New England" land system. When the Jay-Gardoqui controversy threatened an impasse, both sides again searched for a compromise. The interrelationship between the Northwest Ordinance and the Federal Constitution, as manifested in the Compromise of 1787, was no accident. Western policy

was inextricably tied to the Nationalist movement. As the Southerners, especially Virginians, adopted Nationalism, so too did they adopt Eastern Nationalist western policy. The rise of centralism was accompanied by adoption of centralist notions concerning the West.

If one gives any credence to the frontier hypothesis of Frederick Jackson Turner, the split over Western policy can be viewed in a much broader context. The American Revolution was declared in 1776 and based upon highly radical conceptions of the individuals' natural right to freedom and sovereignty. Yet even before the Declaration of Independence was signed, Americans were arguing among themselves as to just how far those ideals of natural rights should be carried. Disagreements emerged as liberals who favored maximum individual sovereignty, a weak central government, and local control, were pitted against conservatives who valued order and stability and a strong national government. The western question was a perfect focal point for this struggle, if only in the idealistic sense. As Turner has shown, the frontier came to symbolize the forces of individualism, liberty, and sovereignty in the minds of many Americans. The radicals' version of the Revolutionary experience coincided with an idealistic view of the frontier experience, because Revolutionary ideals of freedom and liberty could be sought in an environment that offered few governmental restraints on the individual. Yet as Turner also noted, and as the conservatives of the 1780s constantly
pointed out, the frontier encouraged some undesirable aspects of complete freedom. A person did not become automatically rational the minute he crossed the Ohio, and lawlessness and rashness were just as much a part of the frontier experience as sovereignty and independence. Indeed, an American's attitude toward the West and Westerners was a direct result of his conception of the Revolutionary experience and the limits to which ideals of freedom and sovereignty should be extended. The radicals and libertarians tended to ignore the less savory characteristics of Westerners, and idealized the importance of their settlement beyond the Appalachians. Conservatives were wary of the West, and sought to harness the troublesome Westerners through a strong national government. The Nationalist impulse, the desire to control and regulate the affairs of individuals, found logical expression in the western policy of the 1780s. The Nationalist victory in the Constitutional Convention in 1787 was complemented by adoption of the Northwest Ordinance that same year.

The irrelevancy of Nationalist western policy to the realities of the frontier soon became obvious. No proof need be submitted other than the fact that, with the exception of prior rectangular survey of lands, every aspect of the Eastern Nationalist policy was either greatly altered or abandoned by the federal government of early national America. Congress repudiated the sale of public lands for revenue purposes as early as 1804; a humanitarian Indian policy was out of the
question by the time of Jackson's presidency; Thomas Pinckney secured American navigation of the Mississippi in 1795; and, as Jack Eblen has shown, the Northwest Ordinance was simply ignored by those settlers who were supposedly under its control. The Nationalist western policy may have been typical of the political climate from which it evolved, but as Americans moved West during the Great Migration of the early 1800s, it became increasingly anachronistic. By 1840 the opening of the trans-Mississippi frontier made the Eastern Nationalist western policy a dead letter.

The uniqueness of Eastern Nationalist plans for western development is apparent to anyone who visits Marietta, in southeastern Ohio. Marietta was the first legal settlement in the Ohio Valley, completely planned and developed by the Ohio Company of Massachusetts. Even today, Marietta's citizens boast that they live in the "only planned community in America." They exaggerate, of course. Throughout the Ohio Valley there are many planned communities like Marietta. They have spacious, ordered streets, and a town square surrounded by public buildings. The Ohio Company and the Northeasterners built many such towns--replicas of the New England and Eastern villages from whence they migrated. But as one moves farther west or south, these towns are few and far between. Beyond the Mississippi they simply do not exist. The Eastern Nationalists had a vision for the American advance westward. They looked forward to a slow, corporate settlement,
and a transplanting of New England society in the great American West. They anticipated thousands of communities like Marietta dotting the Mississippi Valley. The Eastern Nationalists believed that if the central government was strong enough, they could mold and shape society as they pleased. As it turned out, they were mistaken. Eastern domination of the West did not come until the economic and cultural penetrations of the nineteenth and twentieth centuries combined with political centralism to cause the fusion of two differing societies.
EPILOGUE

THE FEDERALIST PARTY AND THE WEST
1789-1803

Now by adding an unmeasured world beyond that river [the Mississippi] we rush like a comet into infinite space. In our wild career we may jostle some other world out of its orbit, but we shall, in every event, quench the light of our own.

Fisher Ames' opinion of the Louisiana Purchase, 1803

After a new Federal government was instituted under the Constitution, most Eastern Nationalists of the Confederation era formed the nucleus of the Federalist party of early national America. Thus the Eastern Nationalist attitudes

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1 Most of this essay is drawn from Michael Allen, "The Federalist Party and the West, 1783-1803," A Senior Honors Thesis submitted to the Department of History of Central Washington State College, March 8, 1974. The only other treatment of the subject is Homer C. Hockett, "Federalism and the West," in Essays in American History Dedicated to Frederick Jackson Turner (New York, 1910), pp. 113-135. See ibid., p. 115: "To the extent to which [the Federalist party] was the party of aristocratic tradition and the representative of the commercial against the agricultural interest it was a party of inherent antagonism to the interests and ideals of the West."


3 Henderson, Party Politics, p. 420: "... party development in the 1790s began as a remarkable continuation of the factionalism in the Continental Congress. The Southern and Eastern nucleii of the Republican and Federalist parties as well as the division in the Middle States were replications of the structure of Confederation politics."
towards the West can be seen in the western policy of the Federalists of the 1790s and early 1800s. In Indian affairs, land policy, territorial government and admission of new western states, the Federalists tried in vain to slow down the westward advance. Some tried to stop it altogether. A study of Federalist attitudes towards the West from 1789-1803 involves also a study of the decline of the Federal party. Nothing so nearly represented the spirit of the new republic as its restless westward settlers. And nothing so nearly represented the spirit of the Federalist party as its efforts to stop those settlers. By studying Federalist attitudes toward the West one may gain a better understanding of the Federalist-Jeffersonian dichotomy and a clearer perception of America in 1800. Only in this way can one understand the importance of the revolution that was taking place.

The trans-Appalachian frontier played an important role during the Federalist administrations of George Washington and John Adams. Events such as the Whiskey Rebellion, the struggle with Great Britain over the Northwest posts, Pinckney's Treaty (securing navigation of the Mississippi River), and the Kentucky Resolutions serve to accent the importance of the West during the Federalist era. Since nearly four-fifths of Washington's budget was spent on measures directly or indirectly related to the frontier, Federalist leaders soon formulated a consistent policy for that region. Alexander Hamilton saw the West mainly as a source
of revenue to fund the national debt and support his fiscal program, and most Federalists shared similar views. They distrusted and feared the migrants to the frontier regions and, consequently, Americans west of the Appalachians came to resent their government. The frontier settlers demanded a more equitable land policy, free navigation of the Mississippi, British evacuation of the Northwest posts, admission of western states, and protection from the Indians. The Federalist administrations of George Washington and John Adams often ignored or only partially answered these demands.  

As in the Confederation era, the Federalists of the 1790s demonstrated an unusual concern and sympathy for the plight of the American Indian. Federalists comprised a large percentage of the small group of early national politicians who made genuine efforts to acknowledge the property rights and sovereignty of the Indian. Their motivations were twofold. First, the educational and social backgrounds of most conservatives made them more receptive to the ideas of humanitarianism. Second, Federalists saw the American Indian as an effective barrier to westward migration. Although acting on strong moral belief, they saw a liberal

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5See Chapter 4 above.
Indian policy as an effective means of keeping settlers out of much of the trans-Appalachian frontier. President Washington and Secretary of War Knox were early proponents of an equitable Indian policy. "The Indians," Henry Knox stated, "have constantly had their jealousies and hatreds excited by attempts to obtain their lands. I hope in God that all such designs are suspended for a long period." A Congressional committee composed of six Federalists denounced the Frontier Protection Act of 1792, recommending that,

Instead of being ambitious to extend our boundary, it would be wise to check the roving disposition of the frontier settlers and prevent them from too suddenly extending themselves to the Western waters. If kept closer together . . . they would not so frequently involve us in Indian wars; but permitted to rove at pleasure, they will keep the nation embroiled in perpetual warfare. . . .

The Frontier Protection Act passed the Senate with nineteen members voting no; thirteen were Federalists.7

Despite the efforts of Hamilton, Knox, Pickering, Washington, and others to establish good relations, Indian wars were the inevitable result of white encroachment on Indian

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6Prucha, Indian Policy, p. 41.

7Debates and Proceedings in the Congress of the United States (Annals of Congress), 2nd Congress, January 26, 1792, p. 338. Federalist members of the committee were Goodhue, Wayne, Boudinot, Livermore, Steele, Parker, and Bourne. In the vote over protection from Indians, as in all other Congressional votes, I have determined the Federalists by using David Hackett Fischer, Revolution of American Conservatism, Appendix II.
lands. After the Ohio Valley tribes defeated General Harmar and territorial governor Arthur St. Clair, the American government was put in the awkward position of having to defend trespassers on Indian lands. Colonel Timothy Pickering opposed aiding the frontiersmen and explained in a letter to Rufus King how he would control the lawless trespassers of the frontier:

> If such savage emigrants encroach on the Indian Territory or commit any outrages, nothing short of a military force will be able to bring them to justice . . . to prevent [Indian wars] resulting from such emigrations I could wish the Indians might be expressly authorized by treaty, to break up every settlement within their territory.8

In Congress, Federalist Theodore Sedgwick of Massachusetts expressed a somewhat more philosophical opinion on the subject:

> Were they (the opponents of Indian land rights) to say to the savages in their own land, you have no right to any land? . . . wherever the natives of a country had possession, there they had a right and not because they did not dress like us, were not equally religious, or did not understand the arts of civilized life were they to be deprived of their possessions. . . . Their rights or their possessions were as sacred as civilized life.9

Unfortunately for the Indians, the political pressure of the Westerners proved greater than Federalist sympathy for the

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8 Pickering to King, in King, Correspondence of Rufus King, I:106.

Indians' plight. Anthony Wayne's victory at Fallen Timbers preceded the eventual removal of most Indian tribes to the region west of the Mississippi, the humanitarian Federalists notwithstanding. Andrew Jackson soon demonstrated the Republican solution to the Indian problem.

Debates over the statehood applications of Kentucky and Tennessee would seemingly provide an excellent arena in which to view Federalist western policy. The issue of Kentucky, however, is clouded. Most Federalists probably agreed with Fisher Ames' view of the Kentuckians as "the infuriate... wild men of the mountains." But Kentucky applied for admission simultaneously with Vermont (1791), and this dual application appears to have facilitated a North-South, Federalist-Republican compromise. Alexander Hamilton wrote,

One of the first subjects of deliberation with the new congress will be the Independence of Kentucky, for which the Southern states will be anxious. The North will be glad to send a counterpoise in Vermont. These mutual interests and inclinations will facilitate a proper result.

The Federalists apparently thought Vermont would balance the political influence of Kentucky, leaving the Federalist domination in Congress unchallenged.\(^{10}\)

Statehood for Tennessee was an entirely different matter.

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\(^{10}\)Ames, *Life and Works of Fisher Ames*, I:317; Syrett, *Works of Alexander Hamilton*, V:186. Federalist hopes of political support from Vermont were soon dispelled as a rural-urban split occurred in that state.
Since there were no new Eastern states to balance potentially Republican Tennessee, the Federal party opposed admission solidly. They knew that a shift in the balance of power would occur should this new western state be admitted into the Union. Statehood for Tennessee was, Chauncey Goodrich wrote Oliver Wolcott, "but one twig of the electioneering cabal of Mr. Jefferson." Yet most of the Federalists' arguments against admission did not sound so partisan. They attacked both the census and proposed constitution of Tennessee, insisting they did not comply with the Northwest Ordinance of 1787. Congressman Theodore Sedgwick thought Tennessee's new constitution had been drawn up too hastily, and Rufus King chaired a senate committee that voted to deny admission until a more accurate census could be taken. Eleven of the fifteen senators who voted to postpone admission belonged to the Federalist party. In the final vote, however, the Federalists lost. Northern Republicans (led by William Findley and Albert Gallatin of Pennsylvania) allied with southern Republicans and southern Federalists having large frontier constituencies (such as Robert Goodloe Harper and William Smith of South Carolina), and the House of Representatives voted 48 to 30 in favor of admission. All thirty negative votes were cast by Federalists. As the Federalists had feared, one of Tennessee's first acts as a new state was to cast its electoral votes for Thomas Jefferson in 1796.¹¹

¹¹For Tennessee statehood, see Abernethy, From Frontier
The Federalists seemed oblivious to political reality, however, as they wrote and adopted the constrictionist Land Act of 1796. This legislation followed General Anthony Wayne's victory at Fallen Timbers, which opened up a brand new area north of the Ohio to western settlement. Battle lines were drawn quickly over the proposed Ordinance. The Federalists were determined to retain the speculator-oriented provisions of the Land Ordinance of 1785 in this new bill, while Republican and frontier elements prepared to fight for a law favoring the yeoman farmer. Once again the Northeastern vs. Southern and Western political split was apparent in the United States Congress. The frontier faction in the House again allied under Gallatin and Findley. Republican strength in the House typified the changing political scene and made for a more heated debate over the land bill. Gallatin's liberal amendment calling for a residency requirement for purchasers was defeated, but enjoyed considerable support. Republican Congressman Baldwin charged that "Speculation and making money [are] rarely found in more raging extremes and
persons we have supposed worthy of our confidence [are] publicly practising the meanest and most disgraceful arts of tricks of swindling." William Findley of western Pennsylvania was one of the most persuasive proponents of an agrarian land act. He summed up the Republican argument in March of 1796:

Some members thought to obtain money was the grand object . . . [I do] not . . . . Had gentlemen considered what they were about? Whether they were merchants only to get money? Surely not; they had men and the happiness of men in their view. . . . The comparison betwixt a merchant selling goods and the government selling land would not hold. It is a sort of transaction which should always be kept in the hands of government and not in those of speculators... 13

The Federalists completely rejected this view. They believed in Hamilton's system of using land revenues to fund the federal government. Moreover, many of the Federalists were speculating heavily in western lands. Congressman William Cooper had amassed a fortune from his land investments in up-state New York. He maintained "the true cause of land selling was the competition of moneyed men," and argued that poor men would not buy land even if it was offered to them. In opposing Republican efforts to reduce the size of minimum purchases, Cooper remarked that Congress should not put itself into the business of laying out "garden spots" for yeoman

13 Annals of Congress, 4th Congress, February-March 1796, pp. 330, 404, 414; Treat, National Land System, pp. 82-83. Findley and Gallatin emerged as spokesmen for the West during the Whiskey Rebellion of the early 1790s.
farmers! Some of his colleagues were nearly as outspoken. One Federalist did not believe "there were as many families ready to go and settle upon these lands as has been assumed," and he opposed "removing the inhabitants of the Atlantic states into these back settlements." Federalist Congressman Kittera spoke the sentiments of many anti-expansionists in March of 1796: "This kind of bounty as to encourage emigration is not good policy. There is still plenty of good land in the east to be disposed of."\(^{14}\)

Southern and Western strength in the House resulted in the passage of a fairly liberal land law, but a Senate committee composed of Federalists Ross, King, Marshall, and Strong amended all of the liberal features out of the Land Act of 1796. The result was a bill even more unfavorable to the West than the Ordinance of 1785. It required a 640-acre minimum purchase at $2.00 per acre. Even the credit provision, added as a feeble compromise, required a farmer to produce $1,280.00 in cash during one year. This bordered on the absurd, yet it reflected the wishes of most Federalists.\(^{15}\)


The election of John Adams as Washington's successor meant a continuation of the Federalist western policies. Although Adams came to represent what has been called the "agrarian" element of his party, he nevertheless entertained many apprehensions concerning the trans-Appalachian West, and believed "The country is explored and thinly planted much too fast." Federalists during the Adams administration acted on several measures which reflected their attitudes toward the frontier. On January 25, 1799, the House voted to exempt the Mississippi River from restrictions on commercial intercourse. Thirty-two of the thirty-four congressmen who opposed this pro-western measure were Federalists. On April 24, 1800, a bill to grant Ohio territorial governor Arthur St. Clair the right to dissolve the Ohio territorial legislature was defeated, 49 to 42. Forty of those who favored the motion were Federalists. These measures not only reflect Federalist animosity towards the West, but also show a decline in the power of the Federal party's constrictionist element. Tennessee's admission in 1796 was an early indication of this development. Another important step was the Harrison Land Law of 1800, passed by a coalition of Republicans and southern Federalists. It provided for a 320-acre minimum purchase at $2.00 per acre

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17 Ibid., Congressional voting appendix.
with four years credit. Although the Harrison act was not as radical as Jefferson's Land Act of 1804 (160-acre minimum at $1.64 per acre, but no credit), it was the most liberal land law ever passed by Congress. The conservatives still had bargaining power in 1800, but it was on the decline. After twenty years, the American yeoman was now able to purchase good land in the West on credit from the federal government. Federalist efforts to slow westward migration through a restrictive land policy had only worked temporarily. They had postponed the inevitable for twenty years.

Payson Treat is correct in his observation that expansion from 1789-1800 occurred despite efforts of the federal government. The revenue-oriented programs of the Federal party showed no consideration for the people of the trans-Appalachian frontier. But settlers continued to migrate; pioneers squatted on land they could not afford to buy, and stole from the Indians the lands which were not for sale.

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18 Smelser, The Democratic Republic, pp. 36, 134; Philbrick, Rise of the West, p. 295; Treat, National Land System, pp. 101, 141. Reviewing the four land ordinances discussed in these essays one can see a definite evolution. The Land Ordinance of 1785 provided for a 640-acre minimum purchase at $1/acre and no credit. The Land Act of 1796 also specified a 640-acre minimum purchase, but at $2/acre and one year credit. The Harrison Land Act of 1800 provided for a 320-acre minimum at $2/acre, but with four years credit. The 1804 law legislated for a 160-acre minimum purchase at $1.64/acre (the price was higher if you wanted credit). So after twenty years purchasers could buy land directly from the government, saving the expense of dealing through land speculators and investors.
Federalist efforts to slow expansion through a liberal Indian policy, slow admission of western states, and a restrictive land policy proved ineffective. Eventually, the anachronistic nature of Federalist western policy became as apparent as the intent of the frontier settlers to ignore that policy. The unpopularity of Federalist western policy was one of many factors that led to Jefferson's victory over Adams in 1800. But Thomas Jefferson's election did not mean the Federalist anti-expansionists had surrendered; it simply marked the beginning of the end. The phenomenal westward push during the "Great Migration" of the 1800s greatly worried conservatives during Jefferson's first administration. The aborted Federalist attempts to block admission of Ohio (1802) and the purchase of Louisiana (1803) demonstrated that the Northeasterners were not willing to change their views--even though their inflexibility meant political oblivion.

Congress debated the Ohio statehood question during the Spring of 1802. By this time, the people of Ohio were clamoring for statehood. They had met the requirements of the Northwest Ordinance of 1787, and sent petitions to Congress asking for admission into the Union. Federalist territorial governor Arthur St. Clair vigorously opposed this

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statehood movement. He and other Ohio Federalists believed statehood would produce "nothing but misfortune." The Ohioans, according to St. Clair, were too poor and ignorant "to employ their thoughts on abtruse questions of Government and policy." "Fixed political principles they have none," he declared. "Their government would most probably be democratic in form and oligarchic in execution, and more troublesome and more opposed to the measures of the United States than even Kentucky." St. Clair and his allies in Congress used every political device available to prevent statehood, but the Republican Congress voted to admit Ohio into the Union in March of 1802. Of the twenty-nine members of the House who opposed admission, twenty-three were Federalists. The six senators who opposed admitting Ohio into the Union were all members of the Federal party.21

The constrictionist Federalists waged their final great

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20 In Congress, the Federalists produced petitions from Ohioans who did not want statehood. When this failed, Federalists Griswold, Henderson, Goddard, and Bayard tried to gerrymander the borders of the new state. This would, according to St. Clair, divide the inhabitants "in such a manner as to make the upper or Eastern division surely Federal, and form a counterpoise . . . to those who are unfriendly to the General Government." For Ohio statehood, see Horsman, Formative Years, p. 89; Hockett, "Federalism and the West," pp. 123-24. The debates over statehood for Ohio are in Annals of Congress, 7th Congress, March, 1802, pp. 296, 1104-5, 1120, 1123, 1161. Prior to the Congressional vote, President Thomas Jefferson dismissed St. Clair from the governorship of the territory.

21 Annals of Congress, 7th Congress, March 1802, p. 1161. The six Federalist senators were Ogden, Foster, Howard, Morris, Tracy, and Olcott.
battle over the Louisiana Purchase. Jefferson's proposed purchase of the Louisiana territory from France was in every sense an ideal issue for the Federalists, since it lay at the very heart of the expansion question. If the United States purchased Louisiana, there could be no turning back; the American republic would become an empire, and expansion would play an increasingly important role in the American experience. Inevitably, the political party which had opposed the West would suffer. Fully realizing this, a small band of Federalists in Congress prepared to fight the Purchase. The Hartford Courant sounded the Federalist battle cry:

Fifteen million dollars for bogs, mountains, and Indians! Fifteen million dollars for uninhabited wasteland and refuge for criminals! And for what purposes? To enhance the power of Virginia's politicians. To pour millions into the coffers of Napoleon on the eve of war with England.22

The constrictionist Federalists used several avenues of attack. Fisher Ames protested the expense of Louisiana and deplored wasting the "many millions it costs." Roger Griswold doubted the validity of the French title to Louisiana, while Senator Timothy Pickering warned of Spanish objections to the purchase. Most surprisingly, the Federalists employed a 'strict construction' of the Constitution argument and termed the Louisiana Purchase "unconstitutional."23 But Federalist

22James Eugene Smith, One Hundred Years of Hartford's Courant (New York, 1949), p. 82.

23Ames, Life and Works of Fisher Ames, pp. 323-24; King,
arguments against the expense, constitutionality, and diplomatic consequences of purchasing Louisiana convinced no one. The House voted 90 to 25 in favor of the Louisiana Purchase. Nineteen of the twenty-five opponents belonged to the Federal party. In the Senate, the vote was 24 to 7, with all seven nays coming from the Federalists. 24

Thus the United States admitted into its boundaries a territory populated by what one conservative termed a "Gallo-Hispano-Indian ominum gatherum of savages and adventurers." With finalization of the Purchase, Fisher Ames wrote gloomily:

Now by adding an unmeasured world beyond that river [the Mississippi] we rush like a comet into infinite space. In our wild career we may jostle some other world out of its orbit, but we shall, in every event, quench the light of our own. 25

Such doom's day talk was no charade. Most members of the Federal party honestly believed that westward expansion would

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Correspondence of Rufus King, I:360; Smelser, Democratic Republic, p. 98. The only Republican who had scruples over the constitutionality of the purchase was Jefferson himself. Thus both parties had performed a flip-flop as regards their 1790s view of the Constitution. For Congressional debates over Louisiana, see Annals of Congress, 8th Congress, pp. 34, 44, 46, 73, 386, 432, 441, 445, 454, 472, 488.

24 Annals of Congress, 8th Congress, October, 1783, p. 488; Smelser, Democratic Republic, p. 97. Smelser notes several prominent Federalists who did support the Louisiana Purchase were Rufus King, John Adams, Alexander Hamilton, and John Marshall.

result in disaster for the American people. The Federalists had many tangible economic and political reasons for their constrictionist ideas, but at the heart of their view of the West was their basic conservatism. Linda Kerber has shown that the constrictionist Federalists were suspicious and wary on the unknown West. They had no desire whatsoever to venture into this "Land of Marvels." Such preposterous notions could only be entertained by Jeffersonians and other fools!  

The Federalists refused to embrace the West, and they paid the political price. After Kentucky and Tennessee allied with the South to elect Jefferson in 1800, the Federal party died a quick death. Their strength steadily declined, while the Republicans gained additional support in Kentucky, Tennessee, and western Pennsylvania and up-state New York. Admission of Ohio and the Louisiana Purchase promised to further lighten New England's political power. At the same time, the Federalists suffered an intra-party sectional split. According to Manning Dauer, the decline of Federalism was due largely to the decline of the agrarian, and Southern elements of the party. These "Adams Federalists," or "Half-Federalists" left the party after the Hamilton-Adams feud. Thus the Hamilton Federalists changed their party from one with an Eastern

26 Linda J. Kerber, Federalists in Dissent: Imagery and Ideology in Jeffersonian America (Ithaca, 1970). Kerber explores the Federalist psyche and makes some interesting observations as to their conception of the West as a "Land of Marvels."
seaboard following to one with only a Northeastern seaboard following. The South and West turned solidly to the Republicans. Some historians contend that the Federalists could have successfully courted the western vote. Robert Goodloe Harper and other southern Federalists certainly did. But the arch-Federalists seemed bent on self-destruction. Their withdrawal into New England insured it.27

The irony of the whole affair is that the Federalists' political heirs, the Whigs and Republicans (GOP) of the 1830-1860 period, came to be great political allies of the West. The hero of Tippecanoe and "Harry of the West"28 were Whigs, not Jacksonian democrats. Obviously, much happened during the intervening years. The Northeast was tempered by democracy while the industrial revolution shifted that section's livelihood from commerce to manufacturing. In the meantime the Old Northwest was settled by transplanted Northeasteriners. These developments combined with

27Smelser, Democratic Republic, p. 76; James M. Banner, Jr., To the Hartford Convention: The Federalists and the Origins of Party Politics in Massachusetts, 1789-1815 (New York, 1970), p. 113; Dauer, The Adams Federalists, pp. 7, 18. As Dauer notes, the "Half-Federalists" were hardly frontiersmen. They resided in the exporting agricultural regions, not on self-sufficient homesteads. Yet on many western issues they sided with the Westerners and Republicans. A good biography of one of the Half-Federalists is Cox, Robert Goodloe Harper. Read the chapter entitled "Robert Goodloe Harper and the West."

28William Henry Harrison of Ohio (Whig candidate for president in 1840) and Henry Clay of Kentucky (Whig candidate in 1832, 1836, and 1844). And do not forget that transplanted Kentuckian in Illinois who ran for president on the Republican ticket in 1860.
completion of the Erie Canal (1825) to create a new partnership between East and West, as the Westerners furnished raw materials, foodstuffs, and a consumer market for Eastern manufactures. The old South-West alliance was superseded by an East-West alliance that lasted through the Civil War and much of the nineteenth century. Industrial capitalism thus forged a partnership between two sections the arch-Federalists thought to be inherently at odds with each other.29

But the Federalists of the 1790s and 1800s were no prophets. They feared and distrusted the West, and believed westward expansion boded ill for the republic. In Indian policy, diplomacy, land legislation, and admission of new states and territories they tried to discourage migration to the trans-Appalachian West. They tried, in vain, to thwart the growth of a segment of the population whom they considered to be a "wild, ungovernable race, little less savage than their tawn neighbors."30 Many Americans, of course, disagreed. A western legislator had earlier answered similar charges in an emotional speech before the Confederation Congress of 1783:

... with the utmost frankness, I admit their personal appearance is not the most fashionable and elegant kind; they are

30 Quoted in Tatter, "Land Policy During the Confederation," p. 182.
not decorated in all the style, the gaiety,
and the taste of a dandy of the first
water. Their means are too limited and
their discretion too great, I trust, for
the indulgence of such foppery and ex-
travagence. . . . Sir, these are the very
constituents of whom the nation ought to
be proud. They constitute the bone sinew
and strength of your government.31

Twenty years later, during the debate over Louisiana, a
young frontier Congressman named Andrew Jackson insisted "the
frontier people will listen to reason and respect the laws
of their country." And in 1809, the pioneers of Shawneetown
(in southern Illinois) alluded to the misapprehensions about
Westerners shared by many Federalists in a letter to Matthew
Lyon:

We must beg leave to make mention with
diffidence lest a misconception be pre­
possessed from misrepresentations, that
there are amongst our number both Moral
and Religious as well as many enterpris­
ing and industrious people.32

Despite these defenses, and after more than twenty
years of debate, Federalist attitudes towards the West re­
mained virtually unchanged. The party which had harnessed
the energy of the new republic was now unable to control it.
The conservatism which made the Federal party a sturdy base
on which to build a new culture, prevented it from changing
with that culture. Although the West is only one window

31Quoted in Karl F. Geiser, "New England and the Western
Reserve," Proceedings of the Mississippi Valley Historical
Association VI (1912-13):62.

32Annals of Congress, 8th Congress, September-October
1803, p. 455; Philbrick, Laws of the Illinois Territory,
XXV:cccxliv.
through which one may view the growing obsolescence of the Federalist party, it is one of the clearest. The several hundred thousand pioneers who had crossed the Appalachians symbolized the energy and feeling that pulsed throughout America in 1800. Men and women who willingly risked their lives in an untamed wilderness demonstrated the spirit of a rising people. Like the frontiersmen among them, Americans in 1800 were searching for something indefinable, something called national greatness. They were in no mood to tolerate a political party that frustrated their search. In its attitudes toward the West, as in so many other ways, the Federal party had become an anachronism. It had no place in the America of 1800--no place at all.


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