"A Freehold Estate Therein": The Ordinance of 1787 and the Public Domain

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The text for the relationship between the citizens of the Northwest Territory and the public domain was set by Sir William Blackstone. "There is nothing which so generally strikes the imagination and engages the affections of mankind," he wrote in his *Commentaries*, "as the right of property; or that sole and despotic dominion which one man claims and exercises over the external things of the world, to the total exclusion of the right of any other individual in the universe." Blackstone and later others accepted the idea that a "set of words upon parchment" should "convey dominion on land."[1] For the first Americans it did, and it still does.

From the opening of the seventeenth century to the middle of the nineteenth, land was a central theme in American life. For these two-and-one-half centuries, individuals and families in the colonies and later in the independent American nation sought to acquire it; investors (or speculators if you prefer) capitalized on its scarcity to make fortunes; society's values everywhere reflected its influence. Land was simultaneously a commodity and a value system. As a commodity it was symbolized by the search of generation after generation for a "freehold estate," the tangible form of permanent wealth that might be willed to subsequent generations, a universally acknowledged symbol in most communities of achievement and permanence. Land as value system meant a rural world in which land and land ownership were the dominant economic, social, and political values to which all aspired and in which ownership of land became a bench mark of status, whether in the colonies or, after 1776, in the new American nation.

From the beginning of settlement in the New World land was a multifaceted, complex business—as befits its significance. For over

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[1] Quoted in Vernon Carstensen, ed., *The Public Lands: Studies in the History of the Public Domain* (Madison, 1963), xiii.

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one hundred fifty years and across half a continent, politicians, military leaders, and bureaucrats in Whitehall established institutional forms to give structure and direction to the search for land and to govern its distribution: Indian treaties to extinguish the title of the original inhabitants; crown grants of land to individual court favorites or stock companies; activities by speculators and people of influence in the several colonies; acts and laws by Parliament to regulate land distribution; and numerous court decisions on the terms and circumstances under which land in the colonies might be acquired and sold.

In 1776 the new independent American nation took over many of these same forms, initially at least with the substantial confusion attending a revolution and the uncertainty associated with inexperience. Within this new proprietorship and responsibility the Ordinance of 1787, in conjunction with the Ordinance of 1785, represented a significant bench mark in the attempt of those who framed policy for the nation to affirm the importance of land in society and to establish the principles that would govern its acquisition by the government and its distribution to the citizens of the Republic. The Ordinance of 1787 also established a new framework of government for the West that reflected much about the influence of land in the colonial world.[2]

It is this old colonial world that first captures attention, for it provides a context within which to understand the significance and scope of the provisions of the Northwest Ordinance for government and for land distribution west of the mountains. What the Congress and its leaders did in the West reflected the experiences east of the mountains. The first Virginia colony brought together many of the features that would become associated with land in its many dimensions: a large stock company created for profit; the transition from corporate to individual land ownership; energetic pursuit of freehold estates. The results of these experiences were a dispersed, rural society. The development of tobacco culture as a commercial crop in Virginia and its rapid spread created a world with growing class distinctions based on land ownership that within two short generations had intensified the rural nature of this world and agrarian values. And these characteristics intensified with the addition of African slave labor. At the same time, stretching toward the West on every hand lay a forested expanse of unclaimed land to which the landless might have recourse in order to realize their own dreams of a freehold estate.[3]

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[2] The texts of the two ordinances with extensive editorial notes are in Clarence E. Carter, ed., *Territorial Papers of the United States*: Vol. II, *The Territory Northwest of the River Ohio, 1787–1803* (Washington, D.C., 1934), 12-18, 39-50.

[3] Charles S. Sydnor discusses the significance of land in the life of Colonial Virginia in *Gentlemen Freeholders: Political Practices in Washington's Virginia* (Chapel Hill, N.C., 1952).

The Virginia experience provided a basis of comparison for the people who followed. The first settlers of New England, who arrived soon after the Virginians, came from a cohesive group in English society, one with its own values and directions; but it, too, rapidly became a world associated with the possession of land. A community that spoke of itself as "a city on a hill" soon evolved into a series of villages, moving out in ever widening concentric circles into the wilderness. Land was the triggering impulse to settlement and, soon, to social and economic influence. While some land was held in common, substantial portions were parcelled out to the village families, in free tenure, as personal property, without obligations of continuing payment to a landlord and with no quit rents.

The distribution of lands in the early New England colonies was based on a desire for continuing community. The difficulty lay in the mechanisms that awarded some families more land than others and in the finite amount of available land. Eventually it was all given out. The solution was the founding of a new town on unclaimed—Indian claims were not considered real claims—lands, where the process of distribution could be repeated with different beneficiaries. During the last years of the seventeenth century the authority of Puritan leaders to control the acquisition and distribution of land gradually eroded. Lands in the Puritan domain became an investment opportunity as they had become in other colonies.[4]

Other systems of land allocation emerged in other colonies: the distribution of large tracts of land to favorites, a system that prevailed along the Hudson and Mohawk rivers where millions of acres of land were granted to men of influence; grants of princely domains to court favorites in the Carolinas, where speculators and settlers alike tried to emulate the Virginia model, and in some cases succeeded. Pennsylvania revealed still another kind of land policy in shaping a society. The proprietor, William Penn, decided to distribute lands widely and cheaply with a small annual quit rent. Thousands, eventually hundreds of thousands, accepted his offer and that of his heirs, although few paid the annual rent. The Penns wanted compact settlements, and they believed that their generous terms for distribution of land would allow them to set the settlement patterns of the colony. As a practical matter, the regulations were impossible to enforce and soon ignored.[5]

By the mid-eighteenth century, then, land had helped to shape several societies in the British colonies in North America, and, as

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[4] Two useful studies for New England are Sumner Chilton Powell, *Puritan Village: The Formation of a New England Town* (Middletown, Conn., 1963) for the early period and Charles Grant, *Democracy in the Connecticut Frontier Town of Kent* (New York, 1961) for the later.

[5] Gary B. Nash, *Red, White, and Black: The Peoples of Early America* (Englewood Cliffs, N.J., 1974). Chapter 6 describes land questions in early Pennsylvania.

a corollary, land speculation was big business involving prominent public figures in England and in the colonies at all levels of government. Much economic activity revolved around agriculture, and much large-scale investment was associated with lands. Furthermore, lands had become an important measure of social standing and political influence, for by tradition large land owning families were the most prominent socially and only those with landed estates could vote and hold office in most of the colonies.

Throughout the colonies—on a lower level, far removed from the schemes of large landed entrepreneurs—there was another group with its ambitions linked to land: much of colonial life continued to revolve around the search for a "freehold estate." This was still the symbol of independence and standing in colonial life, the ultimate reward for those who had left the closed land system of the Old World for the universal opportunities for land ownership in the New. It was a search pursued from the stony hills of the New England upcountry to the tidal marshes of South Carolina. Indeed, by the middle of the eighteenth century this unending search was one of the common qualities that bound together colonies otherwise separated by much increasing diversity. The historian Wesley Frank Craven wrote of this world and this theme, "Surely, if there was one thing which bound the colonists together in a common experience, it was the necessity they found, most of them at least, to dig their livelihood out of the soil."[6]

Mixed in with the continuing search for lands was the astonishing growth of the colonies in the generation from 1730 to 1760. Accompanying this growth was an enlarged perception of the scarcity of land and the parallel rise in price and pressure to open up new land. For the first time some men began to talk and others scheme about opening the lands west of the Appalachians. With the higher prices more families settled illegally on lands—or squatted, as the term came to be used. And with growing illegal settlement came clashes with authorities. The argument appeared that these pioneer families by their presence risked their lives to provide a buffer between the established settlements and the hostile Indian tribes. For the squatters the result was a conflict with authorities and owners mixed with demands for compensation for their labors and special consideration in purchasing their lands at a favorable rate. These were all issues and attitudes that would emerge in vivid form in the Ohio Valley in the 1780s and across most of the trans-Appalachian frontier in the first half of the nineteenth century.[7]

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[6] Wesley Frank Craven, *Diversity and Unity—Two Themes in American History* (Princeton, N.J., 1964), 6.

[7] On the conflicts in the Ohio Valley see Malcolm J. Rohrbough, *The Land Office Business: The Settlement and Administration of American Public Lands, 1789–1837* (New York, 1968), 15-16.

The American Revolution did not represent a dramatic shift in the sense of priorities, for the changes that emerged did not lessen the importance of land within the several American societies but simply recast the rules for its acquisition and exploitation. The principles of the Revolution, no easy thing to define, may be summarized with respect to land in a negative way: that it was no crusade against private property. In its outbursts against those who were charged with having unfairly monopolized lands (such as the Penns) or in the urge to confiscate the property of loyalists, the revolutionaries confirmed the importance of land in American life, in this case, the life of the new, independent American nation. Presumably, the close of the Revolution simply set the stage for a resumption of the search for a "freehold estate," whether on a large scale by planters or speculators or on a more modest scale by individual pioneer families across the breadth of the colonies.

Even before the close of the war, the Congress of the Confederation had begun a long struggle to come to terms with the issues dividing the several states, of which one of the most prominent and bitter was that of the western lands. The legacy of colonial charters threatened to divide the states into two camps: those with great landed estates in the interior of the continent as a legacy of their charters, and those without such landed riches. The latter found themselves imprisoned on one side by the Atlantic Ocean and on the other by inflexible boundaries in such a way as to restrict their expansion and so, in a nation of landowners, their growth. In their own minds this restriction condemned them forever to second class status as partners in a shaky union of supposedly equal states.

The Congress of the Confederation moved to allay these concerns and give the nation a princely legacy by providing for the cession of these western claims. The resolution of October 10, 1780, laid out three principles: first, that the "unappropriated lands" of the states should be "ceded or relinquished"; second, that such cessions should be used "for the common benefit of the United States"; third, that the lands so settled shall be "formed into distinct republican states, which shall become members of the federal union, and have the same rights of sovereignty, freedom and independence, as the other states."[8]

Along with the struggle to establish a public domain, which proceeded by fits and starts until the cession of Virginia's claims in 1784 provided a crowning success, the Confederation Congress had to consider several other influences in dealing with the West in the 1780s. Some of these were long standing; others more immediate.

One of the long-standing issues was the attitude of responsible officials toward frontier people. It was assumed by those who made

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[8] *Journals of the Continental Congress*, XVIII, 1780, p. 915.

policy that the first inhabitants of the distant empire west of the mountains would be a peculiar breed of semicivilized, barbarous individuals and families who had long pioneered in the remote reaches of the forests. During the War of the Revolution the physical presence and fighting services of these families were welcomed as buffers against the Indian menace and the incursions of the Catholic French; in peace time their reputations were of a much different kind. Then they were known for their irresponsibility in economic matters, especially for fleeing debts and ignoring tax agents, for defying the collector of quit rents, for trespassing on private lands without payment or apology, for collectively defying the law and the courts, for disdaining the church and other "civilizing" influences. In the eyes of responsible, sober-minded observers, these people were barbarous and uncivilized. The most common analogy was to the Indian tribes with whom they shared the forest domain.

It was these frontier people who formed the cast of characters in Conrad Richter's novel, *The Trees*. Richter's characters called themselves "woodsies," and their presence and character are important, for the Ordinance of 1787 had to come to terms with them. Of course, there would be appointed officials with great authority; but these frontier people would form the basis of the society that would emerge in the Old Northwest, and provision must be made to bring them by stages along the road to civilization and responsibility. And presumably by the time of statehood this first generation of frontier people would have recognized and come to respect the law and order in society, or alternatively, they would have been replaced by subsequent generations who would have these desirable characteristics.

To the character of the people in the West must be added the need to make provision for the orderly disposal of the new public domain and to do it before the pressure of population across the mountains became so large that it could not be controlled and directed. George Washington wrote of this rush to the West in 1784: "The spirit for emigration is great, people have got impatient, and tho' you cannot stop the road, it is yet in your power to mark the way; a little while and you will not be able to do either." Clashes had taken place between squatters on the northern side of the Ohio River and a detachment of the United States Army sent to remove them.[9]

Clearly the representatives of the Congress had to come to terms with the questions of land and government; the two were

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[9] George Washington to Richard Henry Lee, December 14, 1784, in *The Writings of George Washington . . .*, ed. John C. Fitzpatrick (39 vols., Washington, D.C., 1933–1944), XXVIII, 12.

inexorably intertwined, for land would lead to immigration and immigration demanded a form of government. Thus, the Congress enacted two ordinances, the Ordinance of 1785 for the disposal of the public domain and the Ordinance of 1787, "An Ordinance for the Government of the Territory of the United States, Northwest-West of the River Ohio." Richard Henry Lee announced the adoption of the Northwest Ordinance to George Washington with an explicit reference to the connection between the two when he wrote that the Ordinance was enacted "preparatory to the sale of the lands. It seemed necessary, for the security of property among uninformed, and perhaps licentious people as the greater part of those who go to there are, that a strong toned government should exist, and the rights of property be clearly defined."[10]

There was a third consideration. The economic condition of the new, independent nation was weak. The states were struggling under substantial debts and burdened in many places by the spreading disease of paper money. The national government was without funds and without prospects except for the asset of the new public domain. This weakened financial condition helped to shape the time of the passage of the ordinances. Suffice it to say that the Congress of the Confederation had to keep two separate objects in mind: orderly provisions must be made for the sale of these public lands in order to realize a substantial revenue from them; and the public domain should be used to help shape a responsible and orderly society.[11]

What the Congress of the Confederation proposed in the Northwest Ordinance was a colonial system that raised awkward questions for a nation emerging from a colonial experience. But the colonial aspects of the system, e.g., the supreme authority of the governor and the weak and long-delayed voice of the elected legislature, were muted by a declaration of rights that preserved fundamental freedoms, including trial by jury, noninterference with religion, the right to bail, habeas corpus, and no cruel or unusual punishment. And finally, there was the ultimate prize: admission to the union of states on the basis of equality.[12]

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[10] Richard Henry Lee to George Washington, July 15, 1787, quoted in Paul Wallace Gates and Robert W. Swenson, *History of Public Land Law Development* (Washington, D.C., 1968), 72-73.

[11] Among the standard histories of the public domain are three volumes that represent the work of different generations: Thomas Donaldson, *The Public Domain: Its History with Statistics* (Washington, D.C., 1872); Roy M. Robbins, *Our Landed Heritage: The Public Domain, 1776–1936* (Princeton, N.J., 1942); and Gates and Swenson, *History of Public Land Law Development* (1968).

[12] The standard works on the territorial system are Jack Ericson Eblen, *The First and Second United States Empires: Governors and Territorial Government, 1784–1912* (Pittsburgh, 1968); John Porter Bloom, ed., *The American Territorial System* (Athens, Ohio, 1973); and several articles by Robert F. Berkhofer, Jr., especially "Jefferson, the Ordinance of 1784, and the Origins of the American Territorial System," *William and Mary Quarterly*, 3rd ser., XXIX (April, 1972), 231-62.

The specific provisions of the Northwest Ordinance relating to land and its distribution influenced the nature of the emerging western society and was in turn influenced by it. The first paragraph of the Ordinance was significant in this regard:

> Be it ordained by the authority aforesaid, that the estates both of resident and non resident proprietors in the said territory dying intestate shall descend to and be distributed among their children and the descendants of a deceased child in equal parts; the descendants of a deceased child or grand child to take the share of their deceased parent in equal parts among them; and where there shall be no children or descendants then in equal parts to the next of kin in equal degree—and among collaterals the children of a deceased brother or sister of the intestate shall have in equal parts among them their deceased parents share [& there shall in no case be a distinction between kindred of the whole & half blood] . . . .[13]

In this passage for "estate" read "land," for this was the most common article of property that might be willed to heirs. The Ordinance, even before enumerating the provisions of the government to be established (presumably its object), took up the question of the inheritance of estates. And what is the judgment? That the estates should be divided equally among all the children. The doctrine of primogeniture, the inheritance of the estate by the eldest in order to preserve the estate as a single economic unit, this legal and social device (and it was both) was ignored in favor of the doctrine of equality.

Next, the framers of the Ordinance enumerated the officials who would exercise almost dictatorial powers over the citizens of the new American empire—at least during the first formative years before any kind of popular representation. To the appointed governor went powers worthy of any British colonial administrator (whether in America, Australia, or India): to rule by decree; to serve as commander of the militia and appoint other militia officers up to and including the rank of colonel; to lay off counties and townships and appoint necessary officials; and to play a leading role (with three appointed judges) in selecting and publishing such laws as might fit the needs of the infant territory. And preceding this recitation of authority and responsibility was a statement of the governor's new position as landed aristocrat: "he shall reside in the district and have a free-hold estate therein, in one thousand acres of land while in the exercise of this office." For the secretary and the three territorial judges the freehold estate would be five hundred acres under the same terms and circumstances.[14]

The provisions for these landed estates were pointed reminders of the connection between a "freehold estate" and political and economic power. Here, as elsewhere in the American nation, land would symbolize the political, economic, and social standing of the

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[13] Carter, *Territorial Papers*, II, 39-40.
[14] *Ibid.*, 41.

estate owner; it would give the holder a vested interest in the life and property of the new western world, a landed estate to dilute the sense of an alien and arbitrary appointee arrived among the local citizens to command them in imperial fashion; it would provide a place where the governor could establish the kind of physical presence that would lend honor and authority to the office. And a thousand acres was a substantial estate in the view of the members of the Congress of the Confederation, albeit scarcely a pinpoint in the wilderness of the Territory Northwest of the Ohio.

Other congressional actions at about the same time suggest both confusion and ambivalence about the estates of the appointed officials of the Northwest Territory. While on the one hand Congress endowed territorial officials with landed estates of five hundred and one thousand acres, with the other it sold landed estates of one-and-one-half millions of acres to a corporate entity known as the Ohio Company of Associates, another one-and-one-half million to the Scioto Company, and a third sale of one million acres to a New Jersey entrepreneur named John Cleves Symmes. In taking such action the Congress intended to fulfill another desirable quality of the Northwest Territory, namely to use its landed resources to relieve the financial embarrassments of the national government. Thus, almost simultaneously, the Northwest Ordinance gave its territorial officials a landed estate, and the officials found their estates dwarfed by estates offered to giant land companies and individual land speculators.

The sale of large tracts to land companies raised attendant issues that related to land in the Territory Northwest of the Ohio. The judges who accepted judicial office in the Northwest Territory, Samuel Holden Parsons, James Mitchell Varnum, and John Cleves Symmes himself, had substantial connection with land companies, so much so that in conjunction with the secretary, Winthrop Sargent, the territory was really ruled by a landed oligarchy. An ironic twist of the relationship between political and judicial authority on the one hand and land on the other was that the governor, Arthur St. Clair, who was to become the symbol of authoritarian (even tyrannical) rule, was probably the only person of rank in the territory who was not interested in estate building. As a military man and public servant—he had served a term as president of the Congress of the Confederation—he thought himself above such pedestrian money-grubbing activities. It is curious that his model as public servant and military leader, General George Washington, was actively involved in land speculation for many years. Washington always thought of the West in the most practical terms: as a place to make a fortune in land. St. Clair had a large landed estate in western Pennsylvania that he maintained during his tenure as governor and to which he retired when removed in 1802.[15]

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[15] Rohrbough, *Land Office Business*, 21-22.

Other political and economic leaders in the Northwest Territory did not share St. Clair's indifference to land and landed estates. Whatever their views on representative government and on executive and judicial authority, the most prominent political figures in the territory were large landholders. Foremost among them was Thomas Worthington, late of Virginia, who would become the leader of the opposition faction. Even as Worthington and St. Clair clashed over issues of representation, republican values, economic development, and executive authority, Worthington's large landed estate would sharply contrast with the governor's spartan lifestyle.[16]

Another aspect of the Ordinance that relates to the public domain was the issue of property qualifications for officeholders and voters. The Ordinance laid out three stages from territory to statehood. In the first stage the appointed governor ruled by decree. In the second stage, when the district had five thousand free male inhabitants over the age of twenty-one (presumably a category to assess the militia under arms), then "free male inhabitants . . . [might] elect representatives from their counties or townships to represent them in the general assembly . . . ."[17]

The Ordinance next established specific requirements for participation in this political process, either as voter or as officeholder. The document read:

> provided that no person be eligible or qualified to act as a representative unless he shall have been a citizen of one of the United States three years and be a resident in the district or unless he shall have resided in the district three years and in either case shall likewise hold in his own right in fee simple two hundred acres of land within the same; provided also that a freehold in fifty acres of land in the district . . . shall be necessary to qualify a man as an elector of a representative.[18]

These requirements looked back to a widely held principle of the colonial period, namely, that only property holders should stand for office and exercise the franchise, and the commonly accepted form of property to establish eligibility for political participation in society was landed property.

The property requirement stamped the Northwest Ordinance as a traditional document, traditional in the sense that it perpetuated landed property requirements of the colonial period. Although the reasoning is not specific here, the drafters of the document might have been swayed by the widely held views of the irresponsible character of the western people, those barbarians and savages (men and women) who lived across the mountains in a state of nature.

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[16] On the political conflicts in the Territory Northwest of the Ohio see Andrew R. L. Cayton, *The Frontier Republic: Ideology and Politics in the Ohio Country, 1780–1825* (Kent, Ohio, 1986), chapter 4.

[17] Carter, *Territorial Papers*, II, 44.

[18] *Ibid.*, 44.

That people lived in such circumstances, without respect for laws or courts or property, was not a recommendation to exercise the vote.

The practical results of this property requirement were not clear, but such qualifications surely reduced the numbers eligible to exercise the franchise, perhaps by as many as half. And aside from the issue of whether the requirement was stringently enforced, there was always the question of how the prospective voter came into possession of a freehold estate of fifty acres and could prove possession in such a manner as to satisfy the law. In the Territory Northwest of the Ohio settlers who proposed to purchase land might do so from one of the three private land companies or from the national government under terms laid down in the Ordinance of 1785. Titles from land companies were uncertain. This was especially so in the case of Symmes, a kind and good-hearted man who nonetheless sold much land to which he did not have clear title. Congress eventually passed a law to redress some of his worst lapses.[19]

In the case of the federal government the effective operation of the Ordinance of 1785, delayed at best, required much additional tinkering before an orderly system evolved under which settlers might find their way to a convenient land office and make practical arrangements under easily understood rules that would bring them a clear title. And when Governor St. Clair finally permitted the territory to move to the second stage of government, he had to modify the fifty-acre freehold requirement, for many frontiersmen did not hold a clear title to their lands. In the end St. Clair permitted adult males with town lots or houses worth fifty acres of land to exercise the franchise, but he upheld the principle of the Ordinance that property and the franchise went hand in hand.[20]

Finally, there was the question of the powers of the district, territory, and state (admitted under the provisions of the Ordinance) over the public lands. The Ordinance was quite precise about this question. After declaring that the legislature of the district might levy and collect taxes, the text continued:

> The Legislatures of those districts, or new States, shall never interfere with the primary disposal of the Soil by the United States in Congress Assembled, nor with any regulations Congress may find necessary for securing the title in such soil to the bonâ fide purchasers. No tax shall be imposed on lands the property of the United States; and in no case shall non Resident proprietors be taxed higher than Residents.[21]

It was a significant statement that touched several areas. To begin with, new states would enter the Union without their unsold

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[19] Cayton, *Frontier Republic*, 61-63.

[20] Reginald Horsman, *The Frontier in the Formative Years, 1783–1815* (New York, 1970), 87-88.

[21] Carter, *Territorial Papers*, II, 47-48.

lands, which would remain the property of the federal government. Thus, new states had achieved a measure of political equality with the old under the terms of the Ordinance, but even with statehood they were still at the mercy of the national government in the disposal of their lands. In short, the new states lost the right to make vital decisions about what might be a substantial portion of their own landed territory, areas that they might have offered at a reduced price or simply given away in the interest of putting settlers on the lands. This provision was a reaffirmation of the idea accepted as national policy, namely, that the public lands were a great national resource the sale of which would alleviate present debts and future expenditures. It was an attitude that persisted until well after the Civil War. The provisions that prohibited the states and territories from taxing the public domain was a further statement of this policy, one that enriched the nation at the expense of the new territory or state. And, finally, the declaration that nonresident proprietors might be taxed at no higher rate than residents confirmed the public domain as an investment for distant entrepreneurs.

Taken together, these principles severely handicapped some of the first public land states such as Michigan and Arkansas where settlement was exceptionally slow because of their physical isolation off the routes of immigration and the greater attraction of public lands elsewhere. And this issue assumed something of a crisis proportion in the late nineteenth century, when the rise of the conservation movement led to the establishment in several western states of vast public reserves that could not be sold and, by thus restricting settlement and economic development, doomed these states to remain only partially settled. The modern antecedents of the hostility to this provision are alive in the "sage brush rebellion," a movement for the cession of the public land reserves to the states wherein they lie or, at the very least, the opening of these reserves for economic development.[22]

But these results lay in the future. In expectations and realities the Ordinance of 1787 (taken in conjunction with the Ordinance of 1785) opened opportunities for a "freehold estate" or economic opportunity to both settlers and speculators. Numerous families of this first generation of American independence pursued the "freehold estate" with the same intensity as had their parents and grandparents as the avenue to economic independence and social advantage. Later, their children would search for lands in Iowa and their grandchildren in Kansas and great-grandchildren in the lotteries of South Dakota in the twentieth century. The first expe-

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[22] Malcolm J. Rohrbough, *The Trans-Appalachian Frontier: People, Societies, and Institutions, 1775–1850* (New York, 1978), chapters 9, 11.

riences with land acquisition in the Territory Northwest of the Ohio offered a variety of terms and a wide range of settings. There were three land companies in the land business: the federal government, which merchandised lands in the Seven Ranges; the Connecticut Western Reserve in the far northeastern part of the territory; and the Virginia Military Tract in the central part of the territory stretching south to the Ohio. The Territory Northwest of the Ohio (later the state of Ohio) was a museum of schemes for land distribution. What the Northwest Ordinance gave to those settlers who wished to purchase was the assurance of a stable and orderly government, with townships and counties, set in the context of guarantees of certain fundamental rights such as habeas corpus and trial by jury. Finally, the provision for admission to the Union on the basis of equality meant that settlers would not be part of a permanent colonial system—although those who lived in the territories of New Mexico and Utah at the end of the nineteenth century could be pardoned for thinking their territorial status was a well-nigh permanent one.

To speculators the Ordinance offered assurances through legal institutions for the safety of their investment and the prospect of security and growth to the settlers who purchased from them. For the entrepreneurs the western country in 1787 must have seemed a golden opportunity. When the American government had made good its claims of sovereignty against the English and quieted Indian claims, the opportunities for judicious investment stretched forth on every hand. For this group the "freehold estate" was an opportunity to make a fortune through investment. The Ordinance was a mark of government support in their enterprises.

Beyond settlers and speculators a third group demands attention. The American Indian might have found in the Ordinance a firebell in the night (to borrow Thomas Jefferson's phrase), for this document represented a statement of cultural confidence that assumed that the Indians would be brushed aside. In the aftermath of the American Revolution the Native Americans now found themselves enmeshed in the world of American legal doctrines. True, the Ordinance declared in its third article:

> the utmost good faith shall always be observed towards the Indians; their land and property shall never be taken from them without their consent; and in their property, rights and liberty, they never shall be invaded or disturbed, unless in just and lawful wars authorised by Congress; but laws founded in justice and humanity shall from time to time be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.[23]

Yet the future outlined for them was a chilling one. The Ordinance was a blueprint for an American empire in the interior of the con-

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[23] Carter, *Territorial Papers*, II, 47.

tinent, a carpet of settlement and territories (later states) that would unroll from east to west. Indeed, the Ordinance was based on the premise of Anglo-American settlement in the interior of the continent. Whatever the pious declarations of the Ordinance, the assumptions were plainly laid out: it was that Americans would take the land and organize it according to the model described therein for the benefit of its citizens.

In looking forward from 1787 through the nineteenth century and into the twentieth at the relationship of the Northwest Ordinance to the public domain and the expansion of the American continental empire, two separate questions attract attention. The first is the influence of land and land titles in territories with substantial foreign antecedents. It is striking how many of these there are. For the first half of the nineteenth century Louisiana, Missouri, Michigan, and Florida can be counted, not to mention the residue of old French claims in Illinois and Indiana. It required years of work to sort out the validity of these foreign land grants, to balance justice against the clear examples of human greed, to try to bridge the confusion of different cultural and alien legal systems (in the case of the French and Spanish). In the Far West in the period after the Civil War, the territory of New Mexico was especially noteworthy for the systematic looting of its lands by public officials. This story is a reminder that the Ordinance became the law of the land for a variety of non-Anglo-American peoples, who had not read or who did not subscribe to the doctrines of Sir William Blackstone.[24]

In the final analysis the Northwest Ordinance established the ground rules for an American empire in the West. It was an empire based on land: land seized from the Indians, surveyed, and parcelled out to the citizens of the Republic, that they might learn responsibility through land ownership, that they might participate in the political process, that they might continue the search for a "freehold estate" that had occupied so much of their time since the opening of the seventeenth century.

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[24] Rohrbough, *Land Office Business*, 36-41, 161-68, 170.