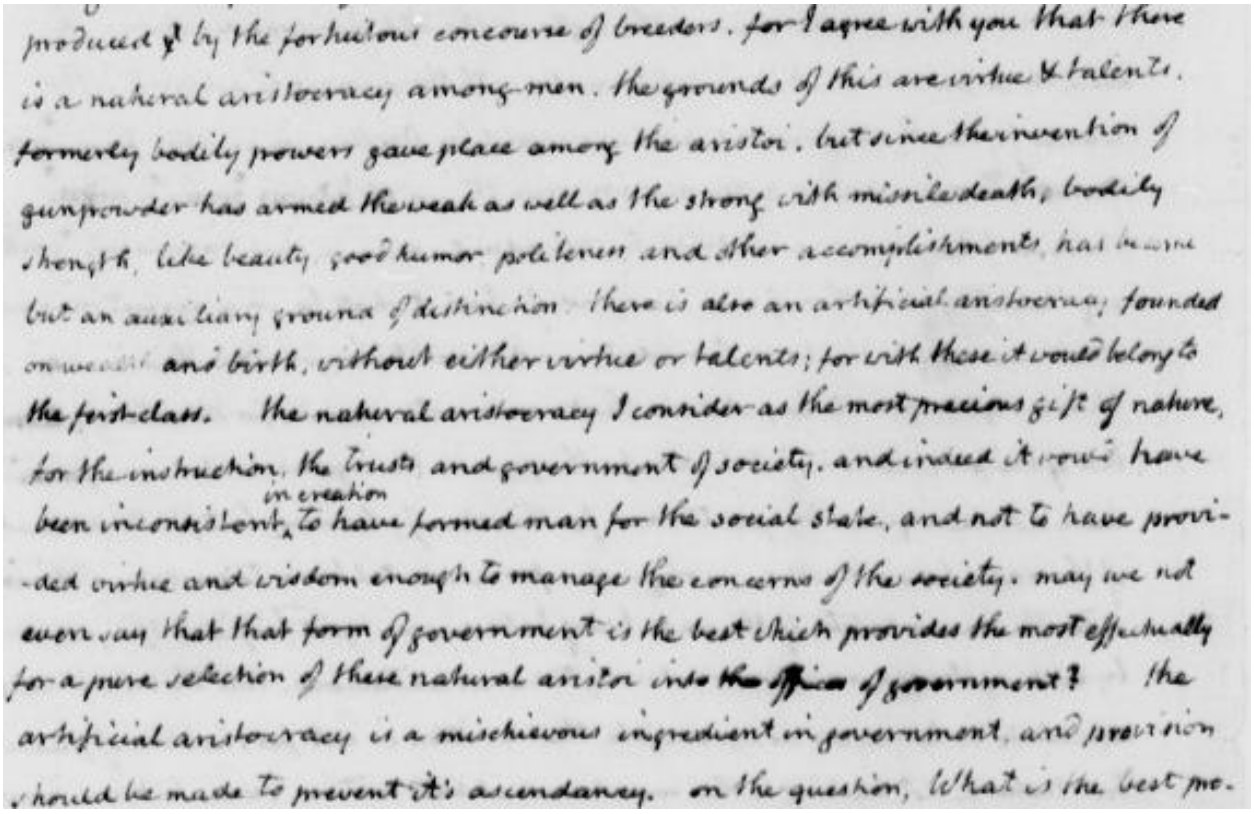
# Chapter Three

# The Promotion of Public Education in the New Republic:

# The First Great Devolution



produced by the fortuitous concourse of breeders. for I agree with you that there is a natural aristocracy among men. the grounds of this are virtue & talents. formerly bodily powers gave place among the aristoi. but since the invention of gunpowder has armed the weak as well as the strong with missile death, bodily strength, like beauty, good humor politeness and other accomplishments, has become but an auxiliary ground of distinction. there is also an artificial aristocracy founded on wealth and birth, without either virtue or talents; for with these it would belong to the first-class. the natural aristocracy I consider as the most precious gift of nature, for the instruction, the trusts and government of society. and indeed it would have been inconsistent in creation to have formed man for the social state, and not to have provided virtue and wisdom enough to manage the concerns of the society. may we not even say that that form of government is the best which provides the most effectually for a pure selection of these natural aristoi into the offices of government? the artificial aristocracy is a mischievous ingredient in government, and provision should be made to prevent it's ascendancy. on the question, What is the best mo-

Jefferson's letter to Adams on "the Natural Aristocracy," October 28, 1813

**Public Education and the Defense of Liberty**

Colonial New England schools received financial backing from taxes and from income generated by land grants, but rate bills charged to the parents of schoolchildren covered most of the costs. Education in the rest of the colonies, save for that offered to paupers, depended entirely upon private sources. It is remarkable, then, that leaders of the newly independent United States supported the idea of providing public support for mass education. Although they differed in background, experiences, outlook, and policy preferences, they were in general agreement that "Republics…require an extraordinary degree of public-spiritedness, self-restraint, and practical wisdom in their citizens" (Pangle and Pangle 1993, p. 1). Washington's Farewell Address is best remembered for the concerns he expressed over "the common and continual mischiefs of the spirit of party," and "the insidious wiles of foreign influence," but he also asserted that it was necessary for the American people to be properly educated if they were to be good, responsible citizens: "It is substantially true that virtue or morality is a necessary spring of popular government…Promote then, as an object of primary importance, institutions for the general diffusion of knowledge. In proportion as the structure of a government gives force to public opinion, it is essential that public opinion should be enlightened" (Washington 1796).

Just as the Puritans had seen universal schooling as crucial to the fulfillment of their religious mission, New Englander John Adams believed that the fate of the new republic hinged upon it as well. Adams, while no stickler for correct spelling, consistent punctuation, or regularity in capitalization, makes this point forcefully in a letter to John Jebb, a leading political reformer in Britain:

> …the social science will never be much improved untill the People unanimously know and Consider themselvs as the fountain of Power and untill they Shall know how to manage it Wisely and honestly. reformation must begin with the Body of the People which can be done only, to affect, in their Educations. the Whole People must take upon themselvs the Education of the Whole People and must be willing to bear the expences of it. there should not be a district of one Mile Square without a school in it, not founded by a Charitable individual but maintained at the expence of the People themselvs they must be taught to reverence themselvs instead of

adoreing their servants their Generals Admirals Bishops and Statesmen (Adams 1785).

The previous chapter reported on the views that Benjamin Franklin held concerning schooling, especially for black children, and on the efforts he undertook on their behalf. In the Middle States, however, the strongest advocate for education was an associate of Franklin's, Dr. Benjamin Rush. A famous physician and signer of the Declaration of Independence, Rush was one of the foremost intellectuals of his time.[1] In "A Plan for the Establishment of Public Schools and the Diffusion of Knowledge in Pennsylvania," he urged the state to institute a system of primary education similar to that already in place in much of New England. He pointed to Connecticut as a model, where there were over 600 such schools attended by 25,000 pupils. Rush called for schools to be established in every township, or in districts containing 100 or more families, throughout both the English and German-speaking areas of Pennsylvania. Like those in New England, public revenue derived from property taxes and land grants would provide financial support. Although he described the schools as free, they were to be free only for those who could not otherwise afford to attend. Parents who were able to pay would be charged rate bills of 1s6 to 2s6 per quarter for each child they sent to school (Rush 1786).

Rush called for both boys and girls to attend school, but, as fellow Pennsylvanian Thomas Budd (1685) had a century earlier, he recommended that they attend separate schools with different curricula. Segregation by gender, he argued, was necessary to assure that "…female delicacy is cherished and preserved" (Rush 1806, p. 90). He shared Franklin's view that no children should be excluded from school on account of their race. Rush went on to develop an elaborate philosophy of education, specifying the various subjects and concepts that were to be taught and the order in which children were to be exposed to them. He was perhaps the first in the new nation to reckon that public investment in education would more than pay for itself by encouraging technological innovation

and economic growth. He also observed that it was cheaper to send someone to school than to keep them in prison:

> Fewer pillories and whipping posts, and smaller jails, with their usual expenses and taxes, will be necessary when our youth are properly educated. I believe it could be proved, that the expenses of confining, trying and executing criminals, amount every year, in most of the counties, to more money than would be sufficient to maintain all the schools that would be necessary in each county. The confessions of these criminals generally show us, that their vices and punishments are the fatal consequences of the want of a proper education in early life (Rush 1806, p. 5).

The strongest and most persistent advocate of public education in the early Republic was not from the Middle States, nor even from New England. It was Thomas Jefferson, whom Rush (1783) hailed as "a fellow worshipper in the temple of Science." Although Virginia had no tradition of public education and the outcome of the War for Independence was still in doubt, in 1779 Governor Jefferson sent to the General Assembly "A Bill for the More General Diffusion of Knowledge." Like Rush, Jefferson proposed to establish and support a network of public schools in Virginia along the lines of what already existed in New England. Each county was to establish 100 primary schools and the state 20 grammar schools. Rather than depend upon rate bills and other contributions made by parents, his bill proposed that "all the free children, male and female, resident within the respective hundred, shall be intitled to receive tuition gratis, for the term of three years." They could remain in school "…as much longer, at their private expence, as their parents, guardians or friends, shall think proper" (Jefferson 1779).

Like Washington, Adams, and Rush, Jefferson believed that making education available to all was indispensable in warding off the ever-present threat of tyranny. As he wrote in a letter to George Wythe, one of six other Virginians who had affixed their signature to the Declaration of Independence:

> I think by far the most important bill in our whole code is that for the diffusion of knowlege among the people. No other sure foundation can be devised for the preservation of freedom, and happiness… Preach, my dear Sir, a crusade against ignorance; establish and improve the law for educating the common people. Let

> our countrymen know that the people alone can protect us against these evils, and that the tax which will be paid for this purpose is not more than the thousandth part of what will be paid to kings, priests and nobles who will rise up among us if we leave the people in ignorance (Jefferson 1786).

**Public Education, Equal Opportunity, and the Natural Aristocracy**

What distinguishes Jefferson's thinking about public education from that of the other Founders is that it transcends the realm of government and politics. He believed that besides being vital to the maintaining of liberty, free and universal education would transform society. Jefferson foresaw a future "…in which the ranks and stations that inevitably emerged would be much less fixed, much more fluid over time, much more determined by the dynamic of equality of opportunity and of careers open to talent and merit, than any society previously known" (Pangle and Pangle 1993, p. 94). His vision presages what the introductory chapter identified as key American articles of faith: every child in this country, regardless of their background, should be given an equal chance to succeed, and it is through publicly supported education that equality of opportunity is to be guaranteed.

As also noted previously, equal opportunity does not imply that there should be or that there ever will be equality in outcomes. Indeed, commitment to the ideal of equal opportunity provides ready justification for great inequality in outcomes. In correspondence with John Adams, in turn his friend and esteemed colleague, later a bitter political enemy, and, late in life, a friend once again, Jefferson goes farther than that. He tells Adams that the main objective of the educational system he envisioned was that of bringing to the fore a "natural aristocracy," based upon merit, which would supplant "an artificial aristocracy founded on wealth and birth, without either virtue or talents" (Jefferson 1813). He incorporated into his plan for public schools a selection mechanism which, though consistent with the Maximin Provision Principle and its concern for the most disadvantaged, was designed to identify and to promote talent. Agents would be appointed to visit every primary school once a year, where they were to:

> "…chuse the boy, of best genius in the school, of those whose parents are too poor to give them further education, and to send him forward to one of the grammar

> schools, of which twenty are proposed to be erected in different parts of the country…Of the boys thus sent in any one year, trial is to be made at the grammar schools one or two years, and the best genius of the whole selected, and continued six years, and the residue dismissed. By this means twenty of the best geniusses will be raked from the rubbish annually, and be instructed, at the public expence" Jefferson 1788, p. 156).

Jefferson believed that most of those who would become the natural aristocracy would be inclined to scientific pursuits and other branches of learning. Some, though, would be drawn to public affairs, and how fortunate we were that this was the case: "… may we not even say that that form of government is the best which provides the most effectual[ly] for a pure selection of these natural aristoi into the offices of government?" (Jefferson 1813). Pangle and Pangle (1993) find this passage disquieting. In their view, what Jefferson seems to be saying here is that members of the natural aristocracy were by right and by design destined to rule the country. Actually, this is precisely what Jefferson is saying, although he prefers to regard the ascent of these worthy individuals to positions of leadership as their selfless heeding of the call of public service. Granted, even these exemplary individuals might be tempted to abuse their power. If so, not to worry: "Education would have raised the mass of the people to the high ground of moral respectability necessary to their own safety, & to orderly government" (Jefferson 1813). An educated, enlightened people would always be wary of the threat of tyranny, no matter the direction from which it came or the form it took. They could be counted upon to keep leaders in check, to sustain sound political institutions, and to preserve liberty.

The rest of Jefferson's bill addresses other matters ranging from the architectural design of the schools to guidelines as to how they were to be administered and governed. His proposal contained one small item, though, which has received little attention: "Every teacher shall receive a salary of [ ] by the year… and shall also have his diet, lodging, and washing found him." Although a specific amount of money was not filled in, the proviso that all teachers in the state of Virginia receive the same compensation does embody the Equal Funding Principle. It is possible that someone before Jefferson proposed that

public resources devoted to education should be apportioned to teachers (and thus to students) on an equal basis, but a search of the historical record failed to identify any such individuals.

Finally, Jefferson's bill lists the subjects that were to be taught. The primary schools, attended by all children, would provide instruction in reading, writing, and arithmetic. Young pupils would also learn the crucial lessons that were to be drawn from both ancient and modern history. By acquiring "…knowledge of those facts, which history exhibiteth, that, possessed thereby of the experiences of other ages and countries, they may be enabled to know ambition under all its shapes, and prompt to exert their natural powers to defeat its purposes." Students going on to grammar school would take on the traditional curriculum of advanced English, Latin, and Greek, but would also receive the training in geography and science. Lessons in mathematics would cover "the higher part of numerical arithmetick, to wit, vulgar and decimal fractions, and the extraction of the square and cube roots."

One cannot help but notice that the program of instruction Jefferson had in mind was an ambitious one. It may not have seemed so at the time. There are scientific data indicating that people were smarter back then than they are now, and perhaps more able to profit from a demanding course of study at a younger age (Crabtree 2013). Something else that one cannot help but notice is that his commitment to free primary education was limited to white children, and that advancement to grammar school was limited to white males. This is not, of course, the only manifestation of the contradictions present in the mind of the slave owner who wrote that all men are created equal. It is important, though, to acknowledge something else. Jefferson was governor of Virginia when he formulated his education bill and he intended for it to be approved by the state legislature. Calling for children to attend public schools free of charge, at public expense, was likely the most radical proposal that any of the legislators had ever encountered. As noted in the previous chapter, in colonial times there had been white Americans, even in the South, who believed that slave children should be educated. But this was undoubtedly the opinion of a

small minority, as evidenced by the fact that by the time of Independence the Negro School in Charleston and all the Bray schools had been shut down. A proposal that they attend publicly supported schools would have been unthinkable and rendered Jefferson's plan dead on arrival in the legislature.

**From Proposal to Policy**

Benjamin Rush's plan for public schooling, "addressed to the legislature and citizens of the state," was one of several essays that he published over the years. In addition to education, he wrote on topics ranging from criminal justice and the practice of medicine to the dangers of tobacco and the habits of the Germans (Rush 1806). There is no evidence to indicate that Rush's proposal ever became more than a topic of public discourse—if that. The education clause in the Pennsylvania state constitution, adopted a few years later in 1790, promised only to continue what the colonial government had done, which was to cover the costs of schooling the indigent: "The legislature shall, as soon as conveniently may be, provide by law for the establishment of schools throughout the State, in such manner that the poor may be taught gratis" (Mayo 1896, p. 719).

The General Assembly in Virginia took up Governor Jefferson's bill, but he lacked the votes needed to get it passed. James Madison sponsored a modified version of the bill six years later, in 1785, but it too failed to achieve majority support. A year later the legislature did approve the Jefferson-Madison bill, but only after tacking on an amendment that empowered county judges to decide whether or not to implement the plan in their jurisdiction (Pangle and Pangle 1993). To the surprise of no one, none of the judges chose to do so. Several years later, in 1817, Jefferson's protégés tried again and failed again to establish free, tax-supported schools in Virginia.

In a letter to Albert Gallatin, Jefferson attributed opposition to his plans for public education to "ignorance, malice, egoism, [and] fanaticism," as well as to "religious, political and local perversities" (Jefferson 1818). Indeed, there were those who opposed the secular education that Jefferson had in mind on religious grounds, especially the leaders

of private colleges "with largely ecclesiastical curricula" (Mercer 1993, p. 20). They considered Jefferson's ideas both radical and destructive, and time did little to soften their views. More than a century later, John Kilgo, president of Trinity College (later Duke University), charged that Jefferson was "an atheistic monster," and the University of Virginia that Jefferson had founded "a deistic daring of enormous proportions" (Peterson 1960, p. 243).

It appears, though, that what led members of the Virginia legislature to repeatedly reject Jefferson's bill was not opposition to public schools per se, nor to his failure to provide for religious instruction. What they found objectionable was the idea of paying for them. Like the Old Deluder Satan Act of colonial Massachusetts, Jefferson's proposal made local governments (counties) responsible for the costs of establishing and operating primary schools. When he wrote to inform Jefferson that his bill was in trouble, Madison (1786) identified the main sticking point as "…the objection from the inability of the County to bear the expence." To have public schools like they had in New England meant paying taxes like they did in New England (more, actually), and the Virginians were having none of it. Resistance to the unfunded mandate embodied in Jefferson's bill was particularly strong among wealthy owners of land and slaves. They would bear most of the burden of taxation while paying for their own children to attend private schools or to be tutored at home (Pangle and Pangel 1993).[2] Jefferson, in short, had failed to devise a viable means of addressing the Revenue Imperative.

Rebuffed in Virginia, Jefferson shifted his attention to the national stage when he became a member of the Congress of the Confederation in November 1783. High on the Congress's agenda was the task of organizing the Northwest Territory, which encompassed everything that lay north of the Ohio River, east of the Mississippi, and south of Canada. Ceded to the United States by Great Britain in the Treaty of Paris, this land became the public domain of the federal government after the original states relinquished their claims to it—or at least most of their claims. Connecticut retained the 3.3-million-acre Western Reserve in the northeast part of what would become the state of Ohio.

Virginia insisted on keeping 4.2 million acres between the Scioto and Little Miami Rivers. This area, known as the Virginia Military District, was needed to honor the claims of soldiers who had fought in the French and Indian and Revolutionary Wars and who had been compensated with land warrants. Neither Connecticut nor Virginia retained political control over these tracts, which, like the rest of the Northwest Territory, was signed over to the United States. It thus fell upon the Confederation Congress to bring political order to this vast area (Onuf 1987).

The Congress appointed Jefferson to head a series of committees charged with this task. General agreement had been reached on several points before his arrival in Annapolis, but it was Jefferson who turned broad principles into a concrete plan—the report to the Congress known as the Ordinance of 1784 (*Journal of the Continental Congress, April 23, 1784*, pp. 275-279). In the view of most historians, the most important feature of the Ordinance was its plan for dividing the Northwest Territory into several distinct states (Berkhofer 1972). Once they had achieved a population of twenty thousand free inhabitants, new states would be admitted into the Union "on an equal footing with the said original states" (p. 278). Although their eastern and western borders were defined by major rivers, the proposed new states were to span, to the extent possible, two degrees of latitude (p. 275). Figure 3:1 displays what the resulting 14 states would have looked like.[3]

The Northwest Ordinance of 1787 subsumed much of the 1784 Ordinance, and it and other enactments of the Confederation Congress were reaffirmed by the first Congress elected under the new Constitution (*U.S. Statutes at Large, 1st Congress 1st Session,* 1789, pp. 50—53, 95-96). Five separate states were subsequently carved out of the Northwest Territory: Ohio, Indiana, Illinois, Michigan, and Wisconsin. Congress also voted to extend the terms of the Northwest Ordinance to the lands south of the Ohio River—an area known as the Old Southwest—which became the states of Louisiana, Mississippi, Alabama, and Arkansas (*U.S. Statutes at Large, 1st Congress 2nd Session,* 1790, p. 123).

Figure 3:1 about here

The Ordinance of 1784 established another principle of great significance: Congress would sell the land in the Northwest Territory, thereby transforming the public domain into private property. In outlining what new states could and could not do, the Ordinance prohibited them from interfering in any way with the privatization process: "…they in no case shall interfere with the primary disposal of the 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 the bona fide purchasers" (p. 277). To assure potential buyers that their hold on property would be secure, the Ordinance also stipulated that the new states could not tax land purchased by nonresidents at a rate higher than that on land owned by those who lived there.

Before it could take effect, Congress incorporated other features of Jefferson's 1784 report into the more comprehensive Ordinance for Ascertaining the Mode of Disposing Lands in the Western Territory. More commonly known as the Land Ordinance of 1785, it called for the Northwest Territory to be surveyed and divided into square townships, which would in turn be divided into square sections. To the extent possible, townships were to be demarcated "…by lines running due north and south, and others crossing these at right angles" (*Journal of the Continental Congress, May 20, 1785*, pp. 375-381). According to most historians, Congress had thereby chosen the New England model of demarcating land instead of the "metes and bounds" system that prevailed in the rest of the country. Actually it is a bit of a misnomer to refer to the use of metes and bounds as a system, in that ad hoc features of the landscape, combined with distances from each other, (the most commonly used unit of distance was the perch, or rod, which equals 16.5 feet) define parcel boundaries (White 1983). An example of a metes-and-bounds description, from Lancaster County, Pennsylvania, is as follows:

> Beginning at a chestnut tree, thence by the other Land of said Henry Hoober West by South fifty six perches to a post, then South South East fourteen perches to a post, thence by land of Ulrich Hoober East South East fourteen perches to a post and thence South East eight perches to a white oak, thence by Land of George Feite North twelve degrees East one hundred six perches to a Hickory and South eighty

> four degrees seventy two perches to a post, thence North twenty six perches and an half to a Chestnut Tree and North North West thirty perches to a Black Oak by Beaver Creek and thence by other Land of said Henry Hoober South South West forty perches to the Place of Beginning (Hocker 2010).

The standard characterization of the traditional New England land use system is only partially correct. It is true that as new townships were formed in New England, they were surveyed into contiguous discrete lots, thus eliminating the pockets of unclaimed lands, known as gaps and gores, that inevitably remained amongst holdings defined by metes and bounds. But while parcels that were platted out in this manner tended to be rectangular, they were usually not square. As shown in the many maps that Price (1985) reproduces, it was common practice in New England to instead divide the land into long strips, forming a ladder pattern. An extreme example of this practice appeared in Fairfield, Connecticut, where parcels ranged in width from 3 to 59 rods (48 feet to 944 feet) but ran up to 10 miles in length. It was also the case that the rectangular lots demarcated by New England land surveys were aligned along whatever lines the surveyors deemed natural or convenient. They were seldom set on the north-south and east-west axes of longitude and latitude, as called for in the Ordinance.

One place where a pattern of squares was imposed is the City of New Haven. It was laid out in 1638 in nine squares of about 16 acres each, with the Green taking up the center square (Price 1985). Another place where squares were marked out, and on much larger scale, is in what is now the southern half of Vermont. In 1741 King George II authorized Benning Wentworth, the royal governor of New Hampshire, to grant townships of six miles square, located along the western frontier of the colony, to those willing to settle there and improve the land. Between 1751 and 1760 Wentworth made 131 such grants, totaling over three million acres. As shown in Figure 3:2, the townships in Bennington County, located in the southwestern corner of Vermont, are quite square and follow lines of latitude and longitude; those in Windsor County, which is north and east of Bennington, not so much. Here the townships can be described as at best square-ish, and, because

they run roughly perpendicular to the Connecticut River, are oriented on a northwest-southeast axis.

Figure 3:2 about here

The Wentworth grants conformed to New England convention and reserved one section in each township for the support of schools (Jones 1939). Although the King had ordered Wentworth to make no grants until at least fifty families were ready to settle a township, he paid little heed to these instructions. The lion's share of the land ended up in the hands of Wentworth's relatives, friends, political cronies, and Wentworth himself.[4] Unfortunately, the colony of New York claimed that its eastern boundary was the Connecticut River. It issued competing patents for the same land and declared the Wentworth grants invalid. In 1764 the Board of Trade ruled in favor of New York, but the inhabitants of the area refused to accept the verdict. In 1777 they declared themselves to be an independent republic, adopted a constitution, and, after agreeing to pay $30,000 to New York to satisfy all outstanding land claims, entered the Union as the fourteenth state in 1791 (Van de Water 1941).

Jefferson, the leading American proponent of decimal weights and measures and a real science nut, proposed dividing the land in the Northwest Territory into townships of ten-by-ten geographic miles.[5] If he had remained in Congress, he might have succeeded in persuading the members to adopt these dimensions. By August of 1784, though, Jefferson had already gone off to Paris, where he served as Minister Plenipotentiary for Negotiating Treaties of Amity and Commerce with Great Britain, Russia, Austria, Prussia, Denmark, Saxony, Hamburg, Spain, Portugal, Naples, Sardinia, the Pope, Venice, Genoa, Tuscany, the Sublime Porte, Morocco, Algiers, Tunis, and Tripoli. Whew. Congress initially voted to make townships seven (standard English) miles by seven miles, but ultimately settled upon the six-by-six mile dimensions of the Wentworth grants in western New Hampshire, i.e., Vermont (Geib 1985). A township would thus consist of 36 sections, with each section one square mile in area. Although land use practices in New England provided something of a precedent, the creation of a vast grid of square townships and

square sections, oriented on the four cardinal points of the compass, was something entirely new under the sun.

It may not have mattered all that much which township dimensions were chosen, but subjecting the land to a rectangular survey mattered a great deal. It was, above all, an excellent real estate development strategy. According to Price (1985), members of Congress from all regions of the country were persuaded to adopt this novel measure because "…its order would facilitate surveying and selling the vast domain" (p. 341). Grubb (2011) concurs. He identifies the Public Land Survey as one of "founding choices" the Congress of the Confederation made "…to enhance the value, and, thus, the sale price of the land…The rectangular property grid rationalized land boundaries, making property rights more secure" (p. 260).[6]

Surveying irregular, wilderness land into square grids was difficult work. The use of simple, inexact measuring instruments, such as the sextant and a simple compass known as the circumferentor, made errors inevitable. The Geographer's Line—the main line of latitude from which the initial survey of the Seven Ranges in Ohio was projected southward, was a quarter mile too far south when it hit its western terminus (Pattison 1959). The chain used to survey land around Cincinnati was 2 inches too long, resulting in 13.3 feet of error per mile. Contractors engaged to do the work, moreover, were not always honest or reliable. The federal government often had to pay for large tracts of land to be re-surveyed (Dick 1970). Still, Libecap and Lueck (2011) show just how prudent the choice of the rectangular survey was by comparing areas in Ohio covered by the Public Land Survey with the Virginia Military District, where, as in Virginia itself, property lines were defined by metes and bounds. Figure 3:3 displays the plat of an area in Greene County, Ohio, where the "Congress Lands" on the west side of the Little Miami River are laid out in square sections and subsections. The parcels on the east side of the river were created in the Virginia Military District. Most of them are at least convex polygons, making these holdings less irregular than they are in other parts of the District, where there are "…a patchwork of surveys which, from the air, resemble a giant jigsaw puzzle" (Petro 1997, p.

4). Libecap and Lueck report that the occurrence of boundary disputes significant enough to make their way to the Ohio Supreme Court was 18 times more frequent in the Virginia Military District than in the rest of the state. Due to the ongoing threat of disputes over metes-and-bounds property lines, real estate values there were 25% lower than in the rest of Ohio. [7]

Figure 3:3 about here

The rectangular survey was not the only feature of the traditional New England land use system that the Confederation Congress adopted. As indicated in the previous chapter, it had become customary there for town charters to set aside certain lots for the support of schools and churches. Jefferson himself was no longer in Congress, but it was at this point that efforts to secure public support for education in the new republic bore fruit. Rufus King of Massachusetts succeeded in adding language to the Land Ordinance of 1785 that called for the practice of setting aside land to support education (Martzolff 1916).[8] The Ordinance directed that "There shall be reserved the lot N 16, of every township, for the maintenance of public schools, within the said township" (*Journal of the Continental Congress, May 20, 1785*, pp. 378). Congress considered setting aside another section for the support of churches, or, more specifically, for the denomination favored by a majority of the inhabitants. This clause, which Madison described as "…smelling so strongly of an antiquated Bigotry," was narrowly rejected (Smith 1982, p. 599).

The rule prescribed by the Ordinance for numbering sections placed section 16 at the southwest corner of the northeast quadrant, putting it at the center of the township. In 1796 Congress ordered the Public Land Survey to instead adopt the boustrophedonic method displayed in Figure 3:4. This moved section 16 to where it has since been located, which is the southeast corner of the northwest quadrant. This still places it at the center of the township. The chain referred to in this figure is the standard Gunter's chain that surveyors used to mark distances. Containing 100 links and stretching 66 feet in length, it is ideally suited to the English system of land measures, i.e., rods, furlongs, miles, and

acres (Linklater 2002). As can be gathered by the notation in the figure, eighty chains equal a mile.

Figure 3:4 about here

**Proposals for a National System of Public Education**

Congress could have chosen to keep section 16 under federal control, which they did with four other sections in each six-mile square township. As specified in another clause in the Land Ordinance of 1785, "There shall be reserved for the United States out of every township, the four lots, being numbered, 8, 11, 26, 29, and out of every fractional part of a township, so many lots of the same numbers as shall be found thereon, for future sale" (p. 378). [9] This was done in the expectation that land located in these sections would increase in value as land in adjacent sections was settled and improved. Reserving them gave the federal government the option of keeping this land off the market for the time being, and to sell it later at a higher price than could be obtained at present (Knepper 2002; Grubb 2011). In all other respects, sections 8, 11, 26, and 29 were treated in the same manner as the rest of the land in the public domain. Section 16 was reserved with a specific policy goal in mind—to support public schools. Still, retaining control of this land at the national level was a logical possibility. Having the federal government collect proceeds from section 16 sales or leases and distribute this revenue evenly to schools across the country would have resulted in the fullest possible expression of the Equal Funding Principle.

Was this possibility a realistic one? Would it have ever crossed anyone's mind to assign responsibility for education to the Confederation Congress, which bore at most a passing resemblance to central authority? The new nation possessed immense quantities of land—which is why Congress was able to make these large land grants to support education—but lacked the financial resources needed to support even the most basic functions of government. Its sources of revenue were confined to borrowing, selling land in the public domain, and requesting funds from the individual states. Congress could not levy a tax of

any kind without first amending the Articles of Confederation to obtain authorization to do so. Such an amendment would require approval of all the states, and the unanimity requirement posed an insurmountable barrier. A few years later, of course, this source of gridlock was removed when the new Constitution was ratified. It put in place a federal government that was able to impose taxes, play a major role in banking, and to enact legislation for "encouraging manufactures" (Hamilton 1791). Nowhere in the founding document, however, was any reference made to education.

It is remarkable, then, that several prominent figures in the new republic, including Robert Coram, Jeremy Belknap, James Sullivan, Nathaniel Chipman, and Lafitte du Courteil, espoused the position that responsibility for the education of the nation's youth should be placed in the hands of the national government (Hansen 1926). They pointed to the economic growth that a well-educated population would generate, as well as to economies of scale that could be achieved in building and operating schools in a systematic way across the entire country. They also shared, according to Kohn (1944), a belief that providing for public schools across the entire nation was necessary "…to imbue youth with patriotic feelings and to act as a much needed bond of unification" (p. 304).

Perhaps what is of greatest significance is the fact that two of these men advocated establishing a national system of public schools in order provide equal educational opportunities to all children. They did not explicitly endorse the Equal Funding Principle, but they did call for all children to have equal access to a good education. In his *Plan for the General Establishment of Schools throughout the United States,* Robert Coram of Delaware devotes the fourth chapter, "The System of Education Should Be Equal," to explaining why this should be the case. Here he declared that "If education is necessary for one man, my religion tells me it is equally necessary for another" (Coram 1791, p. 96), and that "…every citizen has an equal right to subsistence, and ought to have an equal opportunity of acquiring knowledge" (p. 97). Coram was especially troubled by something alluded to in the previous chapter, which was the disparities in schooling available to children out on the frontier compared to those living in cities and towns. Schools in the cities,

especially in the wealthy seaports, could be quite good. Schools in rural areas were hard to come by, and those that could be found were not the kind of places where children should be spending their time:

> The country schools, through most of the United States, whether we consider the buildings, the teachers, or the regulations, are in every respect completely despicable, wretched and contemptible. The buildings are in general sorry hovels, neither wind tight nor water tight; a few stools serving in capacity of bench and desk, and the old leaves of copy books making a miserable substitute for glass windows. The teachers are generally foreigners, shamefully deficient in every qualification necessary to convey instruction to youth, and not seldom addicted to gross vices (Coram 1791, p. 194).

Coram seems not to have realized it, but if his depiction of rural schools was accurate (it probably was, to a certain extent), it implies that there was strong demand for education in even the remote frontier regions of the country. As bad as these schools were, parents were paying to send their children to them.

Jeremy Belknap, a Congregational minister from New Hampshire, also believed that establishing public schools across the country was needed to reduce disparities in educational offerings. His plea for equal opportunity in education presages the message made famous by the United Negro College Fund two centuries later—a mind is a terrible thing to waste:

> There are as many good capacities among the children of the poor, who are not able to give them a good education, as of the rich who are; and if it is the duty and interest of the State to avail itself of the capacities of all its citizens, it is then their duty to cultivate those capacities…the public ought in justice to provide the means of instruction for all (pp. 14-15) …if education be not laid open and common to every family of whatever estate and condition, the rich only will be able to cultivate the minds of their children by sending them off to distant academies and universities; the learning of the country will then be only among men of property, and the rest, being ignorant, may be easily deceived. How favorable such a circumstance may prove to usurpation and tyranny, I dread to think! (Belknap 1785, p. 19).

The two most celebrated champions of providing public education at the national level were Samuel Harrison Smith and Samuel Knox, winners of what Justice (2008) calls the

"Great Contest." In 1795 the American Philosophical Society offered a $100 prize to the author of the best essay on "a system of liberal education, and literary instruction, adopted to the genius of the government, and calculated to promote the general welfare of the United States; comprehending also, a plan for instituting and conducting public schools in this country on principles of the most extensive utility."[10] The Society received submissions from only three serious contenders, and ended up splitting the award between Smith and Knox. Both proposed that the federal government establish a uniform system of free public schools across the country Harris's plan would make attendance compulsory for boys but mentioned nothing about girls. Knox, on the other hand, recognized that some families also would want to send their daughters to school. This could be accommodated by requiring all schoolteachers to be married, and to have the men teach boys and their wives teach girls—in separate classes, of course.

Of the two, Knox's plan was the more detailed and specific. He designed a hierarchical structure of primary schools, academies, state colleges, and a national university, with all instruction based upon nationally approved textbooks. Public schools, as well as institutions of higher learning, were to be overseen at the national level by "Presidents of Literary Instruction and Members of the Board of National Education" (Knox 1799, p. 85). Both Knox and Smith, though, are widely recognized for their pioneering views. According to Justice (2008), they "…have been canonized in the edited volumes and analyses of educational writings of the founding generation. Historians argue that both essays serve as important markers for how the scholarly community of early America imagined a national system of education" (p. 192).

These advocates of nationally controlled and nationally supported public schools were prominent intellectuals and politicians. Most had excellent Revolutionary War credentials, and some were major officeholders. Chipman, a Continental Army veteran, became a U.S. Senator from Vermont. Sullivan of Maine was also a war veteran and was later elected Governor of Massachusetts. Coram fought with John Paul Jones on the *Bon Homme Richar*d in his celebrated victory over the British frigate *Serapis*. Belknap served

as chaplain to the New Hampshire militia during the siege of Boston. One would think that such well-known and well-respected individuals wielded considerable influence.

They did not. According to Kohn (1944), their ideas "did not fall upon fertile soil" (p. 304) and had no discernible impact on public policy. A major reason why their proposals foundered was the same reason why Jefferson's bill met a chilly reception in the Virginia state legislature: they failed to identify a way of addressing the Revenue Imperative that was both adequate and acceptable. One of the other proponents of a national system of public schools, Lafitte du Courteil (1797), recommended funding them with a luxury tax and, if necessary, a lottery. It is doubtful that either of these mechanisms would have generated significant amounts of funding. Smith (1797) proposed levying a national property tax to pay for the schools. In a newly independent nation, founded in large measure upon resistance to taxation, a lack of enthusiasm for universal public education is not difficult to comprehend if this is how the government was going to pay for it.

The many other backers of a national system of public schools did not even discuss financing. None of them pointed to the federal government's vast land holdings as a resource to draw upon, even though they must have been aware of the section 16 grants authorized by the Land Ordinance of 1785. Perhaps they doubted that Congress would follow through on what the Ordinance had promised. While the first Congress elected under the new Constitution had reaffirmed the Northwest Ordinance of 1787, this was not the case with the Land Ordinance of 1785. As Orfield (1915) notes, there was perhaps a moral obligation to fulfill the promise of reserving land for schools, but not a legal or constitutional one. Until the government followed through and granted section 16 to new states entering the Union, whether or not they would do so was still in question.

Justice (2008) concludes that these writers represented an elite perspective that did not tap into any significant body of public opinion at the time. As for Smith and Knox, he suspects that they both proposed a national system of public schools because they thought it was what the American Philosophical Society had asked them to propose. If so, they proceeded on the basis of an erroneous assumption. When the Society announced the

awarding of the prizes it expressed its disappointment with all entries, including those of the two winners: "…none of the Systems of Education then under review [were] well adopted to the present state of Society in this Country" (quoted by Hansen 1926, p. 139). The point that all the competitors missed, according to Justice, is that beliefs concerning the role of education and how it was to be provided varied dramatically across different regions of the country and across different strata of society. Because of this, "…the genius of the American government was to avoid a single, national solution to such thorny problems" (p. 208). Pangle and Pangle (1993) concur. In their view, "Such centralization was impossibly alien to the spirit of American republicanism" (p. 143).

**The First Great Devolution**

Reserving section 16 for the support of public education has long been seen as one of the most important accomplishments of the Congress of the Confederation. Hinsdale (1899) describes it as "a far-reaching act of statesmanship that is of perpetual interest" (p. 254). This assessment is a fair one. In Britain, schools received no government support until Parliament passed the Elementary Education Act in 1870. Canada was the only other country in the New World that provided schools with public support prior to the 20th century, even though many countries in Latin America possessed enormous wealth (Engerman *et al.* 2009). But while the federal government had taken a momentous step in reserving section 16 to support public education, it did not retain control of section 16, nor of the schools that the land was to support. In the clause of the Land Ordinance of 1785 that identified the special purpose of section 16, i.e., "There shall be reserved the lot No. 16, of every township, for the maintenance of public schools within the said township," the key phrase was "*within the said township*." It meant that whatever revenue was raised in the disposition of section 16 would remain with the residents of the township in which it was located. So began the First Great Devolution in public school finance.

Why was this the course that was chosen? As we have just noted, Pangle and Pangle believe that centralized national control of education was incompatible with the

prevailing political ethos of the time. This may well have been true, but a more compelling explanation for the First Great Devolution is grounded in material and economic considerations. While the Land Ordinance of 1785 was indeed a "far-reaching act of statesmanship," the Congress of the Confederation that approved it had more immediate objectives in mind. Deciding to sell the public land in the Northwest Territory had put the United States in the real estate business. Congress, like all sellers, was interested in getting as high a price as possible. Reserving section 16 for public schools, like the rectangular survey itself, was a real estate development strategy intended to make the land in the public domain more attractive to potential buyers. The prospect of schools being established gave assurance to those contemplating migration to the Northwest that civilization would follow along with settlement, and that the frontier would not be a realm of benighted anarchy (Knight 1885; Taylor 1922).

The authors of the Ordinance, furthermore, were sober minded in their assessments of human nature and the regard that most people have for their own self-interest. They assumed that there would indeed be demand for public education, but that it would be accompanied by reluctance to pay for public education. As Fairfax *et al.* (1992) observe, "the lands were granted because it was acknowledged everywhere that if the common [i.e., publicly supported] schools were obliged to rely on locally instituted property taxes, education would not be generally supported in the new territories" (p. 806). The provision of public schooling was an appealing prospect. It was made even more appealing by setting the tax price to zero.

Making land grants to support schools was also something that the federal government had to do to match competition in the real estate market. As members of the Confederation Congress were aware, there remained at the time several million acres of unclaimed and unsettled land in many of the existing states. In 1786 the state government of New York ordered that vacant land in the western part of the state be surveyed into townships of ten miles square, and that lots in each township be set aside to support churches and schools (Mayo 1896). That same year the Susquehanna Land Company in

Pennsylvania reserved land for the support of schools in the tracts it had for sale in the Wyoming Valley (Fischel 2009). In negotiations with Congress over the sale of about 1.3 million acres on the west side of the Ohio River, Manasseh Cutler, representing the Ohio Company of Associates, insisted that the reservation of section 16 for public schools be guaranteed. If it were not, the Company would look to buy land in New York or Pennsylvania instead (Swift 1931).[11] Congress agreed to do so. It thereby reaffirmed the terms of the Land Ordinance of 1785 when it authorized the Board of Treasury to sell land to the Ohio Company: "The lot No. 16, in each township or fractional part of a township, [is] to be given perpetually for the purposes contained in said ordinance" (Ohio General Assembly 1825, p. 17).

Ohio, formed from the most eastern part of the Northwest Territory, became the first state to receive the section 16 land grants. In 1802, legislation to enable Ohio to write a constitution and to form a state government was brought to the floor of Congress. The report of the House select committee in charge of the bill stipulated that the section 16 grant, which currently applied only to the land purchased by the Ohio Associates, was to be made to the rest of the state. Secretary of the Treasury Albert Gallatin, who presumably was speaking on behalf of the Jefferson Administration, endorsed the policy of granting this land to the people of the new state. This measure, he believed, "…instead of diminishing, would greatly increase the value of the lands, and therefore of the pledge to the public creditors, and that they would be highly beneficial and acceptable to the people of the new State, cannot be doubted." He noted further that precedent for this grant had already been set in the government's sale of land to the Ohio Company of Associates (*Annals of Congress, House of Representatives, 7th Congress 1st Session*, 1802, p. 1102). The "pledge to the public creditors" to which Gallatin refers had been made twelve years earlier, when the federal government sought to provide assurance that the United States could be counted upon to honor its debt obligations. Legislation enacted in 1790 ordered that "…the proceeds of the sales which shall be made of lands in the western territory, now belonging or that may hereafter belong to the United States, shall be, and are hereby

appropriated toward sinking or discharging the debts, for the payment whereof the United States now are, or by virtue of this act may be holden, and shall be applied solely to that use until said debts shall be fully satisfied" (*U.S. Statutes at Large, 1st Congress 2nd Session,* 1790, p. 144).

The House approved the Ohio Enabling Act and sent it to the Senate, where a series of amendments were offered. The most important was one to remove the provision, intended to encourage federal land sales in the new state, that required Ohio to place a five-year exemption from state and local taxes on land purchased from the federal government. It failed. None of the other amendments concerned the reservation of section 16 for the support of schools, and they too were all rejected (*Annals of Congress, Senate, 7th Congress 1st Session*, 1802, p. 294). The bill was approved by both houses a few days later (*U.S. Statutes at Large, 7th Congress 1st Session,* 1802, pp. 173-175).

Satisfied that the territorial government had fulfilled the conditions specified in the bill, Congress voted to admit Ohio into the Union early in the next session (*U.S. Statutes at Large, 7th Congress 2nd Session,* 1803, pp. 201-202. A few days later Congress acted upon a companion measure to extend the grant of school land to areas of the state not covered by the Public Land Survey and where there was thus no section 16 to reserve for the schools (this matter is covered at greater length later in the following chapter). A bill to do just that made its way quickly through Congress.

After the third reading and just prior to the final vote on the measure, Andrew Gregg of Pennsylvania rose to the floor of the House to announce his opposition to the First Great Devolution. He acknowledged that support for the bill was overwhelming, and he assured his colleagues in the House that his remarks would be short (they were), and that he would not be offering any amendments (he did not). Gregg then proceeded to argue that granting the school land to Ohio, though authorized by the Land Ordinance of 1785, would nevertheless be in violation of the Virginia Cession of 1784. He remined the House of the language that had established the Northwest Territory as the public domain of the United States: "That all the Lands within the Territory so Ceded to the United States and

not reserved for or appropriated to any of the beforementioned purposes or disposed of in Bounties to the Officers and Soldiers of the American Army 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 or Federal Alliance of the said States" (*Journal of the Continental Congress, March 1, 1784*, p.115). It was therefore wrong, in Gregg's mind, to make one state the beneficiary of land in the public domain, which was clearly intended to benefit all the states equally:

> With what face of justice can we put our hands into this common fund, or lay hold of any portion of these lands, and apply them to the use and benefit of the people on one part of the country, to the entire exclusion of all the rest, as is contemplated by this bill? What authority have we to give the people of Ohio land equal to a thirty-sixth part of the whole State…It was an act of usurpation which he had not been able to discover any principle whatsoever to warrant or justify" (*Annals of Congress, House of Representatives, 7th Congress 2nd Session*, 1803, p. 585).

John Randolph of Virginia countered Gregg's objection by invoking the reasoning that had inspired the policy in the first place: reserving land for schools would attract more settlers who would be willing to pay more for all the rest of the land in the township, and it would thus drive up the value of all land in the public domain: " Can we suppose that emigration will not be promoted by it, and that the value of the lands will not be enhanced by the emigrant obtaining the fullest education for his children; and is it not better to receive two dollars an acre with an appropriation for schools, than seventy-five cents an acre without such an appropriation?" (*Annals of Congress, House of Representatives, 7th Congress 2nd Session*, 1803, p. 586). Randolph asserted that it was thus very much in the national interest to grant the school lands to Ohio, as the additional revenue taken in by the federal government from land sales would benefit all states in the Union—including the old states that were not entitled to the land grants. The school land grant was therefore in accordance with the terms of the Virginia Cession, as well as the Constitution, and should be approved. As Gregg anticipated, his opposition failed to impede action on the

bill. It was adopted without further ado and became law (*U.S. Statutes at Large, 7th Congress 2nd Session,* 1803, pp. 225-227).

Gregg's objection to school land grants to the new states came to the fore again two decades later. In 1821, Maryland state senator Virgil Maxcy resurrected the argument that section 16, like all land in the public domain, was the common property of all the states: "…the property and jurisdiction of the soil were acquired by the common sword, purse and blood of *all* the states, united in common effort" (Maxcy 1821, p. 5). Moreover, the Louisiana Purchase and all the Indian land that had since been acquired had also been paid for, in one way or another, by the U.S. Treasury. Revenue from the sale or rental of section 16 must therefore be used to equally support public schools in all the states, and not just schools in the state and in the township in which the school land was located.

The federal government could set things right, Maxcy reasoned, by extending the school land grant program to the old states. He called upon the federal government to grant equivalent amounts of land remaining in the public domain—of which there were hundreds of millions of acres—to the 16 states that had been passed over. The Maryland legislature endorsed Maxcy's proposal by adopting the following resolutions:

> *Resolved*, by the general assembly of Maryland, That each of the United States has an equal right to participate in the benefit of the public lands, the common property of the union.
> *Resolved*, That the states, in whose favor congress have not made appropriations of land, for the purposes of education, are entitled to such appropriations as will correspond, in a just proportion, with those heretofore made in favor of the other states" (Maxcy 1821).

Van Atta (2014) surmises that Maxy's real objective was to obtain financial relief for the state government of Maryland, which had suffered great loss of revenue during the recession brought on by the Panic of 1819. This may be true, but, in a bid for national support, the Maryland legislature ordered the governor to send the resolutions to the governors of all the other states and requested that they be forwarded to their legislatures. Ten states subsequently sent communications to Congress endorsing the proposal.

According to the Maryland Resolutions, the old states were to receive land grants "in a just proportion" to what the new states were receiving. Maxcy's report included calculations of the area of each of the old states and thus of the amount of school land they would receive were his plan to be implemented. State legislators in Vermont envisioned something far grander, at least for Vermont. Why base the appropriation of school land upon area? If school land grants were instead made to the old states in proportion to population, Vermont's rightful share would be 18 million acres or so—over three times the size of the state itself! Even at that there would be plenty of land to go around for all the other states as well: "…there would, with considerable management, and consistent with sound and liberal policy to the new States, remain a fund sufficient for the endowment and support of all the educational and charitable institutions which an enlightened and benign policy might demand for all present and future states of this Confederacy," i.e., the United States (Pomeroy *et al.*, 1851, p. 378).

Maxcy's proposal instructed Maryland's senators and representatives in Congress to "use their endeavors to procure the passage of an act to carry into effect the just principles therein set forth" (Maxcy 1821, p. 28). In accordance with this directive, John Nelson submitted the Maryland Resolutions to the House of Representatives in the early days of the 17th Congress, coupled with a request that a select committee be appointed to draft the requisite legislation (*Annals of Congress, House of Representatives, 17th Congress 1st Session*, 1821, p. 537). A month later, in January 1822, Edward Lloyd submitted a resolution similar to Nelson's to the Committee of the Whole in the U.S. Senate, and also requested that "…the foregoing resolution by referred to a select committee, with instructions to report a bill pursuant thereto" (*Annals of Congress, Senate, 17th Congress 1st Session*, 1822, p. 241).[12]

Despite the support that many state legislatures had expressed for the Maryland Resolutions, some months earlier Maxcy's proposal had drawn strong criticism from an unlikely quarter. The August 21, 1821 edition of *Niles' Weekly Register*, a highly influential magazine with a large national circulation, published a piece written in opposition to it.

This report of the New York state legislature's Committee on Colleges, Academies, and Common Schools invoked the same arguments made back in 1802 to justify granting school land to new states only. It also raised a new objection, which was that the 1790 legislation that pledged to direct all revenue from land sales to interest and principal payments on the public debt had been reaffirmed several times, i.e., in 1792, 1795, 1802, 1803, and 1817.[13] With nearly $90 million of debt still outstanding, the diversion of so much revenue from federal land sales to the old states would violate the spirit if not the letter of the law.

Van Atta (2014) believes that the report was the brainchild of committee chair Gulian Verplank, an advocate of free trade, whose chief objection to the bill was that it would leave the United States government almost entirely reliant upon the tariff as a source of revenue. This conjecture would seem to be a bit of a stretch. It is true that Verplanck is best known for the role he played several years later in achieving the Compromise of 1833, which, by gradually lowering tariffs over the next decade to much lower levels, defused the Nullification Crisis and averted civil war. At the time the Maryland Resolutions were being circulated, however, the tariff was much less protectionist than it became later in the decade, and preferences concerning tariff rates did not break as sharply across the North-South sectional divide as they did later (Peart 2013). The legislatures of two states which should have been most concerned about high tariff rates, the slave states of Georgia and North Carolina, had gone on record in support of the Maryland Resolutions.

It is also the case that in 1821 the federal government was almost totally reliant upon the tariff already. Over the previous two decades the tariff had generated over 90 percent of the federal revenue, and tariff revenues were trending upward as the economy recovered from the Panic of 1819. As for Verplank himself, elected in 1819 as one of the City of New York's representatives in Albany, we know that he was a charter member of Van Buren's Bucktail faction in the Democratic-Republican party. A few years earlier, however, he had been an ardent Federalist, and some years later he joined the Whig party, which, like the now defunct Federalists, favored higher tariffs (Daly 1870). Verplanck's political

views thus seem to have been quite malleable, and there is little reason to believe that his opposition to the Maryland Resolutions was based upon a principled concern over high tariff rates.

The Verplanck Report notwithstanding, it seemed like a foregone conclusion that Congress would act favorably on the Maryland Resolutions. True, the new states that had received the section 16 grants for education could be expected to oppose the measure. The purpose of the section 16 grants, after all, was to provide a special benefit that would attract the new settlers that they needed to grow, develop, and prosper. This inducement to migration would be lost if all the old states were cut in on the deal. At this time, though, only 17 members of the House came from the new states. The 16 old states that stood to gain had 169. The new states were better represented in the Senate, but there were still twice as many senators from the old states than from the new states (32 to 16).

Expectations that Congress would speedily approve the Maryland Resolutions were dashed when Nelson brought the measure to the floor. Benjamin Hardin of Kentucky immediately proposed an amendment that the resolutions be referred to the standing Committee on the Public Lands instead of to a select committee. Samuel Woodson, also from Kentucky, favored referral to a select committee but proposed an amendment to dramatically expand the scope of federal assistance to public education and to centralize control of it. The amendment directed that a select committee "…inquire into the expediency of appropriating the proceeds of the public lands to the creation of a permanent fund for the purposes of education and internal improvements throughout the United States (*Annals of Congress, House of Representatives, 17th Congress 1st Session*, 1821, p. 538). Using revenue derived from federal land sales to finance schools across the country would have meant an even greater shift in policy than that called for by the Maryland Resolutions. It would have reversed the First Great Devolution and established a national system of school funding much more in accord with the Equal Funding Principle. The only action taken at this point, though, was to table the Maryland Resolutions and proposed amendments, and to take the matter up at a later date.

This occurred a month later, in January 1822, and commenced with renewed wrangling over the question of which committee should be assigned the matter. John Campbell of Ohio, chair of the Private Land Claims Committee, spoke in favor of Hardin's amendment to send it to the standing Committee on the Public Lands. Two congressmen from Maryland, Robert Wright and Peter Little, joined by Samuel Woodson and by Gideon Tomlinson of Connecticut, insisted that it be assigned to a select committee. William Archer of Virginia joined them in supporting appointment of a select committee, which he argued should be composed of one member from each state.

Everyone surely knew what lay at the heart of the dispute over committee referral, but Woodson brought it out into the open. He stated that "He had the fullest confidence in the talents and integrity of the Committee on Public Lands, but believed that they were hostile to the measure. They were generally from the new States, and he felt himself justified in saying that Parliamentary usage required a submission of a proposition to a committee composed of its friends, not its enemies." Despite the support that several members of the House from the old states had expressed for referral to a select committee, Nelson concluded that this was not going to happen. He then beat a tactical retreat and told the House that he would accept referral to the Committee of Ways and Means. This committee was far more representative of the House than the Committee on the Public Lands, and could be expected to be favorably disposed to the measure (*Annals of Congress, House of Representatives, 17th Congress 1st Session*, 1821, pp. 711-713).

As we see in Table 3:1, Woodson's take on the House Committee on the Public Lands was accurate. Members from the new states that had received school land grants—and who could thus be expected to oppose grants to the old states—accounted for less than ten percent of the parent chamber. On the committee, however, they outnumbered representatives from the old states by a margin of five to two. The Maryland Resolutions were likely to receive a chilly reception in the Senate Committee on the Public Lands as well, where three members hailed from the new states and only two from the old.

Table 3:1 about here

The 17th Congress met during the ostensibly harmonious period of Democratic-Republican party domination known as the Era of Good Feelings. Nevertheless, we see in Table 3:1 that the political leanings of the committee members were otherwise quite diverse. Some were in favor of slavery and others opposed it. Some were foes of Andrew Jackson and would go on to support either John Quincy Adams or William Crawford in the upcoming 1824 election. Others were some of Andrew Jackson's strongest backers, including the new senator from Missouri, Thomas Hart Benton, who nine years earlier had shot and nearly killed Jackson in a gunfight. Both committees also included a Federalist. Although the party become extinct a few years later, in the 17th Congress there were still 31 Federalists in the House and four in the Senate. It would appear, then, that on the major issues of the day the Public Lands committee members were broadly representative of opinion in the chamber as a whole. On the matter of extending school land grants to the old states, however, most were "preference outliers" Krehbiel (1990).

What about the assertion, made by Woodson and other supporters of the Maryland Resolutions, that it ran counter to parliamentary tradition to refer a proposal to a committee that was likely to oppose it? This was certainly the general approach taken in the early Congresses and is codified in *Jefferson's Manua*l: "Those who take exceptions to some particular in the bill are to be of the committee, but none who speak directly against the body of the bill; for he that would totally destroy will not amend it…the child is not to be put to a nurse that cares not for it" (Sullivan 2011). However, Christopher Rankin, chair of the Committee on the Public Lands, took issue with Woodson's characterization of House procedure. He stated that "…this was the first time that the private sentiments of a standing committee were ever, within his knowledge, made the subject of an inquiry on a motion of this sort" (*Annals of Congress, House of Representatives, 17th Congress 1st Session*, 1821, p. 713). It is likely that Rankin was being truthful. By the 1820s a system of permanent standing committees was ensconced in the institutional structure of both the House and Senate, and a pattern of deference to them was evident as well (Cooper 1970).

In any case, the Maryland Resolutions survived when the House rejected Campbell's motion to refer to the Committee on the Public Lands, 57 in favor to 89 against.

When debate resumed, opposition to the substance of the Resolutions emerged. Remarkably, it came from a representative of one of the old states that stood to gain from the proposed policy. According to Benjamin Gorham of Massachusetts, any plan for awarding tracts of land in the public domain to the old states was fraught with difficulty. How would such apportionment be done? By area, by population, or some other method? Gorham asserted that "It would be impossible for human ingenuity to devise a plan that would not bear unequally; and such a rule would naturally produce jealousies and dissensions. There were, already, jealousies enough among the members of the Union, without adding to the causes that produce them" (*Annals of Congress, House of Representatives, 17th Congress 1st Session*, 1821, pp. 714-715).

Gorham did not make the point explicitly, but if area were the criterion used to allocate land in the public domain to the old states, which is what the Maryland Resolutions implied, it would have disproportionately benefited the slave states of the South. Virginia, Georgia, and North Carolina were each larger in area than six northern states combined (Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New Jersey), but possessed much smaller free populations. There were at the time less than 200,000 free whites living in Georgia, for example, but over 1.6 million in the six free northern states. According to Van Atta (2014), the main obstacle blocking adoption of the Maryland Resolutions was the fact that members of the 17th Congress had little appetite for another sectional dispute so soon after the clash over slavery had been resolved, at least for the time being, by the Missouri Compromise. Maybe or maybe not, but Van Atta is correct in identifying slavery as the subtext in the dispute over school land grants.

Gorham identified other nettlesome issues that the House would have to confront if it were to pursue the matter. Where would the lands be located? What would prevent a small state like Delaware from getting some small leftover parcel of little value, while a large state like Virginia staked out valuable land near the mouth of the Mississippi River? Who

would sell the land? If it were the federal government, the pledge of all revenue from federal land sales to the public debt would be broken. If it were agents of the old states, large portions of the new states would effectively be under their control. What prices would be charged? If too low, they would undercut federal land sales. If too high, the land would remain unclaimed and off the tax rolls. Nelson attempted to mollify critics of the Maryland Resolutions by offering to make some changes in wording. Reuben Walworth of New York then sought to move the matter forward by referring it to the Committee of the Whole, but this motion, too, was rejected by a 65 to 86 margin (*Annals of Congress, House of Representatives, 17th Congress 1st Session*, 1821, p. 716).

With progress stymied in the House, supporters of the Maryland Resolutions turned their attention to the Senate. Jesse Thomas, chair of the Committee on the Public Lands, was from Illinois and could therefore be expected to oppose the extension of school land grants to the old states. But Thomas was a creative legislator, able to see things from both sides' point of view and willing to make strategic use of ambiguity. In the previous Congress, Thomas had proposed the key amendment in the Missouri Compromise and assisted Henry Clay in achieving its adoption (Hall 2015). Thomas floated a trial balloon that pointed to a possible compromise on this issue as well. Even as work on Maxy's proposal was wrapping up in the Maryland state legislature, he submitted to the Senate a "Proposition to Grant Land to the Old States for the Purposes of Education" (Thomas 1821). He signaled his opposition to the Maryland Resolutions by pointing out that Ohio's enabling act, as well as those of other new states, had made all federal land that was sold exempt from state and local taxation for five years after the date of purchase. The reservation of section 16 in the new states should therefore not be seen as a grant or as a donation, as the federal government had received a valuable consideration in return.

But Thomas also pointed to a way forward with a national revenue-sharing program. It might be, he suggested, "…just and expedient to grant a percentum, to a reasonable extent, on the amount of sales of public lands for the purpose of *promoting education* in such of the States as have not received the aid of the General Government; distributing

the amount among the several States according to the population of each." At the same time, "…justice would require an equivalent from the United States to the States and Territories which contain public lands" (Thomas, 1821, p. 440). What Thomas was proposing was to pursue both policies instead of choosing between them. Only new states would receive section 16 to support their schools, so the First Great Devolution would proceed as before. All states, however—new and old—would receive a share of the revenue from the sale of all federal land in the public domain. This latter proviso was similar to the amendment that Samuel Woodson proposed in the House, i.e., to direct proceeds from federal land sales to a sovereign wealth fund which would support education.

The Senate took up consideration of the Maryland Resolutions in early March 1822. After a speech in support by Edward Lloyd, the Maryland senator who had introduced the proposed legislation, the floor was given over to the other senator from Illinois, Ninian Edwards. Edwards strongly opposed the idea of school land grants to the old states (*Annals of Congress, Senate, 17th Congress 1st Session*, 1822, pp. 248-268). Some of his arguments, published in the *National Intelligencer*, had merit.[14] Others were specious or beside the point. He made no mention of the compromise that Thomas had proposed, and rejected any change in the current policy of reserving section 16 for schools in the new states only. Along with other inducements to western migration, he argued, the school land grants were of immense benefit to the national in general: Without the movement of the population westward, the lands of the public domain "…would remain in the condition in which they were received—waste and unappropriated, the haunts of ferocious beasts, and the habitations of blood-thirsty savages" (p. 258). The first organized filibuster in the Senate did not occur until 1837, but by this time it was common for members to resort to dilatory tactics from time to time (Binder and Smith 1997). Edwards had already spoken on the subject for over two hours, and informed the Senate that he might have more to say about it at a later date. The Senate took no further action on the Maryland Resolutions.

John Nelson, who submitted the Maryland Resolutions to the House in the first session of the 17th Congress, chose not to do so again in the second. He indicated that his

reason for refraining from doing so was because of "indisposition…connected with other circumstances, which he could not control," as well as a desire not to delay progress on the manufacturing bill that his colleagues were much more concerned about.[15] At this point Phineas White of Vermont stepped forward with a resolution similar to those previously offered by Samuel Woodson and Jesse Thomas. It called for the federal government to devote a portion of land sales revenue to "…a permanent increasing fund, the interest of which, after it shall have increased to a certain sum, shall be distributed for the promotion of education in the several States, according to the principles of equal rights and justice" (*Annals of Congress, House of Representatives, 17th Congress 2nd Session*, 1823, pp. 960-64). Most of White's remarks centered on the importance of education, which he asserted "…is to the republican body politic what vital air is to the natural body—necessary to its very existence—without which it would sicken, droop, and die" (p. 960). White did not elaborate on what he meant by "the principles of equal rights and justice" that would guide the distribution of federal money to the states, but it is likely that what he meant by this was the free population of each state. If so, it would have been a major policy reform in the direction of the Equal Funding Principle. Like all the other resolutions concerning schools and federal land sales in the previous session, White's resolution was tabled, and no further action was taken.

Two years later, Senator Henry Johnston of Louisiana proposed another policy that would have countered the First Great Devolution.[16] It was similar in spirit to the amendment that Woodson had made in the House and to the national revenue-sharing plan put forth in the Senate by Jesse Thomas. It was far more expansive, however, both in the amount of support it promised to provide for public education and in the extent to which this support would be administered at the national level. Johnston proposed that income derived from the sale of *all* federal land in the public domain (not just section 16) be pledged to a "permanent and perpetual fund," invested in the stock of the Bank of the United States or in whatever manner Congress might direct in the future. Interest on the fund's assets would be distributed annually to the states according to their representation

in the House of Representatives. Half would be used to fund public education, the other half to underwrite internal improvements (*Register of Debates, Senate, 18th Congress 2nd Session*, p. 42).

If approved, Johnson's plan would have reversed the First Great Devolution in public school finance. It would have produced an 18-fold increase in the amount of federal support for public education, centralized revenue collection and investment, and distributed revenue to schools across the entire country. As long as the implications of the Three Fifths Compromise are pushed to the side, the distribution of funds would be roughly in accordance with the Equal Funding Principle. It seems likely that if the federal government were to make such large annual infusions of revenue, it would have insisted on setting the major parameters of school policy as well. How different the history of public education in the United States would have been had Johnson's proposal become law.

It was not to be. Soon thereafter Congress turned attention instead to a resolution introduced by Senator Rufus King of New York—the same Rufus King who represented Massachusetts in the Congress of the Confederation and who was instrumental in inserting the section 16 land grant provision into the Land Ordinance of 1785. King proposed that once the public debt had been paid off, all proceeds from federal land sales should be used to emancipate slaves and then deport them to locations outside of the United States (*Register of Debates, Senate, 18th Congress 2nd Session*, 1825, p. 623).

This was not a new idea. As Dyer (1943) notes, the idea of coupling emancipation with "negro colonization" dates back to the late 18th century. Nor was it outside the mainstream of American political thinking at the time. The Virginia legislature gave almost unanimous approval to a resolution expressing support for this policy in 1816. The American Colonization Society, a group formed that same year to lobby Congress for the money needed to transport free blacks back to Africa, was backed by several prominent men, ranging from Francis Scott Key to its president Bushrod Washington, an Associate Justice of the Supreme Court and George Washington's nephew (Eggerton 1985). Henry Meigs of New York had submitted a similar resolution linking emancipation with colonization in

February 1820, during the debate which eventually led to the Missouri Compromise (*Annals of Congress, House of Representatives, 16th Congress 1st Session*, pp. 1113-1114).

Still, King's resolution had no prospect of getting anywhere in the Senate, and he admitted as much when he presented it. The measure succeeded brilliantly, on the other hand, in triggering a sharp negative reaction from the southern defenders of slavery. Robert Hayne of South Carolina introduced a counter-resolution, which held "…That Congress possesses no power to appropriate the public lands of the United States" for such purposes, and that what King had proposed "…would be dangerous to the safety of the states holding slaves, and be calculated to disturb the peace and harmony of the Union" (*Register of Debates, Senate, 17th Congress 2nd Session*, 1825, p. 697). The injection of the issue of slavery thus blocked any further consideration of using federal land sales to support schools throughout the country. Going forward, any proposal to alter public land policies also risked stirring up this hornet's nest. For that, and possibly for other reasons, no subsequent efforts were made in Congress to either extend school land grants to the old states, or to use the proceeds of federal land sales to support schools across the nation.

Reserving land in new states to support schools for the people living there originated in the Congress of the Confederation, and was meant to serve as an inducement to migration westward and a boon to federal land sales. Although repeatedly challenged, it proved to be an enduring policy equilibrium. In the early years of the new Republic there had been several plans outlined for a centralized, national system of education, but none received serious attention. Decades later, the Maryland Resolutions, which would have extended school land grants to the old states, were endorsed by several state legislatures but failed to get very far in Congress. Proposals were also brought forward in the House and in the Senate calling for the proceeds of federal land sales to be directed to a national sovereign wealth fund, and to distribute the revenue generated by its investments to schools in all the states. These, too, failed to gain any traction in the legislative process. By the middle of the 1820s, the issue of slavery and the attendant conflict between northern states and southern states promised to confound any effort to centralize the funding

of education. The First Great Devolution—the reservation of section 16 to the residents of the new states being added to the Union—was a done deal. As we shall now see, however, the manner in which school land grants were made differed from state to state, depending upon their particular circumstances, and shifted significantly over time.

**School Land Grant Legislation**

The first state to receive school land upon its admission to the Union was Ohio. The Enabling Act of 1802, in keeping with the Land Ordinance of 1785, stated "That the section, number sixteen, in every township…shall be granted to the inhabitants of such township, for the use of schools" (*U.S. Statutes at Large, 1st Session 7th Congress,* 1802, p. 175). This meant that whatever revenue was derived from section 16 would stay with the township in which it was located. This legislation applied, however, only to the Congress Lands subject to the Public Land Survey. It did not cover the 7.5 million acres in the two areas identified previously, i.e., the Western Reserve of Connecticut and the Virginia Military District. Nor did it apply to the U.S. Military District. Comprised of over 2.5 million acres in the central part of Ohio, this area was set aside by the federal government to honor the warrants that soldiers of the Continental Army had received as compensation for their service in the War for Independence (*U.S. Statutes at Large, 4th Congress 1st Session,* 1796, pp. 490-491).[17] Veterans were permitted to enter their claims for land in this area until the beginning of 1800, at which point any unclaimed land would be released back to the United States and be made available to anyone who wished to purchase it. Figure 3:5 displays the location of the Western Reserve, the Virginia Military District, and the U.S. Military District, as well as the many other tracts of land that made up Ohio.

Figure 3:5 about here

Land in the Western Reserve and in U.S. Military District was subsequently staked out into townships, but instead of the six-mile square townships created by the Public Land Survey, the townships here were five miles by five miles. These dimensions were chosen for the U.S. Military District because the military bounties that had been issued were in

multiples of 100 acres. Generals, for example, were awarded warrants for 1100 acres. Colonels received 500 acres, lieutenants 200 acres, and noncommissioned officers and privates 100 acres. A five-mile square township contains 16,000 acres and so can readily be divided up into parcels that are multiples of 100. A six-mile square township, in contrast, contains 23,040 acres and is not divisible by 100 (White 1983). Most of the Western Reserve was sold to the Connecticut Land Company in 1796, and the company's surveyors also laid out five-mile square townships. The individual parcels that were created, however, varied in size and shape, and, when regular, were usually rectangular and not square (White 1983). Property holdings in the Virginia Military District were demarcated by metes and bounds. Although it was technically possible to identify one thirty-sixth of the area within the District as school land, it would have been difficult and costly to do so.

Because there was no section 16 located within six-mile square townships in these three tracts, Congress sought to reserve an equivalent amount of land, i.e., one thirty-sixth of the area, by different means. In legislation enacted soon after Ohio was admitted to the Union, 18 quarter-townships (three-mile by three-mile squares), were reserved within the U.S. Military District to support the schools of its inhabitants. Twelve quarter-townships located within the U.S. Military District were similarly designated to support schools of people living within the Western Reserve (*U.S. Statutes at Large, 7th Congress 2nd Session,* 1803, pp. 225-227). It was later found necessary to identify additional land in the northwestern corner of Ohio to provide the Western Reserve with an amount equivalent to the section 16 grant (Petro 1997). In 1807 Congress directed Ohio to support schools in the Virginia Military District by selecting 18 quarter townships, plus three additional sections, also located outside of the District, in the Congress Lands north of the U.S. Military District but south of the Western Reserve (*U.S. Statutes at Large, 9th Congress 2nd Session,* 1807, p. 425).

Reserving school land in this manner necessitated a significant change in the way in which the grants were made. Beginning with the U.S. Military District, Congress ordered "That the following tracts of land in the state of Ohio, be, and the same are hereby

appropriated for the use of schools in that state, and shall, together with all the tracts of land heretofore appropriated for that purpose, be vested in the legislature of that state, in trust for the use aforesaid, and for no other use, intent or purpose whatever" (U.S. Statutes at Large, 7th Congress 2nd Session, 1803, pp. 225-227). This arrangement is reflected in the entry for Ohio in Table 3:2, which shows that section 16 in the Congress Lands was reserved to the township in which it was located, but that land reserved for schools in the three large tracts not covered by the Public Land Survey was put under the jurisdiction of the state as a whole.

Table 3:2 about here

Technically speaking, the legislation that reserved school land for the Western Reserve and the two military reservations to the state also transferred the section 16 grant in the Congress Lands to the jurisdiction of the state. It did not, however, negate the provision that proceeds derived from section 16 were to accrue to the inhabitants of the township in which it was located. Ohio dealt with these somewhat contradictory directives by authorizing local officials to control the disposition of section 16 in the townships, but making their actions subject to the approval of the state legislature.

There was another small area of Ohio in which the school land was reserved to the state and not the townships—the Moravian Indian Grants. This is because the Land Ordinance of 1785 had made an additional grant to support education, albeit indirectly. In this case the intended recipients were Native Americans: "And be it further Ordained, That the towns of Gnaddenhutten, Schoenbrun and Salem, on the Muskingum, and so much of the lands adjoining to the said towns, with the buildings and improvements thereon, shall be reserved for the sole use of the Christian Indians, who were formerly settled there, or the remains of that society, as may, in the judgment of the geographer, be sufficient for them to cultivate." To understand why these grants were made, it is necessary to know the tragic history of this place.

As noted in the previous chapter, several Protestant denominations sent missionaries to the American colonies to proselytize and to educate the Indians, as did the Jesuits and other Roman Catholic orders in Maryland and in New France (Curtis 1915). Among these were the United Brethren, commonly referred to as Moravians because of where the sect originated. The Brethren established missions among the Indians in Pennsylvania, Ohio, Indiana, as well as among the Creek and Cherokee tribes in Georgia (Fisher 2017). These missions included schools, as the ability to read the Bible was a central aspect of their faith. Surviving records suggest that the schools served relatively few Indian children and not all who attended became literate (Schwarze 1923).

Much like the Praying Towns that John Eliot established in Massachusetts, Gnaddenhütten, Schoenbrun and Salem, located in Tuscarawas County in eastern Ohio, were home to those Indians whom the Moravians had converted to Christianity. Like the Moravians in general, they were pacifists and took no sides in the War for Independence. Although the Christianized Indians were drawn mainly from the Lenape and Mohegan tribes, white settlers in western Pennsylvania suspected that they were secretly assisting the Wyandots, who were fighting alongside the British, and who had been raiding farms and settlements along the frontier. Acting on this suspicion, in March 1782 David Williamson led a force of 160 Pennsylvania militiamen to the Moravian Indian towns. There they rounded up the inhabitants, imprisoned them overnight, and in the morning beat 96 of them to death. About 30 of the victims were children, and many of the women were raped before they were executed. Because of their commitment to pacifism, none fought back. Although many militiamen refused to take part in the massacre or in the burning and pillaging of the towns that followed, those who did were never punished for their crimes (Harper 2007). The grant made in 1785 was thus intended as compensation, and, because most of the survivors had fled to Canada, to entice them to return.

In its final session held under the Articles of Confederation, Congress subsequently ordered 10,000 acres of land in and around the three towns to be vested with "…the society of the United brethren for propagating the Gospel among the Heathen, in trust and

for the uses expressed in the said Ordinance," i.e., "…for civilizing the Indians and promoting christianity" (*Journal of the Continental Congress*, September 3, 1788, pp. 485-486). Perhaps the land was entrusted with the Moravians because no tribal authority remained to receive the grant directly, or because Congress could not determine who that might be. In any case, Congress intended the grant to be used to support the Moravian schools. Civilizing the Indians necessarily entailed teaching them to read so that they might understand the Gospel and become Christians. Literate Indians, moreover, could be trained to be ministers themselves and help convert those Indians who had not yet accepted the Christian faith.

Few Indians, however, returned to the site of the massacre, and the Moravian Indian towns were never rebuilt. White settlers were anxious to move in, and in 1824 Congress accepted a Deed of Retrocession that retuned the land to the federal government. In return, the Christian Indians were promised an annual payment of $400 (Knepper 2002). They were also allowed to obtain a tribal reservation in the federal domain of up to 24,000 acres in size, but they would forfeit their annuity if they exercised that option (*U.S. Statutes at Large, 18th Congress 1st Session,* 1824, pp. 56-59). This legislation called for the land to be put up for auction at the Tuscarawas County Courthouse in New Philadelphia and at the federal land office in Zanesville. As in the case of the two military tracts and the Western Reserve, Congress ordered that one thirty-sixth of the land "…be vested in the legislature of the state of Ohio, and held in trust for the use of schools" (*U.S. Statutes at Large, 18th Congress 1st Session,* 1824, pp. 56-59).

As noted earlier, the enabling act that authorized Ohio to establish a state government and join the Union required Ohio to make land purchased from the federal government exempt from state and local taxation for five years after the date of sale. This tax break was another policy designed to boost demand for land in the public domain. This information, too, is displayed in Table 3:2. As we see here, Congress required the next seven states admitted to the Union to provide the same five-year tax break to purchasers of

federal land. Five states admitted between 1818 and 1846 were required to grant similar three-year tax exemptions on land acquired with military bounties.

Tennessee, originally the Overland Region of North Carolina, became a state in 1796 after North Carolina ceded this area to the United States. In 1803 Congress enacted legislation that made Tennessee and the rest of the new southern states subject to the education clause in the Land Ordinance of 1785. It stipulated that in the area south of the Ohio, section 16 "…shall be reserved in each township for the support of schools within the same" (*U.S. Statutes at Large, 7th Congress 2nd Session,* 1803, p. 234).

In Tennessee, this turned out not to be a practical possibility. A large amount of land in the eastern part of the state had already been patented in the Colonial Era, and these holdings, as in North Carolina, were defined by metes and bounds. The Cherokees still held the Hiwassee and Ocoee Districts located southeast of the Tennessee River. A large amount of land in the central part of the state was also needed to form the North Carolina Military Reservation, where bounties awarded to North Carolinians who had served in the War for Independence could be exchanged for land (Griffey 2020). These various land tracts are displayed in Figure 3:6.

Figure 3:6 about here

For these reasons, that part of the state lying north and east of the Congressional Reservation Line was not made subject to the Public Land Survey. This meant that in this area the federal government could not make a grant of section 16. In 1806, ten years after the state had been admitted to the Union, the federal government sought to remedy this situation by charging the state with the task of designating an equivalent amount of land for the support of schools: "And the state of Tennessee shall moreover, in issuing grants and perfecting titles, locate six hundred and forty acres to every six miles square in the territory hereby ceded, where existing claims will allow the same, which shall be appropriated for the use of schools for the instruction of children for ever" (*U.S. Statutes at Large, 9th Congress 1st Session,* 1806, pp. 381-383).

What this legislation did not specify was the jurisdiction that was to be put in charge of the school land and its disposition. Townships were out of the question, as there had been no Public Land Survey and thus no townships. Tennessee might have put the counties in charge. They chose not to, and so, as indicated in Table 3:2, the state government assumed control of school land and its disposition. Acting upon Congress's instructions, the legislature directed surveyors to demarcate the land into blocks of six miles square and instructed them to locate 640 acres of school land "in one or more tracts which shall be fit for cultivation and improvement, and which shall be as near the center of each section as existing claims and the quality of the land will admit" (*Laws of Tennessee, Chap.1 Sec. 6*, 1806).

The 1806 legislation did not apply to the Congressional Reservation in western Tennessee, which amounted to about 44 percent of the total area of the state. This area was formally acquired by the federal government in 1818 when it was purchased from the Chickasaws (Sioussat 1908). In contrast to all other areas which became the public domain of the United States, the federal government failed to order any land in this area to be reserved for the support of schools. As discussed at greater length in the following chapter, attempts were subsequently made in Congress to do so, but none were successful.

The next seven states entered the Union without the complications involved in the admission of Ohio and Tennessee. The grants to Indiana and to Alabama stipulated "That the section numbered sixteen in every township and when such section has been sold, granted, or disposed of, other lands equivalent thereto, and most contiguous to the same, shall be granted to the inhabitants of such township for the use of schools." The enabling acts of Louisiana and Mississippi called for section 16 to be reserved "in each township for the support of schools within the same." This language is similar to that of the 1785 Land Ordinance, and both states took it to mean that revenue derived from proceeds derived from section 16 would stay with the township. Illinois, Missouri, and Arkansas entered the Union under legislation stating that "section numbered sixteen, in every township…shall be granted to the State, for the use of the inhabitants of such township, for the

use of schools." This language, too, meant that proceeds derived from section 16 would stay with the townships, but it also meant that townships could dispose of the land only after they had been delegated the authority to do so by the state government.

*The Crary Proviso*

A major shift in policy occurred in 1836, when legislation making the school land grant to Michigan mentioned nothing about townships. It stated instead that section 16 was "…granted to the State for the use of schools." The way in which this change came about is illustrative of how major historical developments often result from the right person being in the right place at the right time.

In 1832, Isaac Crary, a young lawyer newly arrived from Connecticut, moved into the Marshall, Michigan home of another transplanted New Englander, Congregationalist minister and missionary John Pierce. The two discovered that they shared a strong interest in the advancement of education in the wilderness in which they now found themselves. They were impressed by the centralized Prussian system of education, described in Victor Cousin's *Report on the Condition of Public Instruction in Prussia*, which had just been translated into English (Hoyt and Ford 1905). The best way to foster public education in Michigan, they concluded, was to put it under the control of the state government and to make it the responsibility of a single executive branch officer.

Pierce and Crary were dismayed by the policy of reserving section 16 to the inhabitants of the township in which it was located. This meant that the level of public support that schools received from the land grants varied according to the value of section 16, resulting in great inequality in funding levels. To be sure, at this time in American history, when parents were largely responsible for the costs of their children's schooling, *any* infusion of public resources served to equalize access to education. With eight or so families living on each section in rural areas and considerably more in towns and villages, there were likely to be 300 or more families in each township. Families varied considerably in their

economic standing, but aggregating section 16 sales revenue to even the township level produced some equalization in educational offerings (Fuller 1982).

Still, with more than 1,500 townships in the Lower Peninsula alone, the variability in land values, along with the attendant inequality in section 16 revenue, was bound to be substantial. There was strong demand for excellent timberland, which was abundant throughout Michigan, Wisconsin, and other areas in the Upper Midwest. Throughout the rest of the public domain, the value of land was primarily a function of its suitability for agriculture. In the North, this meant the cultivation of grain crops. The best farmland included expanses of dry prairie, a good supply of timber for fences and buildings, and springs or streams to provide clean water (Murray 1967). Land that was too sandy, too rocky, that had poor drainage, or was bereft of trees was not desirable. In the South, the ground that was most prized was fertile sandy loam, which was best suited for growing cotton. This soil type was especially abundant in the Mississippi Delta and other areas with deep alluvial depositions. When section 16 was worth little or nothing, such as when it was located in swampland or at the bottom of a lake, Congress had typically authorized officials to select alternative tracts of "in lieu" land for the support of their schools. Even with this concession, the quality of section 16 land varied greatly from one location to another.

Another determinant of the value of section 16—and, as we all know, of real estate in general—was location. In the early 19th century, the closer that land was to a navigable river, and thus the lower the cost of moving crops to market, the more it was worth. In subsequent years, transportation costs declined, and land prices rose, as a function of proximity to canals and railroads. Land was especially prized in areas that were on their way to become urban and commercial centers (Emill 1933). Variation in land values grew larger over time in response to the patterns of settlement that were induced by natural variation in the desirability of different locations.

As Crary and Pierce saw it, it was highly inequitable to reserve section 16 to the residents of the township in which it was located. "How much better it would be, they

believed, if the state possessed the lands and disposed of them in the interests of all of its citizens" (Dain 1968, p. 208). Granting school land to the state government meant that the amount of benefit that children received from the school land grant would not depend upon the value of section 16 in the township in which they resided. The state government simply needed to pool the revenue derived from the sale or rental of *all* section 16 land in the state and apportion funds to schools according to the number of children they served (Swift 1911). In keeping with the Equal Funding Principle, every child in the state would receive the same amount of public support for their education regardless of where they lived.

By 1835 the population of the Michigan had surpassed 60,000, making the territory eligible for statehood. The Territorial Council called a constitutional convention and Isaac Crary, elected as a delegate from Calhoun County, proposed the that a committee on education be appointed. The convention voted to do so, made Crary the chairman, and instructed the committee to draft an article on education for the new state constitution. This was in and of itself an important innovation, as no state previously admitted from the Northwest Territory had provided for education in its constitution. A few years earlier, the Territorial Council of Michigan had enacted a school law directing the school commissioners in each township to issue three-year leases for section 16 land, to collect whatever revenue these leases generated, and to apply that revenue to schools established within the township (*Laws of the Territory of Michigan*, *Fifth Legislative Council*, pp. 129-139, 1833). Crary and his committee ignored this precedent. They proposed instead that "The proceeds of all lands that have been or hereafter may be granted to this State for the support of schools, which shall hereafter be disposed of, shall be and remain a perpetual fund; the interest of which, together with the rents of all such unsold lands, shall be inviolably appropriated to the support of schools throughout the state." When the convention finished its work in June of 1835, this clause became Article X, section 2, of the Michigan Constitution.

Michigan, it turns out, had jumped the gun by ratifying a state constitution before becoming a state. It was therefore necessary to submit the constitution to Congress for its approval. Crary was appointed to head this effort as well. When he arrived in Washington, he discovered that the vote on admitting Michigan to the Union was being held up by two major controversies. One was the unresolved dispute over the boundary between Ohio and Michigan. Both claimed the Toledo Strip, which is identified in Figure 3:5 as the Michigan Meridian Survey. Although only five to eight miles wide, it was of considerable economic value. 1836 was an election year, and the Democrats and Whigs both coveted Ohio's 21 electoral votes. To the surprise of no one, Congress awarded the Toledo Strip to Ohio. Michigan received the Upper Peninsula as a consolation prize, but few at the time thought this land was worth much of anything (Stein 2008).

The second roadblock standing between Michigan and statehood was the arrangement, made after the Missouri Compromise of 1820, to pair admission of a free state with that of a slave state. This impediment was removed when the population of Arkansas had risen to the required level, and companion bills to admit both states were approved on June 15, 1836 (*U.S. Statutes at Large, 24th Congress 1st Session,* 1836, pp. 49-52). The bill that admitted Michigan— "An Act to Establish the Northern Boundary Line of the State of Ohio, and to provide for the Admission of the State of Michigan into the Union Upon the Conditions Therein Expressed"—was aptly named. Most of the text was devoted to defining the boundaries of the state, and the main "Condition Therein" was that Michigan needed to call another state convention to register its agreement with the boundaries that had been set. What the bill did not contain was any language about the section 16 grant, and so additional legislation was required to address that matter.

Isaac Crary had made many friends in Congress since arriving in Washington six months earlier. He had also been elected to the House and would be seated as soon as Michigan entered the Union. Crary was assigned to work with the House committee in charge of the supplementary bill, and he dutifully accepted the committee's request that he write the draft of it. Debate in Congress concerning the Toledo Strip and the necessity

of pairing Michigan with a slave state was long and repetitive, though at times entertaining. What cannot be found in the *Congressional Globe's* coverage is a single reference to the language that Crary had slipped into the first section of the supplementary bill: "That section numbered sixteen in every township of the public lands, and where such section has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to the State for the use of schools" (*U.S. Statutes at Large, 24th Congress 1st Session,* 1836, pp. 59-60). Crary had changed only a few words from previous statutes, replacing the phrase "to the inhabitants of such township" with "to the State." He later confided to John Pierce that he believed his gambit had succeeded only because no one in Congress noticed the change of language (Dain 1968).[18] Everyone knows that Congress routinely passes legislation that few if any members have bothered to read. This appears to be an early case in point.

The Crary Proviso would not go into effect, however, until a state convention in Michigan approved of the conditions that Congress had set for Michigan statehood. This meant acknowledging that the Toledo Strip belonged to Ohio. It was a bitter pill to swallow. Emotions had run high on both sides, and on occasion boiled over into violence. In April of 1835, at the Battle of Phillips Corners, members of the Michigan militia fired what they claimed were warning shots at an Ohio surveying team. They may have also detained some of the surveyors for a while, but this charge was not subsequently verified. In July of that year, when Michigan Deputy Sheriff Joseph Wood sought to arrest a young ruffian named Two Stickney for disrupting a Michigan-sponsored sheriff's auction in Toledo, Stickney stabbed Wood with a pen knife. A "posse" of 250 Michiganders then marched into Toledo, arrested Two's father Benjamin, broke into the offices of the pro-Ohio *Toledo Gazette,* and destroyed its printing press (Badenhop 2008).

When he called the convention to approve Congress's terms for admission, "Boy Governor" Stevens Mason, who had previously been adamant in pressing Michigan's claims, was accused of insulting "the sacred rights of free people," and was castigated as "the hero of the Bloodless plains of Toledo" (Hemans 1930, p. 231). Acceptance of Congress's terms

might have seemed in doubt were it not for the fact that in June of 1836 Congress had approved the Jackson Administration's plan to distribute surplus revenue held by the U.S. Treasury to the individual states. Michigan could expect to receive about half a million federal dollars, but only if it were a state. Cooler (if not colder) heads prevailed. On a very frigid day in Ann Arbor in December 1836, delegates to the Frostbitten Convention abandoned Michigan's claims on the Toledo Strip, accepted what Congress had offered them, and so paved the way for Michigan to be admitted as the 26th state of the Union on January 26, 1837. So that there would be no question about it, this legislation ordered the Secretary of the Treasury to provide Michigan with its share of surplus revenue, even though Michigan was not yet a state when the surplus revenue law had been enacted (*U.S. Statutes at Large, 24th Congress 2nd Session,* 1837, p. 144).

It appears to have been a serendipitous chain of events, then, that led to the reservation of section 16 in Michigan to the state as a whole instead of to the townships. That Crary could have slipped in his preferred language regarding section 16 without anyone in Congress giving it any real notice, which is plausible enough to begin with, becomes even more believable when some additional factors are considered. First, the legislative vehicle that reserved section 16 in Michigan to the state as a whole was a supplementary bill enacted after the matter of admitting Michigan to the Union had already been settled. Members likely assumed that it was merely some legislative housekeeping, needed to clean up a few minor details. Secondly, in the legislation pertaining to Arkansas, the state paired with Michigan for admission to the Union, Congress adopted the language it had used previously, which stipulated that section 16 "…shall be granted to the State, for the use of the inhabitants of such township, for the use of schools." This too attracted no notice or comment. Thirdly, during congressional debate on the admission of Michigan to the Union, the overriding focus of the members involved was to keep Michigan paired with Arkansas, or, more precisely, "…that these two bills will be hostages for the safety of each other (*Register of Debates, House of Representatives*, June 8, 1836, p. 4209).

Members from the slave states were especially wary of some legislative sleight-of-hand, or double-cross, that would get Michigan in and leave Arkansas out (Scroggs 1961).

*The Florida-Iowa Bill*

By 1845 the conflict over slavery had come to occupy center stage in American politics. Northern and Southern legislators had become too antagonistic and too distrustful of each other to rely upon an informal agreement linking admission of a free state with that of a slave state, as they had with Michigan and Arkansas. To prevent one state from entering the Union without the other, legislation to admit Iowa and Florida were instead joined together into a single bill (Doty 1856).

This simple logroll did not head off a squabble over slavery when the bill came up for consideration in Congress. The sensibilities of many Northerners were offended by two features of the state constitution that Florida had submitted for review: 1) "The General Assembly shall have no power to pass laws for the emancipation of slaves." 2) "The General Assembly shall have power to pass laws to prevent free negroes, mulattoes, and other persons of color, from emigrating to this State, or from being discharged from on board any vessel, in any of the ports of Florida." The first clause that enshrined slavery was objectionable to them on the face of it. The second provision, they asserted, was both unconstitutional and economically harmful to them. Northern shipping interests were suffering from the refusal of free black sailors to serve on ships destined for southern states that had anti-black immigration laws on the books. Once in port, these men risked arrest, and, if unable to pay a fine or court costs, they could then be sold into slavery (*The Congressional Globe*, March 1, 1845, p.378). Freeman Morse in the House and George Evans in the Senate (both Whigs from Maine) proposed amendments requiring Florida to remove these two sections from its constitution before it would be granted statehood. Bundling the admission of Iowa and Florida into the one bill, however, turned out to be an efficacious tactic. Along with several other amendments intended to derail the bill—including one to by Preston King of New York to consider the admission of Florida and Iowa

separately—the Morse amendment was defeated in the House 79-87 (Doty 19567). Evans' amendment was rejected by a vote of 12 in favor to 35 against in the Senate. This cleared the way for a vote on the bill itself, which passed by a wide margin (*The Congressional Globe*, March 1, 1845, p.383).

The Florida-Iowa bill did not address the matter of section 16, but supplementary legislation approved later that evening did. In Florida, the school land, as in many of the first set of states admitted to the Union, was reserved "…for the use of the inhabitants of such township, for the support of public schools" (*U.S. Statutes at Large, 28th Congress 2nd Session,* 1845, p. 788). In a companion Iowa bill, Congress ordered that section 16 "…shall be granted to the State for the use of schools" (*U.S. Statutes at Large, 28th Congress 2nd Session,* 1845, p. 789). As they had when Michigan entered the Union, it appears that Congress simply ratified the language that had been submitted by the state itself. There is no indication in the *Congressional Globe* of any notice being taken that school land in Florida was being reserved to the townships, or that in Iowa it was being reserved to the state, or that the two states differed in how the school land was granted to them. There may have been some interest in this matter, but the overriding issue of slavery crowded out attention to anything else.

Texas, also admitted in 1845, was a special case. Prior to statehood, the independent Republic of Texas had granted four leagues (13,284 acres, or about 21 sections) to each county for the support of public schools. These grants were recognized by the U.S. government when Texas became a state (Gammel 1898). From then on, the precedent set by the Crary Proviso stuck. As shown in Table 3:2, in the next four states admitted to the Union section 16 was granted to the state and not to the inhabitants of the township in which it was located.

What accounts for this shift in policy? Why did it occur at this juncture in time? As observed previously, Crary was troubled by the amount of inequality attendant upon reserving school land to the townships, and desired to see public funds spread evenly across all the schools in the state—a clear expression of the Equal Funding Principle. It is safe to

assume that all those who favored reserving school land to the state and not the townships were similarly motivated by the desire for more equality in the distribution of expenditures on education.

But there was more to it than that. By the late 1830s, the campaign for educational reform known as the Common School Movement was sweeping across the country. Its main objective was to make free, publicly supported education available to all children, or at least all white children. In order to foster the growth of public education, the Movement's proponents also sought to expand the role that state government played in public education. Influenced by the centralized approach to education taken in Prussia, they sought to establish state systems of common (public) schools, overseen by state boards of education and a cabinet-level Superintendent of Common Schools. These officials, who in many states held the title of Superintendent of Public Instruction, submitted regular reports on the progress of public education in their states. Here they documented gratifying increases in attendance, longer school years, and improvement in school buildings. But they almost always noted that some localities were devoting far too few resources to their schools to support even a minimally satisfactory level of education.

For this reason, according to Kaestle (1983), "…most state officials, writers on education, and school promoters in legislatures supported …more supervision from above" (p. 112). They realized, however, that if supervision were confined to collecting data and exercising moral suasion, little would be accomplished. As will be covered to a much greater extent in Chapter 5, they knew that they could have a much greater impact by using state financial assistance to induce local school authorities to improve educational offerings. In order to receive revenue from the state, local authorities would have to levy a minimum level of taxation, or make a minimum level of per pupil expenditures, or keep their schools open for a minimum number of months. It is plain to see that reserving section 16 to the state instead of the townships is in keeping with the Equal Funding Principle, but using state revenue to maintain minimal levels of educational offerings promotes the Maximin Funding Principle as well. The more revenue the state had at its disposal, the greater the

amount of incentive that it could create to provide for adequate schooling at the local level. The sale of section 16 would provide a ready source of such revenue. Even better, it was revenue that could be obtained without collecting taxes from the citizens of the state.

Table 3:2 does not report information on states admitted to the Union after 1859, but in all but one of them Congress reserved section 16 to the state as a whole. The exception was West Virginia, which broke off from Virginia during the Civil War and was not a recipient of the section 16 land grant. The grant of school land to Hawaii was to the state, but it had some unusual features. Like Texas, Hawaii was an independent country prior to its annexation by the United States in 1898 and was not subject to the Public Land Survey. The state of Hawaii was nonetheless granted about 200,000 acres of school land under terms of the 1920 Hawaiian Homes Commission Act, and the federal government ceded it additional land upon admission. This legislation stipulated that "…proceeds from the sale or other disposition of such lands and the income therefrom, shall be held by said State as a public trust for the support of the public schools and other public educational institutions, for the betterment of native Hawaiians" (*U.S. Statutes at Large, 86th Congress 1st Session,* 1959, p. 6). According to Title VI of the Elementary and Secondary Education Act, "Congress does not extend services to Native Hawaiians because of their race, but because of their unique status as the indigenous people of a once sovereign nation as to whom the United States has established a trust relationship" (Office of Elementary and Secondary Education 2021). This unique restriction on the use of school land revenue has so far passed constitutional muster.

**Consolidation of Section 16 Revenue**

Granting section 16 to the state as a whole allows for a much more equal distribution of school funding than granting it to the township in which it is located. Almost every state that entered the Union after Michigan had their school land reserved to the state as a whole, and once in place this policy was there to stay. Nowhere in the historical literature is there any report of any attempt made in any state at any time to alter it. In contrast, in

several of the early states, where school land had been assigned to the townships, attempts were made to transfer the grant and thus the revenue derived from section 16 to the state as a whole. This could be accomplished directly, by consolidating revenue derived from section 16 and placing it under the control of the state government. It could also be achieved indirectly, through funding policies that used state financial assistance to compensate for differences in section 16 revenue.

*Illinois*

Knowing that the state legislature was about to consider a major new education bill, in early 1841 the Educational Society of Illinois dispatched a memorial to Springfield that recommended several changes to existing law. The most far-reaching of the reforms that they advocated was to consolidate all revenue derived from section 16 sales into the state treasury, and to apportion it to schools according to the number of children they served. The current policy of reserving section 16 to the townships, they argued, was in clear violation of the Equal Funding Principle:

> The mere fact that a child happens to be at school in Sangamon, should not entitle him to receive a greater dividend from the school fund than that which is received by a child at school in Cass. The children at school are the legitimate beneficiaries of this general fund, and it should be distributed to them equally. Aside from the injustice of a mode of distribution which confers superior advantages to the children resident in particular counties, distinctions amongst the children of a republic, where all have, or ought to have, equal rights and equal demands upon public favor—are thought to be at war with the genius of our institutions… If the number of children in school is made the basis of distribution, equal justice will be done to all the children of the State, and the Legislature will be faithful to the high trust committed to their charge (Brown 1841, pp. 151-152).

The Illinois legislature enacted a comprehensive new school law that year, composed of 109 separate sections, but the new law did not include consolidation. Why did it not? The legislators were surely aware of the precedent set in Michigan four years earlier of reserving section 16 to the state. It may be that a majority of them did not favor

equalization. Another possibility is that they chose not to pursue equalization through consolidation because they believed they would first need to ask Congress to alter the terms of the section 16 grant, and that Congress was not likely to accede to their request. Whatever the reason, the status quo prevailed, and the townships kept the money.

*Florida*

As indicated earlier, the legislation enacted in 1845 that granted Florida school land reserved it "…for the use of the inhabitants of such township, for the support of public schools." This meant that the townships would retain section 16 revenue. As shown in Table 3:2, this policy was subsequently reversed. In 1848, John Beard, Register of Public Lands, urged the state legislature to consolidate the section 16 grant by turning it over to the state. Beard's chief ally in the legislature was Owen (O.M.) Avery, chairman of the Senate Committee on Schools and Colleges, who had commissioned a study of land prices and school enrollments throughout the state. According to its findings, reserving section 16 to the township in which it was located would produce gross inequities in school finance. In one township in Jackson County (located along the border with Georgia), section 16 land was so valuable that a six percent annual payout on sales revenue would yield $24.00 per child. In another township in the same county, section 16 was worth next to nothing (Pyburn 1954).

Governor William Mosely advised the legislature to first request permission from Congress before proceeding with consolidation. Although Cochran (1921) reports that they did so and that Congress gave its assent, there is no evidence in the *Congressional Globe* or in the Statutes at Large that Congress either receiving such a request or acting upon it. In any case, on December 28, 1848, in the bill that authorized the sale of section 16 (or sections selected in lieu of section 16), the Florida legislature approved a bill that ordered all such land to be sold by the State Register of Public Lands, and that all sales revenue was to be deposited into the state treasury. In a companion bill passed a week later, the legislature provided that the treasurer was to place this revenue in a separate Common

School Fund. The state comptroller, with the written assent of the governor, was to invest the capital of the fund in public stocks of Florida, of other states, or of the United States (*Acts and Resolutions of the General Assembly of the State of Florida Passed at its Fourth Session*, 1849, pp. 34-36.) The list of potential investments was later expanded to include general obligation bonds issued by cities and counties in Florida (Cochran 1921). In keeping with the Equal Funding Principle, the Register of Public Lands (who was also *ex officio* Superintendent of Schools) was to annually apportion interest earned by the fund to the counties on the basis of school attendance. In Florida, the campaign for consolidation was thus a successful one.

*Indiana*

In 1852 the Indiana state legislature considered a bill that was nearly identical to what Florida had adopted four years earlier. It proposed consolidating township funds into a single state fund and distributing the interest it generated to counties according to the number of enrolled students. The Superintendent of Public Instruction prepared a table showing that the distribution of section 16 revenue was highly skewed, and that a clear majority of counties would benefit from the redistribution of revenue resulting from consolidation (Larrabee 1853). The legislature approved the bill (*Laws of the State of Indiana, Passed at the Thirty-Sixth Session of the General Assembly*, 1852, pp. 439-456).

In Florida, the decision to consolidate section 16 sales revenue was approved before any such sales occurred. In Indiana, in contrast, a great deal of school land had already been sold. Sale proceeds had already been collected by the townships, and accruing interest was already being spent. While consolidation was certainly in keeping with the Equal Funding Principle, it could also be characterized as a Robin Hood redistributive policy of taking money from the wealthy townships and transferring it to the poorer ones. Counties that would have had lost section 16 revenue petitioned the State Supreme Court to block the bill, asserting that consolidation contravened the terms under which Congress had granted section 16 to Indiana. The Court ruled in their favor (Boone 1892).

Some Indiana legislators believed that they should respond to the court ruling by petitioning Congress to alter the terms of the section 16 grant. If Congress acted to retroactively reserve the school land to the state instead of to the townships, this presumably would overcome the court's objection. They ended up not making such a request, but they did devise a new school funding plan designed to achieve the equalization that would have resulted from consolidation. Legislation enacted in 1855 stipulated that the townships would continue to retain all proceeds derived from the sale of section 16. Revenue derived from all other sources that composed the state's Common School Fund, however, would be apportioned in a way that would compensate for inequality in section 16 revenue (*Laws of the State of Indiana, Passed at the Thirty-Eighth Session of the General Assembly*, 1855 pp. 161-183. Townships which derived little from section 16 income would get more state funding, while townships where section 16 yielded large returns would get less. Total public financial support would thus be as proportional as possible to school enrollment. The state supreme court affirmed that this method of compensatory equalization, unlike the consolidation of section 16 revenue, was constitutional (see Boone 1892).

*Alabama*

As in Illinois, Florida, and Indiana, public officials in Alabama were dismayed by the inequities that arose from reserving section 16 to the townships. In 1835 Governor Clement Clay complained that in some townships the proceeds from section 16 sales amounted to little or nothing, while those located in the prime cotton lands had collected far more than they could reasonably use (Weeks 1915). William Perry, Alabama's first Superintendent of Education and, some years later, commander of the Alabama 44th Infantry Regiment at Gettysburg, made the same point, only more tellingly. He observed that counties in the Tennessee Valley and in the Black Belt had large plantations with thousands of slaves. Section 16 sales in these areas had yielded considerable sums of revenue. Few schools had been established there, however, because rich planters preferred to send their children to elite boarding schools instead (Hyde 2016).

Within the Alabama state legislature there was strong support for the idea of consolidating section 16 revenue, but considerable opposition as well. As in Florida and Indiana, there were those who held that consolidation could not proceed without prior approval from Congress. After years of wrangling over the matter, in 1852 the legislature voted to hold an advisory referendum on consolidating section 16 revenue *(Acts of the Third Biennial Session of the General Assembly of Alabama*, 1852, pp. 30-32). To assure voters that no township was at risk of losing money as a consequence of the referendum, this legislation came with the proviso "That nothing in this act contained shall be construed to authorize any subsequent legislature to consolidate or to put into a common fund the amount that may belong to any township that shall vote against consolidation."

According to the election returns that county probate judges submitted to the Secretary of State, over 80 percent of those who voted on the question favored consolidation. No results were returned from 456 townships (29 percent of all the townships in the state), but this was still a very strong statement of support. On the other hand, given that any township that voted against consolidation could have opted out, there would have been little revenue to redistribute under any plan the legislature might have formulated.

Instead of moving ahead on consolidation, the Alabama legislature acted instead on a school funding plan that, as in Indiana, sought to achieve some degree of equalization without consolidating section 16 revenue. In 1854 Alexander Meek, chairman of the education committee, introduced a bill that called upon the Secretary of Education (an office established in this same bill) to use federal and state census data to determine the number of children in each township who were between 5 and 18 years of age. The Secretary was then to calculate how much each child would receive if proceeds from the sale of all school land in the state were distributed equally among them. Townships that derived less than this average figure from the proceeds of section 16 sales would receive enough revenue from the state Educational Fund (derived from a variety of sources, but mainly from taxation) to bring them up to the state average. Townships that garnered more from the proceeds of section 16 sales than the state per pupil average would keep all this revenue, but

they would receive no additional funds from the state (*Acts of the Fourth Biennial Session of the General Assembly of Alabama*, 1854, pp. 8-18). Some degree of equalization was achieved when the legislature approved this bill, but it was done by assuring a minimum level of per pupil expenditures in each township rather than through the equal division of revenue that would have occurred through consolidation. It was thus acting much more in accord with the Maximin Funding Principle than the Equal Funding Principle.

*Arkansas*

In 1850, Governor John Selden Roane urged the Arkansas state legislature to consolidate section 16 township funds into a single state fund. His recommendation was not inspired by the Equal Funding Principle, as had been the calls for consolidation in the other states we have previously examined. Arkansas, he pointed out, was very sparsely populated at the time. He argued that it would therefore be wiser to funnel all section 16 revenue to the small number of academies that already existed in the state rather than spread it thinly across the townships. Most townships would garner very little revenue—too little, according to Roane, to do much of anything with it: "you give to each a poor pittance, useless for any purpose whatsoever…In all thinly settled countries the people must, in great measure, rely upon private enterprise for the rudiments of education" (Roane 1850, pp.15-16). Whatever the merits of his argument for consolidation, the Arkansas legislature chose not to act upon the matter.

**Summary and Appraisal**

Convinced that an informed and enlightened citizenry was indispensable in shielding the new republic from the omnipresent threat of tyranny, Washington, Adams, and other major figures from across the United States favored the idea of funding education largely, if not entirely, from public sources. The strongest statement of support for mass public education came in the form of "A Bill for the More General Diffusion of Knowledge," which Governor Thomas Jefferson submitted to the Virginia legislature in 1779. Although

limited in its application by race and by gender, his plan for free public schooling contains key elements of what became American articles of faith: every child, regardless of their background, should be given an equal chance to succeed, and it is through equal access to education that equality of opportunity is secured.

Jefferson failed to win approval for his bill in Virginia, but efforts to spread the New England model of publicly supported schools throughout the new republic succeeded in the Congress of the Confederation. Acquisition of the Northwest Territory added over a quarter million square miles to the area of the United States, and the Land Ordinance of 1785 directed that it all be surveyed into six-mile square townships. The entirety of the public domain was to be sold, but section 16 in each township was reserved to provide support for public schools.

The early decades of the United States witnessed clear expressions of support for the Equal Funding Principle in the public provision of education. There were proposals, made by prominent figures within as well as outside of government, to establish a national system of public education, and to distribute federal land sales revenue as evenly as possible, on a per-child basis, across the entire country. These ideas engendered little if any support. The federal government chose instead to undertake the First Great Devolution in public school finance, reserving to new states as they entered the Union section 16 in each township. In the early decades of the Republic, representatives from the original states asserted that they, too, should derive a fair share of benefits from the public domain. The Maryland Resolutions, which would have reserved to the old states as much land for schools in the public domain as the new states were receiving, stalled out in Congress even though the old states had an overwhelming share of the membership in both the House and the Senate. In the 1820s resolutions were introduced in both the House and Senate to direct proceeds from federal land sales to a national sovereign wealth fund which would provide financial support to schools throughout the country. Such proposals became caught up in the overarching conflict over slavery, and as a consequence failed to get very far through the legislative process.

Because education in the early republic depended so greatly upon family income and wealth, public support of any kind was beneficial to the less well off. The extent to which the section 16 grants might equalize the provision of education, however, depended upon whether it was the townships or the state governments which were awarded the land. If it were the townships, as it was in the case of the first group of states that received the grants, the amount of support flowing to public schools depended upon the value of section 16 in each township—which varied greatly. Beginning with Michigan in 1837, almost every state subsequently admitted to the Union had section 16 reserved to the state as a whole. This policy, in line with the Equal Funding Principle, enabled state governments to pool the revenue derived from all school land in the state and apportion it to schools on a per pupil basis. With well over a thousand townships in the typical state, the amount of such equalization could be quite substantial. Campaigns were also undertaken in states where section 16 had been reserved to the townships to consolidate sales revenue into a single state fund. These efforts, which succeeded in Florida and, indirectly, in Indiana, reflect clear commitment to the Equal Funding Principle. Legislation was also approved in Alabama to counter the inequities arising from the reservation of section 16 to the inhabitants of the townships in which it was located, but the compensatory formula adopted there was more in keeping with the Maximin Funding Principle than with the Equal Funding Principle.

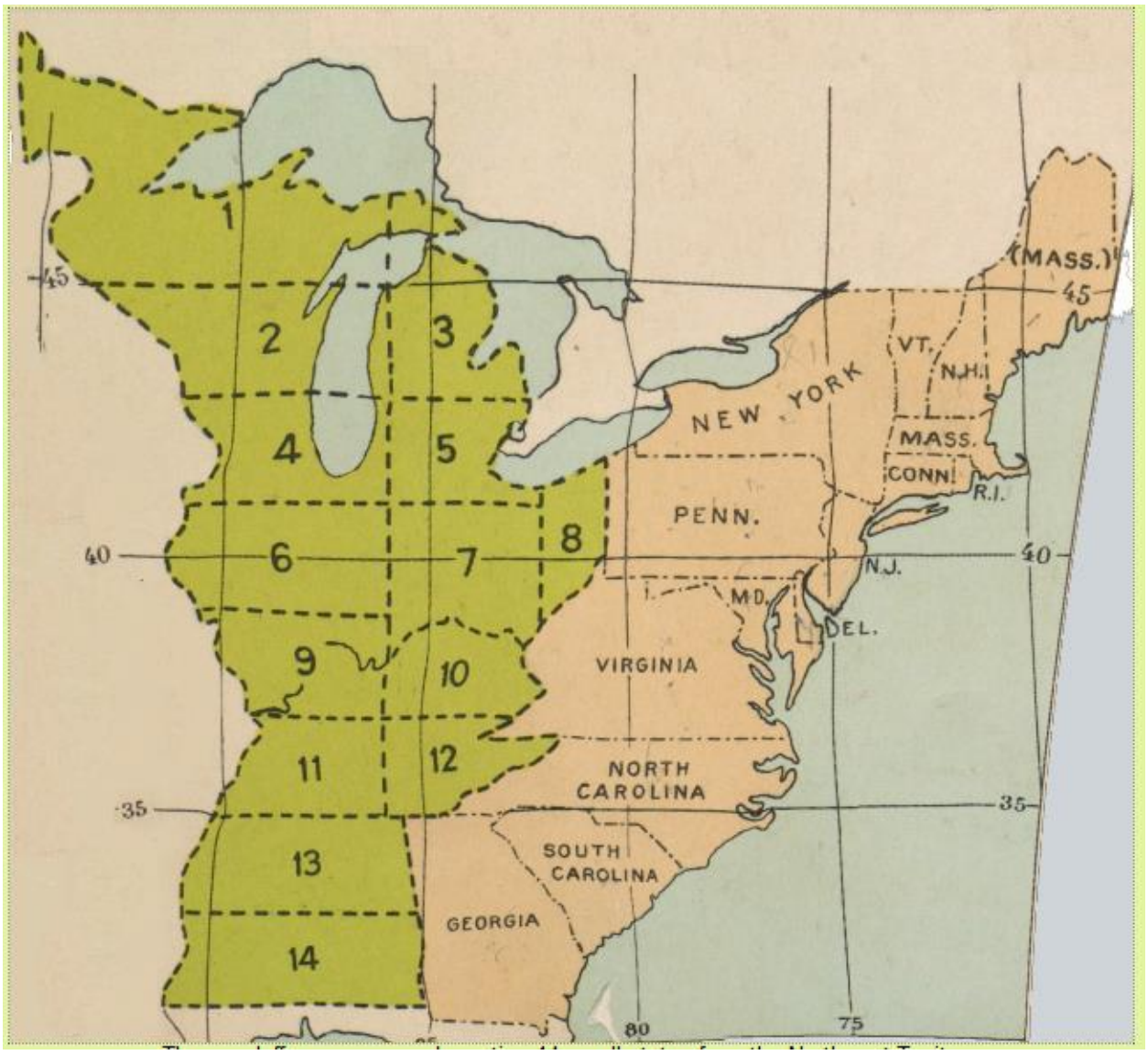
There always has been and continues to be, however, a great deal of economic inequality across states, and correspondingly a great deal of inequality across states in their ability to support public education. This inequality is an inherent consequence of the First Great Devolution. Reserving section 16 to the state instead of to the townships does nothing to alleviate it.

We must also remain mindful of something that is vitally important to public school finance, regardless of whether proceeds from section 16 sales flowed to the state or remained with the townships—the total amount of revenue that was secured. Here the actions of officials in charge of the school land were critical. Did they seek to maximize

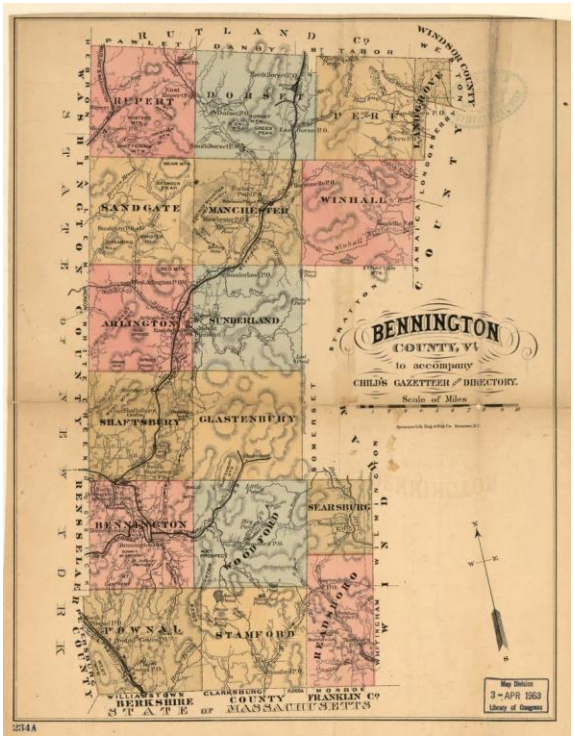
revenue by obtaining as high a price for it as possible, or did they dispose of the land for far less than what it was worth? We know from observing events unfold in the countries of the former Soviet Union and Eastern bloc that the process of privatization does not bring out the better angels of our nature. Aggressive, risk-acceptant types with a bit of a head start, willing and able to either curry favor with public officials or to intimidate them, acquired tremendous amounts of public assets at a tiny fraction of their actual value. Anti-corruption statutes were enacted, but, as Kaufmann and Siegelman (1996) note, "…fiduciary controls that ordinarily operate to ensure that government transactions are fair and transparent" were circumvented or simply ignored (p. 421).

Unless those entrusted with section 16 were properly motivated and constantly vigilant, it is possible, even likely, that the school land grants would yield little by way of revenue. If so, it would not much matter for the nation's public schools how it was distributed. It is thus a matter of great importance to determine how much revenue was derived from section 16 land and how much of a contribution this revenue made to public schools in the states that received these grants. As we shall see, a key feature of the environment in which these sales took is the fact that there are 36 sections in a township. Section 16 is only one of them, and the federal government was selling all the rest.

**Figure 3:1 New States Proposed by the Land Ordinance of 1784**



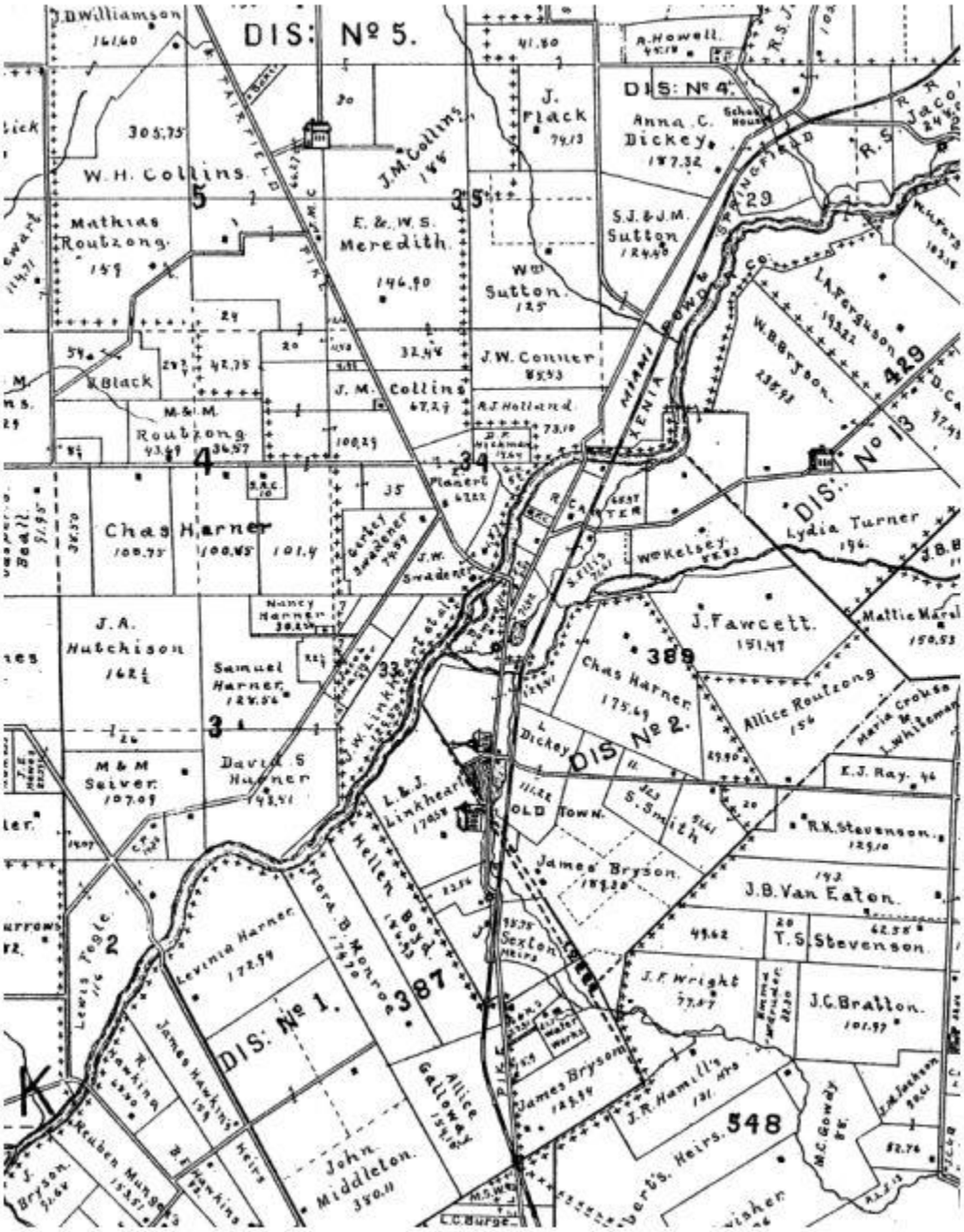
## Figure 3:2 Townships in Bennington and Windsor Counties, Vermont




Bennington County


Windsor County

**Figure 3:3 The Congress Lands and the Virginia Military District Along the Little Miami River in Greene County, Ohio**



## Figure 3:4 Township Numbering System Adopted in 1796

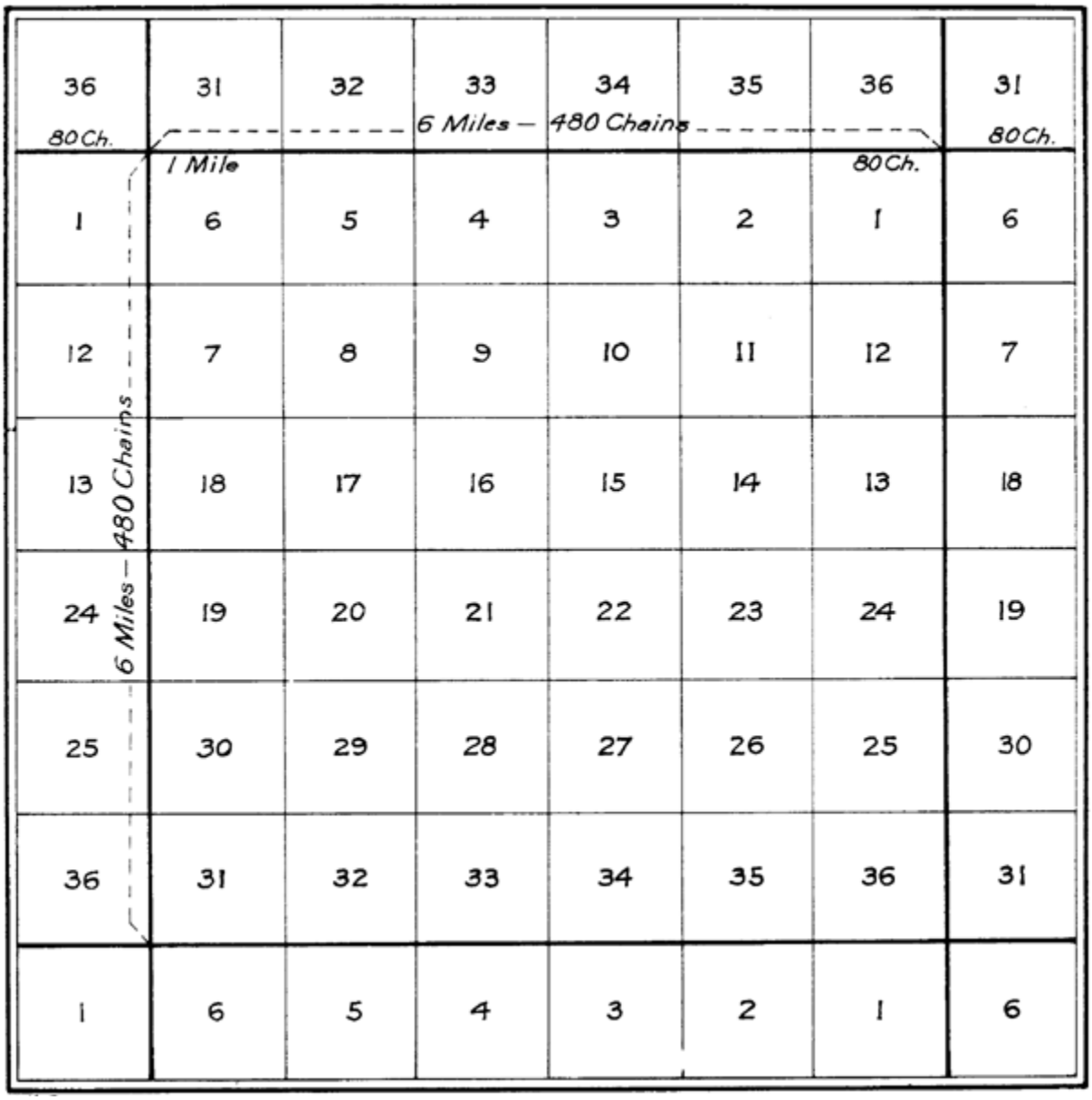
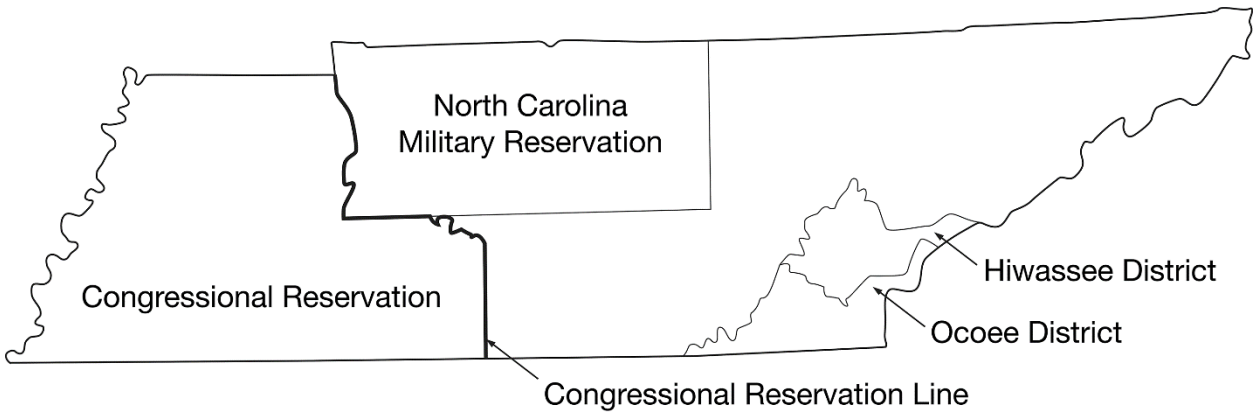


Table 3:1 Membership of House and Senate Committees on the Public Lands

| Member | State | Political Views |
|---|---|---|
| *House* | | |
| Christopher Rankin (chair) | Mississippi | Pro-Jackson |
| Newton Cannon | Tennessee | Anti-Jackson |
| Daniel Cook | Illinois | Anti-slavery |
| John Scott | Missouri | Pro-Adams/Clay |
| William Hendricks | Indiana | Anti-slavery/Anti-Jackson |
| Micah Sterling | New York | Federalist |
| Andrew Stuart | Pennsylvania | Pro-Jackson/Adams |
| *Senate* | | |
| Jesse Thomas (chair) | Illinois | Pro-Crawford |
| John Eaton | Tennessee | Pro-Jackson |
| Thomas Hart Benton | Missouri | Pro-Jackson |
| Walter Lowrie | Pennsylvania | Anti-slavery |
| Nicholas Van Dyke | Delaware | Federalist |

**Figure 3:5 Land Tracts in the State of Ohio, 1802**

## Figure 3:6 Land Tracts in the State of Tennessee, 1806



## Table 3:2 Assignment of Section 16 School Lands, 1803-1859

| | Year | Jurisdiction Granted School Lands | Five-year Tax Exemption | Three-year Tax Exemption, Military Bounties |
|---|---|---|---|---|
| Ohio | 1803 | Townships and State | X | |
| Tennessee* | 1806 | State | X | |
| Louisiana | 1812 | Townships | X | |
| Indiana | 1816 | Townships | X | |
| Mississippi | 1817 | Townships | X | |
| Illinois | 1818 | State/Township Use | X | X |
| Alabama | 1819 | Townships | X | |
| Missouri | 1821 | State/Township Use | X | X |
| Arkansas | 1836 | State/Township Use | | X |
| Michigan | 1837 | State | | X |
| Florida** | 1845 | Townships, then State | | |
| Iowa | 1845 | State | | X |
| Texas | 1845 | Counties | | |
| Wisconsin | 1848 | State | | |
| California | 1850 | State | | |
| Minnesota | 1858 | State | | |
| Oregon | 1859 | State | | |

* Tennessee was admitted in 1796, but school land was not reserved until Congress ordered the state to do so, in the area north and east of the Congressional Reservation Line, in 1806.

** School land in Florida was originally reserved for the use of the townships, but the state government consolidated section 16 sales revenue in 1849.

## Endnotes

[1] Rush was courageous in his efforts to treat the sick, as evidenced by his decision to remain in Philadelphia in 1793 and minister to victims of the yellow fever epidemic then sweeping through the city. Unfortunately, like most physicians of his time, he killed many more patients than he helped. Rush was a proponent of aggressive "depletion therapy," i.e., repeatedly draining large volumes of a patient's blood and blowing out their gastrointestinal tract with mercury chloride. He remained an adamant defender of these appalling practices long after they had lost favor in the medical community (North 2000).

[2] Virginia was not the only place where plans to advance free public schools foundered. A proposal similar to Jefferson's was approved in the Territory of Orleans in 1806. It, too, required counties to provide free public schools, but funding for it never materialized (Noble 1999).

[3] Although the Ordinance made no mention of them, Jefferson also came up with names for the new states (Jacobs 2010). Michigania (state 2 in Figure 3:1) and Illinoia (state 6) were similar to the names that these states were later given, but most of the other proposed names, including Cherronesus (3), Assenisipia (4) and Polypotamia (9), were left on the cutting room floor. Thank God.

[4] In addition to reserving a section in each township to support schools, one section was reserved for the glebe of the Church of England, another to support a minister employed by the Society for the Propagation of the Gospel in Foreign Parts, and two sections for the governor (Jones 1968).

[5] A geographic mile was originally defined to equal one minute of arc at the equator, but because the earth is not a perfect sphere a minute of arc depended a bit upon where the measurement was taken. In 1954 the National Institute of Standards and Technology defined it to be exactly 1852 meters, which is about 6087 feet.

[6] In addition to Vermont, another state in New England that made heavy use of square township grids is Maine. In 1784 Massachusetts made plans to sell land there, and commissioned Rufus Putnam to survey 50 townships in the eastern part of the future state. It was for this reason that Putnam declined the invitation extended by the Confederation Congress to help oversee the Public Land Survey in the Northwest Territory. Putnam's original survey was later extended throughout much of the rest of the state, and in

northern Maine the townships are aligned on cardinal lines of longitude and latitude (Irland 1986).

[7] Today GIS and sophisticated software can be used to translate metes-and-bounds descriptions into extremely precise latitude and longitude coordinates, but these technologies cannot overcome vagueness and ambiguity in the boundary descriptions or changes in the physical markers, e.g., when creeks are drained or rerouted and trees are removed.

[8] According to Orfield (1915), Elbridge Gerry sent a draft of the ordinance to another member from Massachusetts, Timothy Pickering, and instructed him to refer any suggestions he might have to Rufus King—also from Massachusetts, and a member of the committee in charge of the ordinance. Pickering informed King that he believed that the ordinance should reserve land for the schools. King agreed, and succeeded in persuading the committee to include a clause making such a provision. King and Pickering were thus instrumental in realizing Jefferson's goal of providing public support for education. Some years later, however, they became some of Jefferson's most implacable political enemies.

[9] As shown in Figure 3:4, these four sections are located at the corners of the interior four-mile square within each township. Spreading them out in this manner achieves as much geographic diversification of holdings as can be achieved within a six-mile square township.

[10] Founded by Benjamin Franklin in 1743, the American Philosophical Society was the leading scholarly organization in the country. Its members included most of the Founding Fathers, as well as many of the world's leading scientists and intellectuals. Justice (2008) is convinced that the person responsible for the topic of this essay contest was none other than Benjamin Rush, who was both a member of the Society and a resident of Philadelphia.

[11] Kaestle (1988) attributes the Company's demand for school land to a sincere commitment to the advancement of education. The person they sent to negotiate with Congress, Manasseh Cutler, was a Yale and Harvard graduate and a member of the American Philosophical Society. He had a deep interest in all things scientific (particularly botany), and, in addition to serving as a pastor, ran an academy for boys in Massachusetts. By all accounts, his views were shared by the other New Englanders in charge of the Ohio Company. But it is also reasonable to infer that the principals of the Company reckoned their

holdings would increase in value as public schools were established, and that the reservation of land for schools would thus increase profits rather than subtract from them.

[12] Early congressional procedure was informed by traditional practice in the House of Commons, whereby general principles of legislation would be agreed upon in the Committee of the Whole before being referred to a select committee to fill in the necessary details. The process of considering legislation would thus begin by a resolution, petition, or some other type of communication from one of the members. In 1822 the modern structure of standing committees was already in place in Congress, but it was still common for members to initiate legislation, as Nelson and Lloyd did in this case, by submitting a resolution to the floor. After some debate, sometimes meaningful but at other times perfunctory, the Committee of the Whole would then choose to refer, or not to refer, the matter to an appropriate committee (Cooper and Rybicki 2002).

[13] This was an accurate claim, in that legislation pertaining to the debt enacted in these years all contained clauses much like that of the 1817 act: "Nor shall anything in this act be construed to repeal, alter, or affect, any of the provisions of any former act, pledging the faith of the United States to the payment of the interest or principal of the public debt but all such payments shall continue to be made at the time heretofore prescribed by law" (*U.S. Statutes at Large, 14th Congress 2nd Session,* 1817, p. 380).

[14] The *Annals of Congress* (1789-1824) are not a contemporaneous record of proceedings. They were compiled many years later (between 1834 and 1856), primarily from newspapers accounts. In all likelihood the transcript of Edward's long speech in the *Annals* is based upon what was published originally in the *National Intelligencer*.

[15] Nelson's enigmatic remarks could have meant that he had been indisposed by poor health—always a possibility given the unhygienic environment of Washington, D.C. at the time—or that he thought it was a waste of time to pursue legislation which the House was not disposed to approving.

[16] Like nearly all members of Congress during the so-called Era of Good Feelings, Johnston was a Democratic-Republican. In Louisiana he was known as an Adams Republican or National Republican, and eventually became a Whig. He had recently been elected governor of Louisiana, and so was on his way out of Congress when he introduced the resolution.

[17] In September 1776 the Continental Congress promised to award soldiers of the Continental Army bounties, or land warrants, if they served continuously from the time of enlistment until they were discharged. These benefits would be transferred to the survivors of those killed in battle. Military bounties issued by the state of Virginia and other states were also based upon rank, as well as upon the amount of time served (Freund 1963). This legislation was needed by the Continental Army to recruit and to retain soldiers in the face of competition from individual states that were offering better pay, as well as enlistment bonuses and land warrants, to entice men to join their militias (Hagedorn 2013). The award of these bounties was reaffirmed in the Land Ordinance of 1785.

[18] John Pierce became much more famous than Isaac Crary. He was appointed by Governor Mason to be Michigan's first Superintendent of Public Instruction—an office created by the 1835 Constitution—and is regarded as the founder of the Michigan public school system.