

Northwest Ohio Quarterly



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Ohio's First Constitution¹

BY RANDOLPH C. DOWNES

1. Ohio's Three Constitution-Changing Conventions

Ohio has had three constitution-changing conventions: that of 1802 held in Chillicothe to organize the new state out of the old Northwest Territory; that of 1850-51 held in Columbus to enable the state to catch up with a half century of non-amendment; and that of 1912 held in Columbus to bring the state's organic law more into line with 20th century conditions.

Although held in strikingly different political and social circumstances, these three great constitutional changes had certain remarkable similarities. Each was the product of a period of great political excitement and represents the liberal or progressive moods of the people of the state. Judging by modern standards, they were liberal documents. Judging by the standards of their own times, they were radical. This is not to say that Ohio's constitutions remained of this political complexion. In between conventions they were moderated by court interpretations and amendments of a conservative nature. Nevertheless, it must be emphasized here that the Constitution of 1802 was a Jeffersonian document and a part of the so-called "political revolution of 1800." The 1851 document was largely colored by so-called Jacksonian Democratic ideas. And the 1912 amendments came at the peak of the Progressive Movement remembered largely by modern folk because of the national leadership of the great "bull-moose" Republican, Theodore Roosevelt.

2. Jeffersonian Democracy versus Hamiltonian Federalism

The Constitution of 1802 grew out of a partisan struggle in the Northwest Territory between two political factions or parties. The dominant faction was supported by the aggressive frontier Ohioans who found the policies of the nationally appointed Governor Arthur St. Clair too autocratic. This group is often called the Chillicothe faction because its chief leaders were Thomas Worthington, Edward Tiffin and Nathaniel Masie—all of or near Chillicothe, which was the Territorial capital. The

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Chillicotheans were opposed by leaders supporting Governor St. Clair who owed his appointment to the conservative party of the time known as Federalists. Both Territorial factions had their counterparts in Congress where a struggle for supremacy in the national government was going on in the years from 1795 to 1800. The Federalists were strong supporters of the policies of greater national supremacy. These were promoted by Alexander Hamilton who had been President George Washington's Secretary of the Treasury. The Anti Federalists (often called Republicans and Democrats) were led by Jefferson who had been President Washington's Secretary of State, and who favored greater states rights and more democratic voting qualifications and government policies.

It is necessary to describe the political differences between the Hamiltonians or Federalists on the one hand and the Jeffersonians or Democrats on the other. Originally the Hamiltonian leaders had done much necessary good in getting the young American Republic off to a good start. It was they who were largely responsible for the drawing up of the United States Constitution. Fearing the inflationary and anti-business tendencies in state politics in the 1780's, they fashioned a strong national government with razor-sharp powers allotted to the president, the Congress and the federal courts. The states were placated in some measure by guarantees of local self-government. The Hamiltonians also laid down the absolutely indispensable financial foundations of the new United States government by which the latter assumed and funded all state and national debts, set up a tax base for government income, and created a Bank of the United States to formulate sound credit standards for American business. Thus was the new nation made into a businessman's republic with a 100% credit rating. Western Pennsylvanians who revolted against the exercise of federal powers were quelled by a military demonstration. Entanglements in the Anglo-French wars growing out of the French Revolution were avoided by Jay's Treaty of 1794 which assured peace with England and the war trade so essential to commercial recovery and adequate tax revenue. The Anglo-Indian alliance for the defense of Indian rights in the Old Northwest was smashed by Anthony Wayne's victory at Fallen Timbers in 1794. The new Federal Constitution was given a maximum of utility for national supremacy by Congressional adoption of the doctrine of implied powers, that is, a broad rather than a narrow interpretation of Congress' rights. All of these Federalist achievements have been judged in later times to be quite necessary to healthy political growth.

But success went to the heads of Federalist leaders so that by 1797 their efforts to create national supremacy became excessive. They assumed that opposition to their measures by states-rights advocates and by small-time farmers and workingmen were conspiratorial and inspired by agents of the French Revolution. Hence they got a Federalist Congress in 1797 to pass the Alien and Sedition laws. These made it possible for the President to expel from the country aliens deemed undesirable by him. They also provided for fine and imprisonment of all persons who wrote or spoke against Congress or the President "with intent to defame or bring them into contempt or disrepute." This was greeted by Jeffersonians as an unconstitutional effort to throttle public opinion. The issue was so skillfully exploited by Jefferson and his new political party that they were able to capture both the presidency and Congress in the election of 1800. The vote was very close, and both Jeffersonians and Federalists looked for converts as they prepared for the election of 1804. This is where the Ohio Constitutional Convention of 1802 comes in.

3. Campaign for the Ohio Constitutional Convention of 1802.

The people of the Northwest Territory were quick to take advantage of this political situation. In 1801 spokesmen for the Territorial Federalists organized in Marietta and Cincinnati for the purpose of petitioning Congress to divide the Territory in such a way as to make their respective cities the capital of two new territories. The Territorial Legislature actually passed such a measure in the form of a petition to Congress, and sent it to the Territorial delegate, Paul Fearing of Marietta. The measure instantly became controversial, with the Congressional Federalists supporting Fearing and the Jeffersonians supporting a new Territorial faction known as the Chillicothe group. Chillicothe, being the capital of the Northwest Territory at the time, would lose this position if the Marietta-Cincinnati petition were granted by Congress. (Hence the Chillicotheans organized a campaign designed to show Congress that the Northwest Territory was ready for statehood with boundaries which would keep their city in the central position.)

Several factors made possible the success of the manoeuvres of the Chillicothe faction. Their plan fitted in with the boundaries originally proposed in the Ordinance of 1787 which created the Northwest Terri-

tory because the Ohio division of it was rapidly approaching the 60,000 population requirement for statehood provided by that document. The Marietta-Cincinnati scheme would obviously delay statehood if the population requirement were adhered to. Moreover, the Chillicothe leaders—Tiffin, Worthington, Massie and others—were ex-Virginians of Jeffersonian politics. They had the additional advantage of a Jeffersonian majority in Congress. They also had more general support for their plan as contrasted with the Marietta-Cincinnati coalition whose manoeuvres smacked too much of a deal to promote the ambitions of local real estate men and politicians. The reason that this coalition was able to get the Territorial legislature to support its two-territory petition to Congress was that voting in the territorial election of 1800 was confined to county seats. However, the legislature had passed a new law in 1801 ^{*} districting the counties in such a way that the next local elections would give the back-country people a chance to vote. This gave the Chillicotheans an incentive to appeal to this back-country vote in behalf of the Chillicothe brand of statehood.

The leader who made the most of this situation was Chillicothean Thomas Worthington. He undertook a whirlwind campaign in 1801 to get statehood petitions from the back country for submission to Congress. While he went to Washington to counteract Fearing, statehood agents in the Territory gathered thousands of signatures to petitions for Worthington to present to Congress. So effective was this that it soon appeared that the Territorial Legislature was, in fact, not representative of the public opinion of the people. Especially significant was the revelation that the non-Cincinnati part of Hamilton County was opposed to the Marietta-Cincinnati deal. Thus William Ludlow of Mill Creek wrote Tiffin December 22, 1801, "The majority of Hamilton County at this juncture feel themselves much alarmed at the prospect of having this Territory Divided." He denounced the "present monarchic system" and said the division of the Territory would be similar to "a Rheoboam scourge." The follow-up on Ludlow's report was so effective that two weeks later Massie wrote to Worthington, "You will receive a large packet of petitions by this mail, and chiefly from Hamilton County. From the latest information, that county is more than one-half opposed to the [division] measure, and it appears that the more the subject is examined, the more it is deprecated. I am very sanguine that at the next session [of the Territorial Legislature] the tone of members will be greatly changed in favor of a state government." As for the rest of the Territory, Samuel

Finley, head of the Chillicothe petition committee, reported to Worthington that Fairfield County meetings were for statehood "without a dissenting voice," that the people of Adams County have "but one voice & that is for a State Government." Petitions will be forwarded from all sections by every mail, he promised, until the desired object is attained.²

Essential to the success of the Chillicothe statehood campaign was the power of the patronage. How Worthington wielded this county by county is a revelation. James Pritchard of Jefferson County wrote him March 23, 1802, "A small revolution in this county will be necessary especially with the Sheriff Francis Douglass and John Ward the prothonotary but this you may keep to yourself." Pritchard was later speaker of the State Senate. In Belmont County James Caldwell wrote, May 22, 1802, "You mentioned my acting as Collector [of internal revenue] for this and Jefferson Counties. I would do it with pleasure did not the Acts of the Territory incapacitate any person holding an office under the U States from holding one under the Territory . . . if the Busniss can be done in the name of William Cooke a young man who does Busniss for me at this place I shall be glad to serve you." In Marietta the leader of the Chillicothe statehood faction was Return Jonathan Meigs who wrote to Worthington that Mariettans Philip Greene and Daniel Converse, who were carrying the mail from Morgantown, Virginia to Zanesville, wanted to carry it to Chillicothe, as well as to have some "active and responsible person" to join with them in carrying it from Chillicothe to Cincinnati. On June 1, 1802 Meigs wrote that Joseph Tiffin, Chillicothe postmaster, wanted to team with Converse and Greene, but that it would be improper for Tiffin himself to make the contract with the Postmaster General, Gideon Granger. He said that Tiffin could get somebody else to make the contract "yet the business may be so arranged as that Mr. Tiffin may have the direction and Benefits of carrying from Chillicothe to Cincinnati." Thereupon Worthington, on June 12, wrote to Granger proposing that Converse be given the contract clear to Cincinnati. He pointed out that the Federalist editor of the Marietta paper wanted the contract with a view to disseminate Federalist principles throughout the Territory. Since Granger was one of Jefferson's patronage leaders this suggestion no doubt did some good. At least Worthington closed his letter with the statement, "Your kind attention to Mr. Converse will be gratefully ackd."³ It should be added that Greene had just been appointed postmaster of Marietta as a result of the recommendation of hn Cleves Symmes of North Bend in Hamilton County. Symmes de-

scribed the process in a letter to Greene dated January 21, 1802, "In recommending you to the Post-Master-General, as a proper person to fill the office of Post Master at Marietta . . . I succeeded . . . Mr. Granger asked of me whether your politicks were federal or republican. I answered that I could not define your politicks but even supposing that you might have been federal in times past, yet I had such an opinion of your honor and integrity that I would pledge myself to him for the faithful performance of every duty required as postmaster."⁴

As a result of the coordination of Territorial petition gathering, patronage promises, and the activities of Worthington and Symmes in Washington, Congress, by a strictly partisan vote, passed the Ohio Enabling Act which became law on April 30, 1802. Worthington's letterbook shows that he had contacted all the leading Jeffersonians in Washington including the President himself. (The act called for an election in October of delegates to a constitutional convention which should meet at Chillicothe in November. As an inducement to help the new state it was provided that Section 16 of every township in the public lands should be reserved for the support of the public schools, that all salt springs were reserved for state sale, and that 5% of the net proceeds from the sale of public lands should be reserved for building public highways. The election resulted in an overwhelming victory for the Jeffersonians and for the Chillicothe brand of statehood. It was the first vote under the new district election law and the result showed it. The number of votes was at least six times greater than the number cast in the Territorial election of 1800.

4. *The Constitution of 1802*

The long contest was over and statehood was attained. There now remained but the details of making the Constitution of the State. The main features of the Constitution had, of course, been determined by the circumstances of the statehood contest. The central theme of the Constitution and of the debates in convention was the placing of all the agencies of the State subject to the will of the people who had been so long deprived of a real share in political life. As an opponent of the instrument expressed it, "It begins with we the people, and if we may judge from the judiciary Article few Constitutions were ever so bepeopled as it is throughout."⁵

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From the first frontier days beyond the Ohio River, there had existed this strongest of frontier desires for self-government. It had been evident in every period of the Territorial era—in every phase of frontier life. Self-government was sought in all political affairs, in township, county and territory. And now every element of this frontier democracy, either accomplished or hoped for, received explicit sanction in the first Constitution of Ohio—which represents, therefore, the first political fruit of Ohio's frontier experience.

The keynote of the Constitution was sounded during the campaign of 1802 by Stephen Wood of Hamilton County when he offered himself to the electorate as a candidate for delegate to the Convention. In answering certain questions proposed to all aspirants to the Convention, Wood said that he would do all in his power to promote the rights of the people, "that every resident male citizen of full age who pays a tax toward the support of the government may vote for its various officers." In addition to obtaining universal suffrage for taxpayers, he pledged himself to work for the popular election of all executive and legislative officers, and for the election, by the two houses of the Legislature in joint session, of the judges of the State Courts. Finally, he argued that all offices should be "limited" and elections should be frequent. Other candidates express practically the same sentiments.⁶

Each one of these fundamental demands found its place in the Constitution.⁷ The suffrage for the election of all state, county and township officers was given to all white males of twenty-one and over who were taxpayers or who were "compelled to labor on the roads of their respective townships or Counties." The governor, county sheriffs and coroners, justices of the peace, and other township officers were to be elected by the taxpayers. The secretary of state, the judges of the Supreme Court, the judges of the Courts of Common Pleas, the state treasurer and the state auditor should be elected by joint ballot of both houses of the Legislature. All civil officers of the State were subject to impeachment by a majority of the House, and conviction rested with two-thirds of the Senate. Terms were limited and were, as a general rule, short. Representatives to the Legislature and township officers were chosen annually; the governor, senators, sheriffs and coroners were chosen biennially; the secretary of state, treasurer, auditor and justices of the peace were chosen triennially; and judges of the state and county courts were appointed by the Legislature for seven year terms. It should be noted fur-

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ther that the governor had no veto power—a natural result of the contest with St. Clair. ←

Further points which were the natural result of frontier experience should be noted. The strong desire for autonomy in the creation of new counties and for the consequent benefits of increased local self-government was finally satisfied, with the express provision that counties of not less than four hundred square miles might be laid off by the Assembly. The oft expressed antipathy to the poll-tax was laid at rest by prohibiting the Legislature from levying such a tax for county or state purposes. The militia officers, who had long been too closely supervised by the Governor, were now released from such control when the selection of the higher officers was placed in the Legislature, and the selection of the various officers of subordinate rank in election by the grade of officers or men next beneath them.

The reform of the judiciary, to which much attention had been devoted throughout the territorial period, was finally carried out by Article III, which not only placed the state and county judges subject to appointment by the Legislature, but required annual sessions of the Supreme Court in each county, a feature borrowed from the Pennsylvania Constitution. This provision to make the Supreme Court a peripatetic body was the object of much derision by the Federalists. Levin Belt, a Federalist attorney of Chillicothe, wrote to Fearing, "If Justice is not worth coming after it can hardly be worth the having. Nor can I think that system likely to conduce to the prosperity or respectability of Society which makes their honours the Waiters, rather than the Waited upon." This system, said Belt, was taken from the Pennsylvania system, "with these trifling differences, in that State the Judges are well paid, well accomodated and their task made practicable from their number and from having roads from one county to the other, and Taverns and Court-Houses when they get there. In this State . . . [sic]."⁸

Another characteristically frontier feature of the Constitution was the express limitation of the salaries of state officers within a definite maximum, the governor and judges of the Supreme Court being limited to \$1,000, and the rest to sums varying from \$450 to \$800.⁹ This was, of course, the *reductio ad absurdum* of the tendency by which the Territorial Legislature had reduced all fees in the interests of the people. The dangerous possibilities of this feature were, of course, noted by the op-

ponents of the Constitution. Belt exclaimed with keen sarcasm, "What a truly desirable object of ambition will be a Judgeship in the State of Ohio."¹⁰ Woodbridge wrote that "on their present Economical plan no office will be Lucrative, nor I think very honble."¹¹ The orgy of job-hunting which was to follow the adoption of the Constitution was to bear out the implications of the words of Belt and Woodbridge.

It is important to note that a successful effort was made to cope with the fact that the State was to be deprived of the revenues from the taxation of lands bought from the United States until five years after the date of sale. On the last day of its session the Convention passed an ordinance promising to exempt all public lands from taxation for five years after their sale, on condition that Congress grant two further concessions: first that the donation to the State, for school purposes, of a section of every township, be extended to the Congressional Military District, the Connecticut Reserve, and all lands to be obtained in the future by cession from the Indians; second, that not less than three of the five per cent of the net proceeds from the sale of public lands reserved for western roads be applied to the laying out of roads *within* the State, under the direction of the State Legislature. A copy of the Constitution, of the Ordinance of Acceptance, and of an Address to the President and to Congress, was placed in the hands of Worthington, who was thereby commissioned as the Convention's official agent to present these documents to the authorities at Washington.¹²

Thus Worthington, whom one of his enemies at this time described as "that Sweet mixture of Milk & honey, sour small beer . . . everything—citizen Tommy all in a foam with the fomentations of a Morbid Ambition,"¹³ appeared in Washington to put the finishing touches to an enterprise he had so successfully inaugurated a year before. After interviews with Jefferson, Giles, and others of the Republican politicians,¹⁴ he was able to secure from Congress the acceptance of the State Constitution, the passage of an act dealing with the school lands, and the three per cent fund as the Convention had desired.

Under these auspices, and backed by a second overwhelming Republican victory in the election of State officers in January, 1803, the State of Ohio came into existence with the meeting of its Legislature in March. After years of struggling for self-government, the desire of the people had been attained. After a period of apparent division, a commonwealth

had abruptly revealed itself with the sudden enfranchisement of the mass of settlers in the upper Ohio Valley.

But there was one feature of the Constitution of 1802 which was to have peculiarly unfortunate results for the future. This was the unwieldy method of amendment. Only by calling another convention could changes be made. There was no provision such as we have nowadays for the passing of amendments by special majorities of the legislature followed by submission to the popular vote. The Constitution of 1802 provided that only by a two-thirds vote of the Legislature could the question of whether or not to have a convention be submitted to the people. This reflects the over-solicitude of states other than Ohio for the convention method. Americans had been the first people of modern times to make a reality of the convention process of creating government. It did not occur to most of them that there was a slightly less clumsy way of changing the Constitution. The result was that for almost 50 years the Ohio Constitution of 1802 could not be amended. Only once, in 1819, was a two-thirds majority of both houses obtained for a convention. However, this was rejected by the people. Hence by 1851 the Constitution was woefully out of gear with changing conditions. This story will be told in the next article of our Sesquicentennial series.

FOOTNOTES

1. This article is a summary of chapters 6-8 of the author's *Frontier Ohio* published in 1935.
2. These letters are in the Thomas Worthington MSS in the Ohio State Library in Columbus.
3. These letters are from the Worthington MSS and from the Letter-book of Thomas Worthington in the Library of Congress.
4. Griffin Greene MSS in Marietta College Library, Marietta, Ohio.
5. Levin Belt to Fearing, December 3, 1802, Fearing MSS, Marietta College Library.
6. *Spy*, October, 1802, Cincinnati, Ohio.
7. The first Constitution of Ohio may be found in numerous places. See Isaac Franklin Patterson (ed.), *The Constitution of Ohio . . .* (Cleveland, 1912). See also Elliot Howard Gilkey (Ed.) *The Ohio Hundred Year Book . . .* (Columbus, Ohio, 1901), 62-76.
8. Belt to Fearing, December 3, 1802, Fearing MSS.
9. This feature and the over-specific provision for the Judiciary are two of the best examples of what Jefferson meant when he told Jeremiah Morrow in 1803 that the Convention "had legislated too much." Julia P. Cutler, *Life of Ephraim Cutler*, 75 (Cincinnati, 1890).
10. Belt to Fearing, December 3, 1802, Fearing MSS.
11. Dudley Woodbridge, Sr. to William Woodbridge, William Woodbridge MSS. (In Detroit Public Library, Burton Historical Collection), no. 49.
12. These documents, together with Worthington's letter transmitting them to Congress, are printed in *American State Papers, Miscellaneous* (Washington, 1834), I, 343-44.
13. John Mathews to Fearing, December 11, 1802, Fearing MSS.
14. Worthington to Massie, December 25, 1802, in D. M. Massie, *Nathaniel Massie* (Cincinnati, 1896), 220-222.

The Settlement of The Black Swamp of Northwestern Ohio: Early Days

BY MARTIN R. KAATZ

1. Introduction

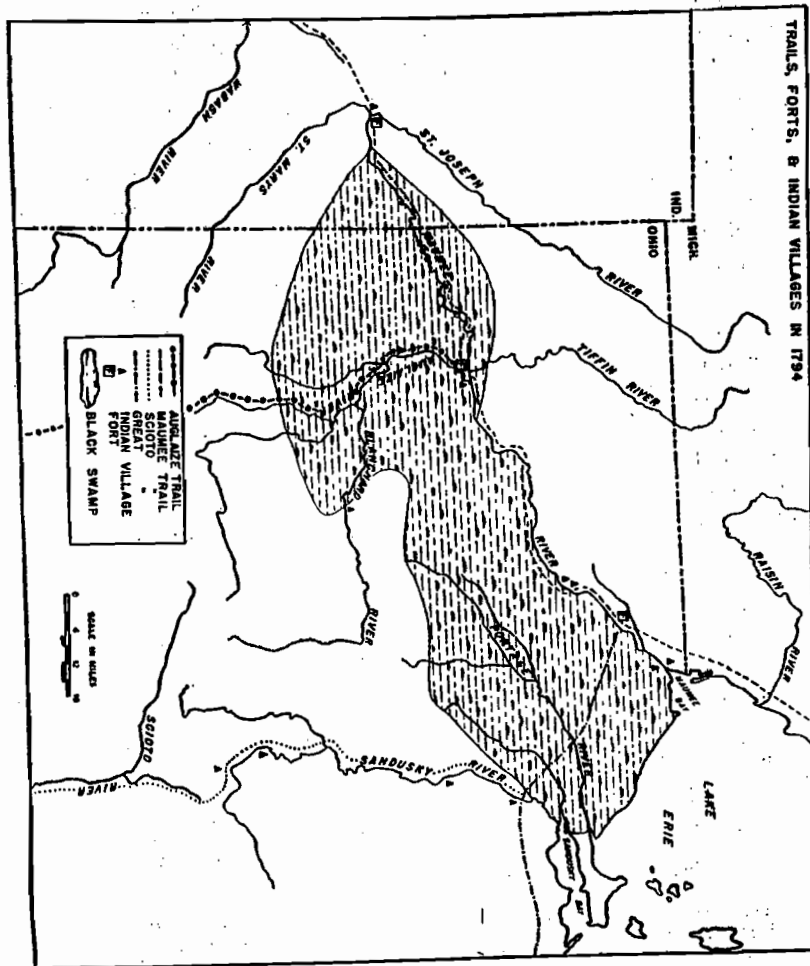
Northwestern Ohio, particularly that portion once covered by the Black Swamp, stands out in the early annals of the "westward movement" because it was so slow to be settled. Lands farther north, south, and west were settled first. Why was northwestern Ohio avoided? How was it finally settled? How was the landscape transformed so that it became an integral and prosperous section of the vast region now known as the Corn Belt? These are the principal problems and questions with which this study of the historical geography of the Black Swamp of northwestern Ohio is concerned.

In a study such as this, which has as its central theme the process of settlement and the development of a given region, it is necessary to state at the outset the meaning of the term "settlement."¹ Settlement involves migration on to and the occupying of land of unfamiliar qualities, perhaps among a previously established alien people. To understand the settlement process requires an understanding of the qualities of the land and an appreciation of the abilities and objectives of the settlers.

Because settlement necessitates movement, the roads utilized, be they land or water, are significant. "All human activity . . . proceeds along roads and trails, permanent or ephemeral as the case may be, for it is only at some point on a road which unites him with the rest of the group acting in the area that the individual human agent in the cultural transformation becomes significant."²

The physical evidence of the settlement process is found in the transformation of the land and the changes in the distribution of population which take place.

In a sense settlement is a continuous process, for the land is continually being transformed and the distribution of population continually



The Black Swamp