

Chapter 8

The Early History of the Public Domain

During and following the period of the signing of the treaty of peace with Britain which ended the Revolutionary War, the vast territory beyond the Allegheny Mountains became the property of the federal government as then constituted under the Articles of Confederation. This development was the outcome of the disputes among the separate colonies as to ownership and jurisdiction over segments of the region extending from the Great Lakes to the neighborhood of the Gulf of Mexico. As already shown in the previous chapters, much of this region was unexplored and populated only by Indian tribes. But the "right" to it was bought dearly in blood and suffering by the colonists in their struggle against the French claim to occupation.

As some of the colonies had boundaries that did not abut any part of this region, they were unwilling to enter a union which thus cut them off from claims to a portion of this new territory. Appeasement came about only through the successive cessions of the claims of the various states in the Confederation to the national government. In this way, the public domain was created. It has proved to be a source of irritation, dispute, corruption, and even despair to the Republic for more than a century and a half. *Yet its distribution and development in this period form one of the most remarkable historical episodes in the story of civilized man.*

The Northwest Ordinance

The first project to dispose of a part of the public domain was an ordinance passed by the Continental Congress in 1785. Besides insti-

tuting a territorial government, it provided for the public sale of lands in the northwestern area (i.e., the region northwest of the Ohio River to the Great Lakes, ceded by Great Britain in the treaty of peace) in tracts not less than 640-acre lots at a minimum price of \$1.00 per acre, or in larger tracts at wholesale, if approved by the Congress. It was provided that no areas were to be patented until after they had been surveyed, and all surveys were to make provision for parallel ranges, townships, and sections. As soon as sufficient ranges were surveyed and the maps prepared, the land could be sold or otherwise disposed of by Congress. Despite the fact that the Congress desired to obtain sorely needed funds by disposal of the lands—its “embarrassment of riches”—comparatively little land was disposed of under the Ordinance of 1785. This was ascribed to the high minimum acreage set for individual sales. However, Congress in 1787 made two sales at wholesale in Ohio, one to the Ohio Company of one million acres, and another of approximately the same acreage to John Cleves Symmes and associates. The details of these transactions will be described later.

The Northwest Ordinance, as we know it, was amended by the Congress of the Confederation on July 13, 1787. In addition to providing for the government of the Northwest Territory under federal jurisdiction, it re-enacted the provisions for land disposal but discontinued the policy of sales in large tracts at wholesale. In 1796, however, the act was again amended by fixing the price of the land at \$2.00 per acre but left the provision of the minimum sale of a tract to 640 acres. As an offset to the increase in price, liberal credit terms were extended to purchasers.

This was an inducement to land speculators. However, sales to individuals were comparatively few, as 640 acres was too large to attract pioneer settlers, so in 1800 the minimum tract was reduced to 320 acres. As indicated in the accompanying table, the price of \$2.00 per acre was continued until 1820, when it was reduced to \$1.25 per acre. During the interval, however, Congress changed the credit terms (under which only one twentieth of the purchase price had to be paid immediately). Under a new payment plan, government bonds or specie only was acceptable and a partial-payment system adopted.

THE LAND ACTS COMPARED

	ORDINANCE OF	LAND ACTS OF	LAND ACT OF	LAND ACT OF	PRE-EMP- TION ACT OF	HOMESTEAD ACT OF
	1785	1796	1800	1820	1841	1862
Mini- mum allot- ments	640 acres to an indi- vidual	640-acre lots in al- ternate sec- tions	320 acres	80-acre lots	160 acres to an in- dividual	160 acres
Mini- mum price	\$1.00 an acre	\$2.00 an acre	\$2.00 an acre	\$1.25 an acre	\$1.25 an acre	Free, to ac- tual settlers. \$10.00 reg- istration fee
Terms of pay- ment	Cash or in debt certifi- cates re- duced to specie value	One twenti- eth of pur- chase price to be paid immediately	Payment in specie or government bonds. Partial pay- ments	Cash; i.e., specie or bank notes	Cash	Title to land given after five years' cultivation of land

By this time Congress had despaired of gaining a substantial amount of revenue from the sale of the public lands. Many speculators who bought on credit failed to complete their purchases, and settlers were slow in making payments. In many cases they pleaded for extensions or abatements. Land offices were lax in making collections, and the whole scheme of land disposal became a political "hot potato" to the Congress. Corruption and fraud swept into the system, and waste characterized the whole land policy. As stated by W. A. Phillips in his book, *Land, Labor and Law*, it is unfortunate that a broad foundation was not set up in the Northwest Ordinance to secure the soil for the tillers thereof and to prevent an aristocracy from being founded on land monopoly.

Under the system of land disposal as originally set up in the Northwest Ordinance, the land was divided into parallel ranges, in which townships, each six miles square, were comprised. The township (a plan borrowed from New England practice) was thus adopted as a unit of land survey. The very name "township" was expressive of the intention that these surveyed squares would become the basis for a self-governing communal life. Each township contained thirty-six sections of equal size—i.e., a square mile—and a quarter section (160 acres), in due time, came to be regarded as the standard or average for the extent of a single farm or homestead. The charge of \$1.25 an acre was sufficient to meet the costs of extinguishing the Indian title and of surveying the land, and to net the government substantial returns.

Despite the liberality of the terms of disposal, the sale of the public domain in the early period was relatively small. According to Dr. Adam Seybert,¹ no more than 121,540 acres had thus been sold prior to the act of May 10, 1800. These sales were made in the large cities; viz., 72,974 acres at public sale in New York City in 1787 for \$87,325 in debt certificates, 43,446 acres at public sale in Pittsburgh in 1796 for \$100,427, and 5,120 acres in Philadelphia in the same year at \$2.00 per acre.

One reason for the paucity of land sales was the slowness in making land surveys. Another reason was that Indian titles were not ex-

¹Adam Seybert, *Statistical Annals of the United States*, p. 362.

tinguished over a large part of the public domain. Then again, there were few generally accessible land offices, and these were not established until after 1800.

In the meantime, as surveys proceeded, land offices were set up at various localities within the regions where the public land was offered for sale. Settlers as well as speculators could make their selections and purchases at these land offices.

At the beginning of the nineteenth century, however, there was a considerable increase in public land sales. Seybert's figures show that the quantity of land sold under the system of land offices from July 1, 1800, to July 1, 1810, amounted to 3,386,000 acres, which produced \$7,062,000. Of this amount, \$4,888,000 was paid in specie or debt certificates, and the remainder was still due from purchasers.

Small as the proceeds from land sales were, they were sufficient to create political conflict. According to the early enactments, the sums received from public land sales were to be applied to the extinguishment of the national debt; but, as the older colonies, which became the original states, possessed their own public lands, the new states also desired to own and control the unsold public land within their respective boundaries. Thomas Jefferson, in his second inaugural address, in 1805, proposed a distribution of the public domain among the states and recommended that the proceeds of their sales be applied "to rivers, canals, roads, arts, manufacture, education and other great objects within each state." But Congress never got around to this idea. For decades thereafter, the disposal of the public lands was a subject of political controversy, second only to that of the slavery and tariff questions.

The plan of land disposal as adopted in this early period was undoubtedly fair and equitable. It was liberal, since its aim was to give easy access to landownership, and in conjunction with the early liberal immigration policy, it afforded opportunities to millions of European immigrants as well as native inhabitants to establish homesteads. It was undoubtedly responsible for the rapid settlement of newly acquired regions. But despite all this, there was "squatting" by settlers unable to pay for the land on the public domain, as well as unscrupulous specula-

tion, particularly as regards the favorable sites. "Squatter sovereignty" thus became the slogan of the western pioneers who were actual settlers, and "town-jobbing" by local and absentee purchasers became a national nuisance. But more about this later.

Sale of Land to the Ohio Company

As early as 1784, when the federal union of the colonies was still in the balance and its continued existence was doubtful, the Congress took up the question of disposing of western lands. Bids for large tracts were not wanting. In 1785, Nathaniel Sackett, in behalf of himself and associates, petitioned for a grant of land, the boundaries of which would now cover most of the present state of Ohio. Sackett offered no consideration "except an ear of Indian corn annually as rental, if demanded." He did, however make it a condition of the proposed grant that the land be settled and cultivated by those who obtained title to it. To prevent land-jobbing effectually, none of the settlers would be permitted to sell his land for a space of years.

But the Continental Congress was too heavily in debt to give away the land. No consideration, therefore, was given to Sackett's petition. In the meantime, a reverend gentleman from Massachusetts, Dr. Manasseh Cutler, had been pondering over a colonization scheme in the Ohio country.² He was desirous of providing the hard-pressed New England yeoman with better and cheaper lands and, incidentally, he may have had ideas of pecuniary gain. At any rate, in 1786, Cutler, together with Rufus Putnam and a few others, formed a colonization scheme which he called the Ohio Company of Associates. The capital of the company was fixed at \$1,000,000 in Continental debt certificates, and the shares in the project were publicly offered "for a consideration." It required a full year before one fourth of the proposed capital was subscribed, but Cutler thought the remainder could be readily obtained if Congress

²Manasseh Cutler was born at Killingly, Connecticut, on May 28, 1742, and graduated from Yale College in 1765. He then studied law and began to practice his profession at Martha's Vineyard, but soon gave this up for theology. Becoming a Congregational minister, he served as chaplain in the American Army during the Revolutionary War. In this capacity he became acquainted with Rufus Putnam, the hardy Revolutionary soldier, who, after making a trip beyond the Alleghenies, became an enthusiast of the Ohio country.

would give "the associates an option on a compact body of land on reasonable terms." This would require a modification of the land ordinance of 1785, which restricted sales to small tracts. To accomplish this, Cutler journeyed to New York to treat with Congress, and it is said he was instrumental in shaping the Ordinance of 1787, which established the government of the Northwest Territory and permitted the sale of unlimited areas at the discretion of Congress.

At this time, Colonel William Duer, an enterprising, wealth-seeking former British subject, was Secretary of the Board of the Treasury, an agency set up by Congress to replace Robert Morris, the Superintendent of Finance. The Board, then composed of three members, managed the depleted finances of the new federal Republic. Duer, therefore, would have a hand in arranging terms with Cutler, whom he wined and dined on his arrival in New York City. He not only promised him assistance but proposed himself as a partner in the deal.

The negotiations with Congress, however, were discouraging. Cash was demanded for the land, and this Cutler's associates did not have. Duer then advised Cutler that as a bait to the impoverished government his petition be increased from 1,000,000 to 4,000,000 acres, of which 3,000,000 should be assigned to another company composed of New Yorkers, of whom Duer would be the head. With so large a sum in prospect, Duer thought Congress would be willing to grant liberal credit terms.

The excess acreage comprised territory east of the Scioto River and west of the actual grant desired by the Ohio Associates. It thus became known as the Scioto Project.

The ruse succeeded. Congress approved the purchase by Cutler and associates of a tract in Ohio, covering 5,000,000 to 6,000,000 acres, at \$1.00 per acre payable in specie, or in "loan certificates" reduced to specie value, or in certificates of liquidated debts of the United States. A payment of \$500,000 was required on the execution of the contract. A similar sum was demanded when the tract was surveyed, and the balance was to be paid in six annual installments. It was provided, however, that as soon as the aggregate sum of \$1,000,000 was paid, a patent for 1,000,000 acres was to be given. The title to the remainder was to

be passed upon such conditions as the Board of the Treasury might agree upon with the purchasers.³

Thus the Ohio Company and William Duer's Scioto Project were launched as a joint proposition. The former may have been primarily a colonizing scheme without the stigma of speculation, but the Scioto Project was an out-and-out land gamble. In order to put the proposition through, Duer promised to advance \$100,000 to Cutler to aid in making a first payment, and he promised that payment for the remaining 3,000,000 or 4,000,000 acres would be made by the Scioto Associates. This part of the deal was kept secret, and shareholders of the Ohio Company were kept in blissful ignorance of the connection of the Scioto speculation with their own enterprise.

Cutler had a difficult time obtaining the necessary funds to make the first payment. He conducted a vast selling campaign, appealing both to colonists and speculators to purchase shares in the undertaking. With some aid from Duer, who became a larger shareholder, he finally succeeded on October 27, 1787, in making the first payment of \$500,000 in debt certificates worth somewhere between \$60,000 and \$130,000.

The history of the Ohio Company of Associates has been recorded in glowing eulogies as the earliest phase of the westward movement. A commemoration tablet in bronze to this effect has been placed on the Sub-Treasury Building in New York City. It notes that under an ordinance "passed here," Manasseh Cutler, acting for "the Ohio Company of Associates, an organization of soldiers of the Revolutionary Army, purchased from the Board of the Treasury for settlement, a portion of the waste and vacant lands of the [Northwest] Territory: and Rufus Putnam heading a party of fifty-eight on April 7, 1788, began the first settlement at Marietta, and on July 15, Gen. Arthur St. Clair, as first Governor, established civil government in the territory. From these beginnings sprang the states of Ohio, Indiana, Illinois and Wisconsin."

So runs the story; the project was free from the stigma of land speculation. "No land company in America," writes Archer B. Hulbert, the historian, "was ever formed with an eye more single to the welfare of

³See Joseph Stancliffe Davis, *Essays in the Earlier History of American Corporations*, Vol. I, pp. 132-36.

the poorest investor; no land company in our history surpassed the Ohio Company in its manifold efforts to better the case of the 'common people.'"⁴

All this is only partially true. The original prospectus of the company made an appeal to human cupidity, and many of the "shareholders" had not the least intention of emigrating to Ohio and had not the slightest interest in fostering land settlement for the downtrodden or impoverished Revolutionary soldiers. They were not interested in acquiring western lands. They wanted merely to profit from the rising market value of their "shares."

Measured by the financial outcome, the Ohio Company was not a success. It had to petition Congress for relief, as it was unable to make the required installment payments. Congress acceded by reducing the average price of the land by 50 per cent. The Ohio Company, therefore, received a grant of about 1,000,000 acres, for which it paid \$500,000 in government debt certificates worth at the time from 12½ to 50 cents on the dollar. For about 215,000 acres of the purchase, the Ohio Associates presented soldiers' warrants.

William Duer's Scioto Project fared much worse than Cutler's Ohio Company. It ended in a complete fiasco. Though the concern was never chartered and had not received a patent for an acre of land, the promoters of this notorious land gamble proceeded to sell in Europe, particularly in France, the portion of the region assigned to them by Cutler. To effect this purpose, they sent to France the American poet, Joel Barlow. After repeated failures to sell large tracts to individuals, particularly the hard-pressed noblemen, Barlow formed in France a subsidiary company, called the *Compagnie du Scioto*, of which he acted as agent and manager. Because he gave "shareholders" and land purchasers the right of immediate settlement, he "expected to raise the reputation of the lands to such a degree that they will sell them off at a great profit in the course of a year." Through glowing published accounts of the territory, he aroused the enthusiasm of intelligent Frenchmen and arranged for the shipment of a group of French gentlemen

⁴See Archer B. Hulbert, *The Records and Proceedings of the Ohio Company*, Vol. I, p. xcvi.

who were to make a settlement on the company's pretended property. These settlers were sold land with Barlow's warranty against every kind of eviction and attack.

The first shipload of French *émigrés* arrived in March 1790 and, with some difficulties, were carted off to Ohio. Among them were several prominent French noblemen who had purchased large tracts and brought along with them retainers—indentured servants of the worst class—some even taken from prisons. When they arrived at the place of settlement, euphoniouly called "Gallipolis," they were painfully disappointed. Moreover, they were unfitted to endure the hardships of pioneer life. Many soon deserted. Duer attempted to appease them by seeking relief from Congress, but during this period, because of the collapse of his speculative schemes, he and some of his associates had to take up residence in a debtor's prison. As the land was not paid for and thus remained unpatented, Congress, merely as a charitable act, passed a law making small allotments to the settlers who remained at Gallipolis. John Bach McMaster, the eminent American historian, aptly describes the whole affair as "one of the . . . most shameful pieces of land-jobbery that has ever disgraced our country."⁵

The Symmes Purchase

Aside from Cutler's purchase on behalf of the Ohio Company of Associates, in which the Scioto Project was involved, Congress made only one other sale of a large tract of public land for colonization purposes. This is known as Symmes' Miami Purchase. In its outward aspects it is very similar to that of the Ohio Company's purchase, but had more of the birthmarks of pecuniary gain.

John Cleves Symmes, who had been a member of the Continental Congress from New Jersey, picturing himself, in 1785, as a friend of the Revolutionary soldier and a promoter of western settlement, in association with Jonathan Dayton and Elias Boudinot, two prominent New Jersey politicians, succeeded in having Congress approve a petition for a tract of land, comprising about a million acres, lying on the Ohio River between the Great Miami and Little Miami rivers, a section in

⁵*History of the United States*, Vol. II, p. 146.

which Cincinnati is now located. The contract was signed on October 15, 1788, and the first payment of \$82,198 in debt certificates and soldiers' warrants was made. Like Cutler, Symmes advertised widely for settlers and purchasers and extolled the advantages of the region. He professed no object of gain for himself, except "the exclusive right of electing or locating that entire and exclusive township which will be the lowest in the point of land formed by the Ohio and Miami River" (the site of Cincinnati).

Symmes began to push his land sales even before the land was surveyed. He sold on the expectancy of receiving a million acres, but when the survey was completed, it revealed the grant contained only slightly more than one half the acreage anticipated. This did not disturb Symmes and his associates, however, who continued to demand from Congress the full million acres, and he continued to sell tracts outside the designated area.

Symmes contracted to pay 66 $\frac{2}{3}$ cents per acre for his grant in depreciated debt certificates. As Congress, after the approval of the Symmes grant, fixed the minimum price of public land to the public at \$2.00 per acre, Symmes and his associates saw opportunity for an additional pecuniary profit in obtaining additional acreage, but Congress was obdurate and Symmes never received the amount of land he claimed. The total acreage patented to him was 311,862 acres, and the actual cost in specie was probably less than \$50,000.⁶

The Connecticut Company

Symmes' Miami Purchase was the last sale by the government of land for colonization purposes at wholesale. But it was not the last of the Ohio land gambles. The state of Connecticut had persistently claimed, under its charter grant, title to territory beyond its western boundary. After much haggling and bickering with the federal government, a compromise was adopted in 1786 whereby Connecticut, by surrendering its claims, was given a strip of territory comprising 3,500,000 acres bordering on Lake Erie. This became known as the

⁶Symmes undoubtedly served the country well in settling the Miami tract on the Ohio. He took up his residence on the grant and was active in the administration of its welfare. He died, however, in almost hopeless poverty.

Connecticut Western Reserve. A part, covering about one half million acres, was set aside and allotted by the state to residents of New London, who had suffered from British depredations. This section became known as the Fire Lands.

The remainder of the area was sold to an association known as the Connecticut Company. However, because of dispute with the federal authorities regarding the political jurisdiction of the territory, the proprietors of the Connecticut Company for several years made little headway in disposing of the land. Finally, in 1800, in return for a surrender by Connecticut of all claim to land and its jurisdiction west of her western boundary, Congress acknowledged her right to ownership of the Western Reserve. This gave an impetus to settlement of the region. There began a Connecticut trek to the West that threatened to depopulate the state. The Connecticut Company lands were thus disposed of at favorable prices to the proprietors. In 1809 they divided the little that remained unsold and wound up the company.

Summary

After the unhappy experiences with the "colonizing companies," and when the national finances were re-established under Alexander Hamilton's funding schemes, Congress was wary of selling the public domain at substantial discounts to land promoters. There was, even at this early time, a cry against land monopoly, and the epithet of "land-jobber" was not a pleasant one. Instead of selling the land in large tracts, Congress, as already stated, set up local land offices in surveyed areas to facilitate sales at retail. But the problems, both political and economic, of equitable land distribution persisted. Despite the evident intent of the nation's legislators during the early period to distribute ownership of the land to homesteaders, fraud, waste, and corruption prevailed in the parceling out of the public domain. This matter will be recounted in the next chapter.