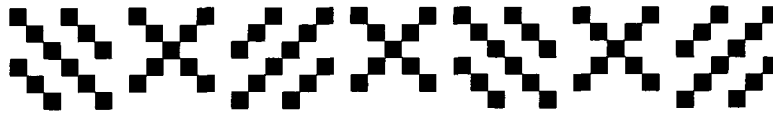


## The Land Ordinance of 1785: A Bicentennial Review

*George W. Geib\**



Meeting in New York in the early spring of 1785 the Articles of Confederation Congress turned its attention to the western land question that had intermittently agitated the politics of the central government for several years. The unsuccessful draft of a 1784 land ordinance was taken from the table and promptly referred on March 16 to a grand committee headed by William Grayson of Virginia.<sup>1</sup> The creation of Grayson's committee was the logical aftermath of one of the most significant achievements of the oft-maligned Confederation Congress: the successful assertion of its authority over much of the trans-Appalachian West.

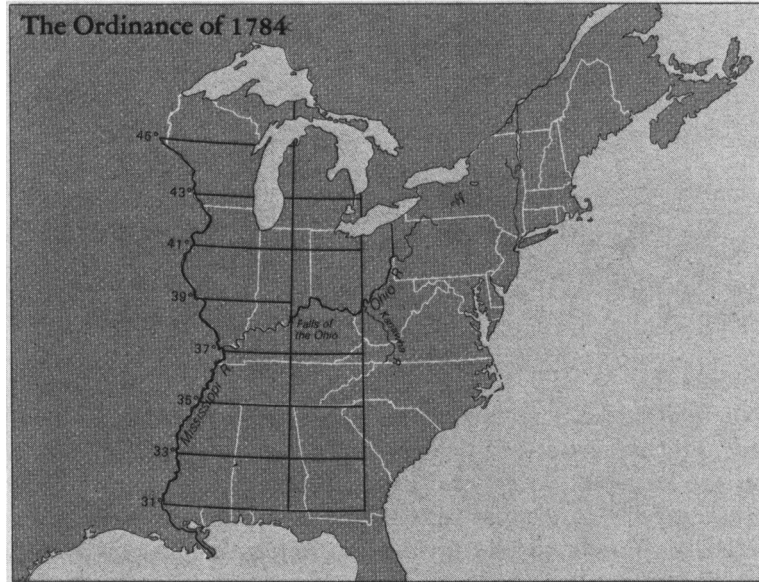
By treaty with Great Britain following the Revolutionary War and by cessions from several key states of much of their own western claims, Congress had become responsible for a public domain that rivaled in size the combined areas of the thirteen seaboard states. The Peace of Paris of 1783 had officially ended twenty years of sporadic attempts to restrain American settlement beyond the mountains. The Proclamation of 1763 and the Quebec Act of 1774 were history, replaced by boundaries that extended north to the Great Lakes, south to Spanish Florida, and west to the Mississippi River. Even the areas won by western militia in the Revolution paled by comparison to the treaty bounds.

As the possibility of acquiring the vast western lands from England had become more apparent during the treaty negotiations, such "landless" states as Maryland, whose colonial charters

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<sup>1</sup> The story of the deliberations of Congress in this era is told in detail in Edmund C. Burnett, *The Continental Congress* (New York, 1941), 613-32.



THE VARIOUS PROPOSALS FOR ORGANIZING THE WESTERN TERRITORY CULMINATED IN THE ORDINANCE OF 1784, WHICH ESTABLISHED A GRID OF STATES, EACH COMPRISING—WITH A FEW EXCEPTIONS—TWO DEGREES OF LATITUDE, BEGINNING AT 45°. THE GRID WAS TO APPLY “AS NEARLY” AS THE CESSIONS BY THE STATES TO CONGRESS WOULD PERMIT.

Reproduced from Lester J. Cappon, *et al.*, *Atlas of Early American History: The Revolutionary Era, 1760-1790* (Princeton, N.J.: Princeton University Press, for The Newberry Library and the Institute of Early American History and Culture, 1976), Maps, p. 60. Reprinted by permission of Princeton University Press.

and grants served to fix their western borders, feared they would not be able to participate in the development and exploitation of the new lands. All began to pressure the “landed” states to cede their western claims to a common central authority. Maryland’s long delay in ratifying the Articles of Confederation was the most visible, but hardly the only, tactic employed. The pressure produced results. One by one the “landed” states began to cede much of their western claims. New York led the way with a 1781 cession, Virginia had confirmed earlier promises with its 1784 action, and Massachusetts joined in 1785 while the report of Grayson’s committee was being debated. Others, beginning with Connecticut in 1786, soon followed.

Historians are quick to point out that neither the diplomatic nor the political relinquishment of western lands was total.<sup>2</sup> Britain was already using alleged American violations of the peace treaty to justify maintaining a military presence south of the Great Lakes—a presence that helped the British to retain substantial influence among several northwestern Indian tribes. Most of the “landed” states were holding back portions of their western lands. Virginia, for example, limited its cession to lands north of the Ohio River—and even there reserved large military bounty lands along the Scioto River as well as the smaller Clark grant near the Falls of the Ohio. Despite each of these qualifications, however, the lands under congressional authority remained large and served as the impetus for substantial pressure for land legislation.

The host of potential western settlers and entrepreneurs that had developed over the quarter century from 1760 to 1785 generated part of the demand for the sale of the western lands, but much came from within Congress itself. Denied taxing authority by the Articles of Confederation, and unsuccessful in periodic attempts to secure a tariff (or impost) amendment, the Congress was regularly strapped for the funds to service the Continental debt or to meet other expenses. Little wonder that the possibility of profit from land sales was enticing to many congressmen or that the ordinance proposed by Grayson moved quickly to passage. Grayson’s committee reported on April 12, 1785, and debate began on April 14. The lack of a quorum, not unusual to that body, delayed a second reading until May 5 and postponed the final consideration and vote until May 20 when a final compromise measure passed unanimously.

The text of the Land Ordinance of 1785 fills a little over six pages in Clarence E. Carter’s *Territorial Papers*,<sup>3</sup> a brief length for a document of such long-term significance. The principal feature of the act arranged for the division of the “western territory”—after purchase from the Indian inhabitants—into townships “six

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<sup>2</sup> Early studies of land policy were often descriptive accounts of laws, treaties, and administrative rules that reveal a detailed acquaintance with the text of the documents. See, for example, Shosuke Sato, *History of the Land Question in the United States (Johns Hopkins University Studies in Historical and Political Science, Series IV, Numbers 7-9; Baltimore, 1886)*; Payson J. Treat, *The National Land System, 1785-1820* (New York, 1910); and Benjamin H. Hibbard, *A History of the Public Land Policies* (New York, 1924).

<sup>3</sup> Clarence Edwin Carter, ed., *The Territorial Papers of the United States. Volume II, The Territory Northwest of the River Ohio, 1787-1803* (Washington, D.C., 1934), 12-18.

miles square, by lines running due north and south and others crossing these at right angles . . . .” The work was to be done by surveyors, one from each state, under the supervision of the geographer of the United States and was to begin “on the river Ohio at a point that shall be found to be due north from the western termination of a line which has been run as the southern boundary of the state of Pennsylvania . . . .”

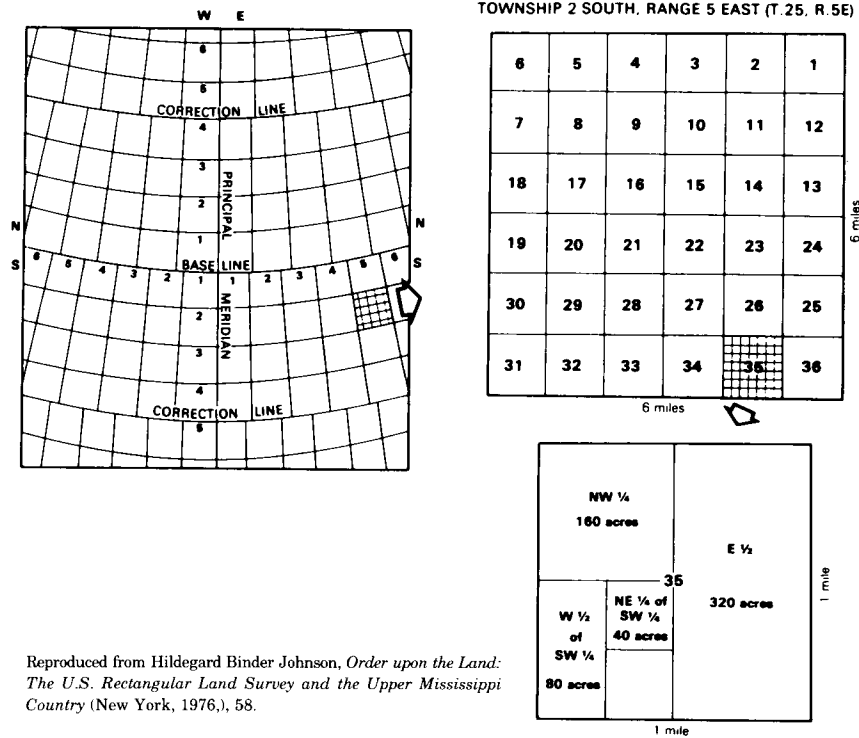
Seven ranges of townships were to be surveyed initially, with each township to be composed of thirty-six mile-square sections of 640 acres each. Detailed rules set forth the duties of the surveyors, particularly for the record-keeping that would permit government sale after the survey was completed. Half the townships, on an alternating basis, were to be sold entire; the other half were to be offered by section lot. Four sections per township (as well as certain mineral lands) were reserved for the United States; one more, section 16, was reserved “for the maintenance of public schools within the said township . . . .” Sales would be conducted by public auction. A minimum price of one dollar per acre, in specie or equivalent market value in loan office certificates, was established, along with the text of title deeds and the detailed methods of sale and collection. Pre-existing titles, of both Virginia’s claims and several Christian Indian towns, were acknowledged, as were the rights of certain veterans who had received wartime promises of land from Congress.

The brevity of the Ordinance of 1785 has not meant that the far-reaching consequences—and origins—of its provisions have been overlooked. Well before the current bicentennial of the act, the language of its text drew historians of the New West to search for the motives and identities of its authors. In the early part of the twentieth century the name of Thomas Jefferson attracted special attention. Jefferson had chaired the committee that had drafted the unsuccessful 1784 ordinance, and the Virginian’s lifelong interest in the West made him a logical focus for study. Many of the key ideas of the 1785 law could be found, in Jefferson’s own handwriting, in the 1784 draft, including the plan for rectangular townships and the quest for an orderly sales process. Thus, even though Jefferson had gone on to his diplomatic appointment in France in 1785, it seemed possible to credit him with a vital role in developing the system.<sup>4</sup>

The image of a central role for Jefferson began to fade during the decades of the 1920s and 1930s as scholars directed greater

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<sup>4</sup> See, for example, Payson J. Treat, “Origin of the National Land System Under the Confederation,” *Annual Report of the American Historical Association for the Year 1905* (2 vols., Washington, D.C., 1905), I, 231-39.



Reproduced from Hildegard Binder Johnson, *Order upon the Land: The U.S. Rectangular Land Survey and the Upper Mississippi Country* (New York, 1976.), 58.

THE U.S. RECTANGULAR SURVEY SYSTEM. AFTER 1796 EACH TOWNSHIP WAS NUMBERED WITH REFERENCE TO A BASELINE AND PRINCIPAL MERIDIAN AND SUBDIVIDED INTO 36 SECTIONS, ALWAYS NUMBERED AS SHOWN. THE ORDINANCE OF 1785 DID NOT SPECIFY THE SEQUENCE OF NUMBERING TO BE USED FOR THE SECTIONS; EIGHT VARIATIONS WERE POSSIBLE.

attention to records of Congress. In particular, Edmund C. Burnett's monumental project with the letters of congressmen elicited a new appreciation of the complexity of that body.<sup>5</sup> Three inter-related themes affecting decisions on the western lands question as well as other issues soon emerged: an enlarged role of sectional interests, a heightened concern for economic motivations, and an expanded list of possible sources of ideas for western land policy. Each helped to relegate Jefferson to the role of a single,

<sup>5</sup> Edmund C. Burnett, ed., *Letters of Members of the Continental Congress* (8 vols., Washington, D.C., 1921-1936).

albeit influential, delegate in a much more elaborate process. The correspondence of Grayson, chairman of the 1785 committee, was central to this reinterpretation. Grayson was clear in his view of sectional rivalry: "I think there has been enough said and wrote about it as would fill forty Volumes . . . so difficult is it to form any system . . . where the interests of the component parts are suppos'd to be so different." In particular he noted the need to "accommodate both the Eastern and Southern States,"<sup>6</sup> and he later remarked, as a Virginian, about "the Eastern people being amazingly attached to their own customs, and unreasonably anxious to have every thing regulated according to their own pleasure."<sup>7</sup>

The southern and eastern sectional differences noted by Grayson included alternative views of land development in the two regions. The eastern (or New England) states accorded a central role to the towns within their borders and normally used the township as the vehicle through which western expansion was set in motion. As Grayson stated, "the idea of a township with the temptation of a support for religion and education, holds forth an inducement for neighborhoods of the same religious sentiments to confederate for the purpose of purchasing and settling together . . ." Southerners, on the other hand, preferred to emphasize the separate farm or plantation site, or "the idea of indiscriminate locations and settlements . . ."<sup>8</sup> Each region also had its own type of survey and sale techniques. Under the New England system, clear boundaries, usually in the form of straight lines and right angles, normally preceded sale and settlement. Under the southern system, land was purchased under warrants that merely specified acres and general locations. Survey, if any, usually followed the occupation of an attractive location of the appropriate size. This procedure often meant an initial southern purchase less extensive than a full township. Because New England township organizers ususally resold land in smaller and relatively equal portions, the final result, however, was often a larger holding by a southern settler.

Viewed in these terms, the Ordinance of 1785 was heavily influenced by New England precedents. Apart from the concession that alternating townships would be sold by section, the essential features were eastern: townships, linear boundaries, advance surveys, and even land to support community schools.

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<sup>6</sup> William Grayson to Timothy Pickering, April 27, 1785, in *ibid.*, VIII, 106.

<sup>7</sup> Grayson to James Madison, May 1, 1785, in *ibid.*, 109-10.

<sup>8</sup> Grayson to George Washington, April 15, 1785, in *ibid.*, 95.



**AERIAL PHOTOGRAPH OF AN AREA IN NORTHWESTERN OHIO SUBDIVIDED IN THE MANNER OF THE UNITED STATES LAND SURVEY SYSTEM. The black crosses indicate a quarter section ( $\frac{1}{2} \times \frac{1}{2}$  mile).**



**AERIAL PHOTOGRAPH OF AN AREA IN THE VIRGINIA MILITARY DISTRICT OF OHIO SUBDIVIDED IN AN UNSYSTEMATIC MANNER.**

Reproduced from Norman J.W. Thrower, *Original Survey and Land Subdivision: A Comparative Study of the Form and Effect of Contrasting Cadastral Surveys* (Chicago, 1966), opposite 1. Both maps are from the Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C., and both have a uniform scale.

Often forgotten is the fact the Congress almost added a further provision to designate one section per township for the support of a local church. With seven states needed to approve the idea, the vote was five yea, two nay, and two divided of the nine states voting.<sup>9</sup>

Important as such regionalism was in determining the final form of the ordinance, it was closely allied to other, economic, considerations. Again Grayson set the tone when he noted: "Some gentlemen looked upon it as a matter of revenue only" and voiced the concern that land sales might depopulate the eastern seaboard or cause eastern land values to depreciate. Others clearly feared the reverse through the effect of "speculators and ingrossers" who would "have the effects of injuring the poorer class of people, or of establishing monopolies . . ." Grayson himself was more impressed by the fact "that the Eastern States, where lands are more equally divided than in any other part of the Continent" were generally settled in the manner proposed.<sup>10</sup> Yet the conflict of settler and speculator, found on so many frontiers in American history, had still made itself heard for all who were interested in economic factions and motives.

Given the considerations suggested in the correspondence of members of the Confederation Congress, a broadened search for authorship of the Ordinance of 1785 was clearly in order, and several candidates quickly joined the two Virginians who had chaired the 1784 and 1785 committees. The New England features pointed to the influence of a member from that region and frequently focused attention on Rufus King, most vocal of the eastern congressmen. The stress upon survey and auction technique suggested a spokesman familiar with sales and marketing and brought forth such names as the Philadelphia merchant and pamphleteer Pelatiah Webster.<sup>11</sup> Perhaps the most interesting discovery was North Carolina's Hugh Williamson, who wrote to Governor Alexander Martin of that state about the 1784 draft ordinance. "The plan for laying off and settling the Western Territory you will find on the *Journals* . . . However as I happen to have suggested the plan to the Committee it is more than probable that I have parental prejudice in its favour. It has at least the merit of being original."<sup>12</sup> There was of course nothing inconsistent with north-

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<sup>9</sup> Treat, *National Land System*, 36.

<sup>10</sup> Grayson to George Washington, April 15, 1785, in Burnett, *Letters*, VIII, 95-97.

<sup>11</sup> A good recent treatment of these sources is Norman J.W. Thrower, *Original Survey and Land Subdivision* . . . (Chicago, 1966).

<sup>12</sup> Hugh Williamson to Alexander Martin, July 5, 1784, in Burnett, *Letters*, VII, 563-64.



ern delegates of 1785 adding their ideas to a more southern-oriented 1784 act, and writers have noted the differences of the two bills—particularly in the shift from warrants to advance surveys. One fact, however, seems well established: the Ordinance of 1785 was much more than the inspiration of a single individual.

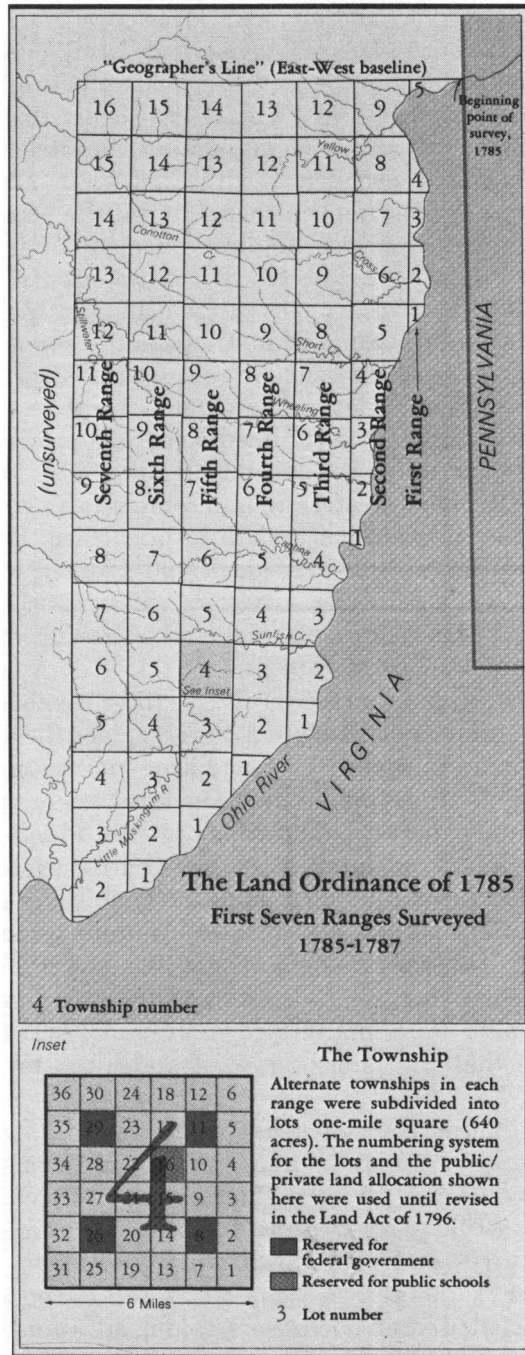
The immediate consequences of the land ordinance have also been of interest to historians, although it quickly became apparent that those consequences were less momentous in the short run than one might have expected. The initial area of the survey was limited to the seven ranges of townships in the southeast corner of what later became Ohio. Close to the supply center of Pittsburgh, and easily accessible from the Ohio River, the area's greatest appeal probably lay in the comparative absence of hostile Indian activity. Although government agents, supported by small western army garrisons, had been struggling, with limited success, to bring the northwestern Indian conflict to an end for some time, a number of tribesmen remained unpacified. Even in the Seven Ranges, survey was periodically interrupted when tribal leaders refused to assure the surveyors' safety or when Colonel Josiah Harmar was required to make other uses of the handful of troops at nearby Fort McIntosh.

Thomas Hutchins, a career military officer who had accepted the post of geographer of the United States, guided the first survey of the western lands. Aided by a fluctuating number of surveyors from the various states, he needed over three years to complete both survey and paperwork. Hutchins began in 1785 by drawing the East and West Line (later called the Geographer's Line in his honor) westward from the junction of the Ohio River and Pennsylvania's western border. A year later his group completed survey of the first four ranges south of that line, and in his absence in 1787 the surveyors finished the last three. The notes, plats, and general plan were finally filed in July of 1788. The Seven Ranges were the only lands surveyed under the terms of the Ordinance of 1785.<sup>13</sup>

Sales of land in the Seven Ranges proved disappointing. A later Confederation Congress dropped the original plan for land sales in the various states as outlined by the Ordinance of 1785, and the only actual sales were held in New York in 1787. Just over 100,000 acres, and no full townships, were sold for \$176,090. About a third of that acreage (and about half of the total sales value) was forfeited when purchasers, taking advantage of a 1787

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<sup>13</sup> William D. Pattison, "The Survey of the Seven Ranges," *Ohio Historical Quarterly*, LXVII (April, 1959), 115-40.



Reproduced from Lester J. Cappon, et al., *Atlas of Early American History: The Revolutionary Era, 1760-1790* (Princeton, N.J.: Princeton University Press, for The Newberry Library and the Institute of Early American History and Culture, 1976), Maps, p. 60. Reprinted by permission of Princeton University Press.

credit provision that allowed one third down and two thirds in three months, missed their second payment.

Commentators at the time offered a variety of reasons for the poor land sales. Explanations ranged from the quality of the rugged land to the remoteness of the sale site from the western settler. The primary problems, however, were most likely the continued Indian menace and the alternative opportunities created when Congress decided to make several large land grants in the area. Much of the valley north of the Ohio was sold on generous terms to the Ohio Company, the Scioto Company, and the Symmes Purchase, signaling at least a temporary abandonment of the 1785 system. It would only be with the land law of 1796, under a new central government, that the Ordinance of 1785 would begin to serve as a model for western surveys and sales.

But a model it became. Later legislatures would debate many specific features of the 1785 design: minimum price, minimum acreage to be sold, credit features, preemption rights, even the method of numbering sections within townships. Yet the basic decisions for rectangular survey in advance of sale and for clear title remained the rule for over a century.<sup>14</sup> Geographers are quick to point out that the resulting face of the western landscape, with its distinctive checkerboard effect, is a uniquely American feature—and the term “section” has achieved international usage as a description of American land use.

The long-range success of the Ordinance of 1785 has encouraged further inquiry into its origins in recent years, although less now as a matter of specific authorship than as a search for the broader climate of opinion that made general acceptance of the system possible. Some have looked far back into the Roman past, noting both the ancient emphasis upon rectangular survey and the new American republic’s fascination with Roman republican models. Others have sought the roots of the township in the medieval English hundred and the pressures of the enclosure movement. Still others judged significant the era’s streak of utopianism, ranging from William Penn’s street plan for Philadelphia to the new communities that found a congenial home on the moving frontier.<sup>15</sup> Those historians who have looked closer to the time of the actual passage of the ordinance have emphasized particularly the questions arising from military bounty lands.

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<sup>14</sup> A particularly useful study, stressing the administrative dimension of the system, is Malcolm J. Rohrbough, *The Land Office Business: The Settlement and Administration of American Public Lands, 1789-1837* (New York, 1966).

<sup>15</sup> Hildegard Binder Johnson, *Order Upon the Land: The U.S. Rectangular Land Survey and the Upper Mississippi Country* (New York, 1976), 21-49.

Revolutionary War recruits found the promise of a postwar grant of land an attractive alternative to the payments in depreciated paper that were offered as enlistment bounties. Often paid in the form of warrants that could be converted after the war to a western land claim, the bounties had clearly been a major factor in forcing quick political action on the western question. Generated partly by claims of the actual bounty holders, the pressure to settle the western lands issue had been sharply reinforced by the claims of the "landless" states for a national presence in the West and given particular shape by the need to consider the role of the speculators who were making a market in the often-depreciated warrants. It is little wonder that an original provision of the ordinance (a provision repealed only in 1788) gave certain priority to bounty claimants. Similar legislative experiences in several states before 1785, particularly in the North, had also led to laws and actual surveys that recent study suggests provided strong precedent for the cadastral system of 1785.<sup>16</sup>

Historical geographers have also pointed out that the final form of the survey of the Seven Ranges might well be rooted in surveying techniques of the day. Any attempt to impose a straight surveyor's line upon the curved surface of the earth imposed a challenge to the eighteenth century, even with such precedents as the excellent survey of Pennsylvania's southern border to draw upon. The key tool used by Hutchins and his surveyors was a circumferentor, a simple compass fitted with sight vanes and mounted upon a ball and socket that fitted upon a "Jacob's staff" or upon a tripod. Although originally required to use a true meridian, the surveyors were allowed in practice to use simple compass readings to set their lines. The result was a close approximation, but only an approximation, of the precision suggested in the ordinance. Survey technique, like land law itself, needed to be refined.<sup>17</sup>

Viewed in the context of its era, the Land Ordinance of 1785 thus emerges as a complex and many-faceted piece of legislation. Its origins reflect both the complicated regional factionalism of the Confederation era and the climate of enlightened rationalism and history within which its authors moved. The law's immediate implementation calls attention to a small corner of southeastern Ohio and to a few New York auctions; yet, its long-range impli-

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<sup>16</sup> The most useful study is Rudolf Freund, "Military Bounty Lands and the Origins of the Public Domain," *Agricultural History*, XX (January, 1946), 8-18.

<sup>17</sup> Pattison, "Survey of the Seven Ranges," 134-36.

cations encompass many of the key features of the great transformation of America's western landscape in the last two centuries. The Ordinance of 1785 may not have merited great attention in its own time, but its consequences continue to command attention today.