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Democracy in Search of Utopia: The History, Law, and Politics of Relocating the National Capital

Whit Cobb*

The act of choosing a capital, a place of coming together as a society, may express not so much what a society has been or what it is but rather what it wishes to become. Such was surely the case with the selection in 1790 of “a district of territory, not exceeding ten miles square, to be located . . . on the river Potomac, at some place between the mouths of the Eastern Branch and Connogochegue . . . [as] the permanent seat of the government of the United States.”¹ The founding generation chose to build an entirely new city on rough farmland, making a utopian break with history and emphasizing the agrarian character of the new nation.²

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1. An Act for Establishing the Temporary and Permanent Seat of the Government of the United States, ch. 28, § 1, 1 stat. 130, 130 (1790). The “Eastern Branch” refers to the Anacostia River, which intersects the Potomac in Washington, D.C.; “Connogochegue” refers to a stream intersecting the Potomac near Williamsport, Maryland. This legislation was amended the following year to permit the inclusion of Alexandria, Virginia, within the District’s boundaries. See An Act to Amend “An Act for Establishing the Temporary and Permanent Seat of the Government of the United States,” ch. 17, 1 Stat. 214 (1791).

2. See generally KRISHAN KUMAR, UTOPIA AND ANTI-UTOPIA IN MODERN TIMES 71 (1987)

Since that first choice, Americans repeatedly have sought to reinterpret the good life by relocating their capital. Almost as soon as the federal government moved to the District of Columbia, several efforts were made to abandon the sleepy, unfinished town for more urban locales. After the Civil War, exuberant Westerners organized a movement to bring the capital to the rapidly developing Mississippi Valley. And, in a transformation of earlier bids to remove the capital completely, the twentieth century has witnessed many attempts to remove particular federal activities from Washington. Although sharing the more basic impulses of economic and political advantage, all of these relocalational efforts also represent an ongoing American conversation about ideal social arrangements.

But as a result of the Constitution's District clause,³ this utopian conversation has been a most peculiar one. The founders established a unique and somewhat ironic political regime to govern the place selected to be the seat of government for their young democracy: The capital district was to be a national commons in which the representatives of the nation would govern the district with the federal interest at heart and in which, in exchange for federal patronage, the citizens of the district would surrender their suffrage. This "compact" was thought necessary to ensure that Congress could protect itself at the seat of government, that jealousy would not develop between the several states over the location of federal activities, and that the residents of the district would not be harmed economically by their lack of voting representation in Congress. The governing district was to be an imperfect utopia, rich in material wealth but largely deprived of political capital.

This article suggests that lately we have ignored the compact between the national government, the states, and the residents of the capital. As a result, the federal government has been slowly stealing away from the District of Columbia while leaving its citizens without the political representation necessary to protect themselves or the capital.⁴ I

("[The United States'] capital city, Washington, was expressly conceived in utopian terms, and L'Enfant's plan followed precisely the utopian design of Renaissance architects.")

3. U.S. CONST., art. I, § 8, cl. 17:

The Congress shall have power . . . To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings

4. Jamin Raskin, Associate Dean for Academic Affairs at American University's Washington College of Law, made this point succinctly in his recent testimony before the Senate Committee on Governmental Affairs. Among other measures designed to restore the District's vitality, Dean Raskin

hope to illustrate this point by tracing the history, law, and politics of various efforts to remove the federal government, or parts of it, from the national capital.

As a matter of law, the federal decampment flies in the face of the original constitutional and statutory understandings surrounding the capital compact. As a matter of policy, this abandonment entails striking consequences for the nation: The flight of agencies has helped to create an urban dystopia in the national capital entailing tremendous social and economic costs. It has contributed to environmentally destructive suburban sprawl in the vicinity of the capital. And it reflects that we may have abandoned some of our ambitions to be an example to the nations of the world: The condition of a nation's capital, like a person's appearance, may be a window on self-image.

The gradual relocation of the capital is also significant for what it says about our vision of the good life. Harkening back to the original utopian vision, capital removal is one of many contemporary messages proclaiming that utopia is to be found in pastoral dispersion, or at least not in geographically compact cities. But in our flight to this latest utopia, we would be well advised to consider that there is a certain contradiction inherent in disassembling the attributes of our national place of assembly.

I. The Original Vision

From the very first, Americans have been arguing over the most appropriate arrangements for their national capital. The pre-Constitution Congress was rather peripatetic, sitting in Annapolis, Baltimore, Lancaster, New York City, Philadelphia, Princeton, Trenton, and York.⁵ But of more lasting impact were the conclusions reached by the Constitutional Convention and the first federal Congress in placing the federal capital under Congress' "exclusive legislation"⁶ and in bringing the "permanent" seat of government to the banks of the Potomac. The

proposed that

[a]ll future federal offices and departments should be located in the District, since their location here is the very basis for disenfranchising the local populace. District residents increasingly have the worst of both worlds as they are disenfranchised because they live near federal offices but are in fact losing these offices to neighboring states because they are not represented and have no one to fight for their interests.

Hearings on D.C. Voter Representation Before the Senate Comm. on Governmental Affairs, 103d Cong., 2d Sess. (Aug. 4, 1994) (available on LEXIS, FDCH Congressional Testimony file).

5. See KENNETH R. BOWLING, *THE CREATION OF WASHINGTON, D.C.: THE IDEA AND LOCATION OF THE AMERICAN CAPITAL 14-72* (1991).

6. U.S. CONST., art. I, §8, cl. 17

allocation of exclusive jurisdiction over the capital district to Congress—designed to preserve the interests of the national government, the states, and the capital's residents—formed the essence of the capital compact. Also, the selection of the District of Columbia, a largely undeveloped spot, established the American preference for an agrarian⁷ capital. These initial decisions about the federal capital's governance and location demonstrate themes that reappear throughout the history of national capital relocation: the importance of the capital compact and the continuing quest for a utopian capital.

A. *Exclusive Jurisdiction*

The Constitution granted exclusive jurisdiction to Congress over the district that would be chosen as the capital. This grant helped to mitigate regional jealousies and to protect the national government's safety and dignity at the seat of government. The grant also represented an implicit compact among the federal government, the states, and the residents of the capital district, a compact designed to safeguard the interests of all.

The polemical wellspring of the District clause's grant of exclusive jurisdiction was a protest on June 21, 1783, in Philadelphia by mutinous soldiers.⁸ The soldiers, from the Pennsylvania contingent of the Continental Army, were seeking monetary compensation from the Pennsylvania Executive Council, which was then meeting at the State House. Members of the Confederation Congress also happened to be meeting in the building at the same time. Although the crowd of soldiers cursed and threatened, the incident ended without violence when the state's Executive Council offered to meet with the mutineers.⁹ Despite the fact that members of Congress were only incidental targets of the demonstration, Congress immediately decided to remove to Princeton, New Jersey.¹⁰

During the later debates over the formulation and ratification of the Constitution, the Philadelphia incident became a key exhibit in support

7. I use the term "agrarian" to describe the type of capital that would have been preferred by agrarian interests in society, not to describe the physical appearance of the capital. Agrarian interests typically disliked large cities and preferred less urban, less commercial locations for the capital. See generally text accompanying notes 27-31.

8. See BOWLING, *supra* note 5, at 30, 34.

9. *Id.* at 30-33.

10. *Id.* at 33-34. Bowling argues that Alexander Hamilton and others conspired to call members of Congress to the State House during the confrontation in order to strengthen the hand of those arguing for greater centralization of power and to generate sympathy for Congress. See *id.* at 31. Perhaps the difficulties, including mob riots, that the Revolutionary War Congress had earlier experienced in Philadelphia contributed to the haste with which Congress adjourned. See *id.* at 20-21.

of the need for exclusive federal jurisdiction over the site eventually chosen to be the seat of the federal government. How else could Congress preserve its dignity and safety?¹¹ For example, in the Virginia constitutional convention, one delegate argued that such jurisdiction was necessary to give Congress

power over the local police of the place, so as to be secured from any interruption in their proceedings. . . . Congress shall exclusively legislate there, in order to preserve the police of the place and their own personal independence, that they may not be overawed or insulted, and of course to preserve them in opposition to any attempt by the state where it shall be.¹²

Other motives also figured prominently in the debate over the District clause. A concern related to the need to insure Congress' physical safety was that of protecting it from undue influence by the state in which the federal government was headquartered.¹³

Avoiding conflicts between the states over federal largesse at the seat of government was another significant goal evident in the District clause debate. The Constitution's framers were politically sophisticated enough to know that the designation of a site for the national capital would be fiercely contested.¹⁴ James Madison, who proposed the District clause at the 1787 Constitutional Convention, argued in *The Federalist* No. 43 that "the gradual accumulation of public improvements at the stationary residence of the government would be both too great a public pledge to

11. See Peter Raven-Hansen, *Congressional Representation for the District of Columbia: A Constitutional Analysis*, 12 HARV. J. ON LEGIS. 167, 169-72 (1975); see also BOWLING, *supra* note 5, at 76-77.

12. 3 JONATHAN ELLIOT, *THE DEBATES IN THE SEVERAL STATE CONVENTIONS, ON THE ADOPTION OF THE FEDERAL CONSTITUTION* 439-40 (2d ed. 1859) (Edmund Pendleton).

13. See, e.g., Raven-Hansen, *supra* note 11, at 170-71; OFFICE OF LEGAL POLICY, DEPARTMENT OF JUSTICE, REPORT TO THE ATTORNEY GENERAL ON THE QUESTION OF STATEHOOD FOR THE DISTRICT OF COLUMBIA 55 (1987); THE FEDERALIST No. 43, at 279 (James Madison) (Modern Library College ed.) (1960) ("Without [exclusive jurisdiction at the capital], not only the public authority might be insulted and its proceedings interrupted with impunity; but a dependence of the members of the general government on the State comprehending the seat of government, for protection in the exercise of their duty, might bring on the national councils an imputation of awe or influence, equally dishonorable to the government and dissatisfactory to other members of the Confederacy.").

14. During the course of congressional debate in 1866 on a motion to invalidate the retrocession of the city of Alexandria from the District to Virginia, one Senator said:

As everybody knows, when you undertake to locate even a county seat, or a State capital, and, much more, the capital of the United States, it is always a very agitating question, and one about which local interests compete with more avidity than upon almost any other question that we can imagine.

CONG. GLOBE, 39th Cong., 1st Sess., at 3705 (July 10, 1866) (statement of Sen. Benjamin Wade (Ohio)).

be left in the hands of a single state, and would create so many obstacles to a removal of the government, as still further to abridge its necessary independence."¹⁵ It was predicted that great wealth would be infused into the location fortunate enough to be chosen as the capital. By Madison's 1789 estimate, at least \$500,000 would be spent at the capital each year.¹⁶ In essence, the District clause was an agreement between the states that the benefits flowing from government spending at the capital would belong to the entire nation instead of to just one state, thus avoiding interstate jealousies.¹⁷ The compact was thus an early "good government" measure, because its tendency was to discourage purely regional considerations from entering into decisions about the national seat of government.

In the debate over arrangements for congressional governance of the capital district, the issue of voting representation for residents of the district was largely elided.¹⁸ In *The Federalist*, Madison maintained that

as the [ceding] State will no doubt provide in the compact for the rights and the consent of the citizens inhabiting [the federal district]; as the inhabitants will find sufficient inducements of interest to become willing parties to the cession; as they will have had their voice in the election of the government which is to exercise authority over them; as a municipal legislature for local purposes, derived from their own suffrages, will of course be allowed them; and as the authority of the legislature of the State, and of the inhabitants of the ceded part of it, to concur in the cession, will be derived from the whole people of the State,

15. THE FEDERALIST No. 43, *supra* note 13, at 279.

16. See 1 ANNALS OF CONG. 896 (1789) ("The seat of government is of great importance, if you consider the diffusion of wealth that proceeds from this source. I presume that the expenditures which will take place, where the Government will be established by those who are immediately concerned in its administration, and by others who may resort to it, will not be less than half a million dollars a year.").

17. See ELLIOT, *supra* note 12, at 432-33. "I believe that, whatever state may become the seat of the general government, it will become the object of the jealousy and envy of the other states."). Justice Story, in his *Commentaries on the Constitution*, included a section explaining the rationale behind the District clause. See 2 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES, §§ 1216-23, at 127-31 (Melville M. Bigelow 5th ed., 1891). On this point, Story wrote, "[Locating the capital within a state] might subject the favored State to the most unrelenting jealousy of the other States, and introduce earnest controversies from time to time respecting the removal of the seat of government." See *id.* § 1218, at 127-28.

18. See Raven-Hansen, *supra* note 11, at 172-73; CONGRESSIONAL RESEARCH SERVICE, THE CONSTITUTION OF THE UNITED STATES OF AMERICA: ANALYSIS AND INTERPRETATION, S. DOC. NO. 16, 99th Cong., 1st Sess. 365 (1987). For a more detailed account of the debate over federal representation at the seat of government, see BOWLING, *supra* note 5, at 81-86.

in their adoption of the Constitution, every imaginable objection seems to be obviated.¹⁹

In other words, capital residents would exchange federal representation for federal largesse and proximity to national decisionmakers. Although opponents of exclusive jurisdiction feared that the federal district would be a place of despotism where the local residents would be subject to a government in which they were not represented,²⁰ their misgivings were not sufficient to remove the District clause from the Constitution.²¹

Through the exclusive jurisdiction provision, the constitutional drafters set up an implicit compact among the national government, the states, and the residents of the capital district. The Congress would receive absolute dominion over the capital district. In exchange, the ceding state(s) would receive the capital's economic benefits and the prestige and convenience of being close to the Congress. All of the states would receive the assurance that, because of their location in a federal enclave, the activities of the federal headquarters would be exempt from jealous political infighting. In exchange for surrendering their federal

19. THE FEDERALIST No. 43, *supra* note 13, at 280. It does not appear that Madison intended to imply by this language that residents would possess representation in Congress — only that the residents of the capital district would have been able to vote prior to the selection of the site for the capital. See Raven-Hansen, *supra* note 11, at 172 n.24 (“Properly cited, [Madison’s] statement is doubtful authority for the argument that Madison contemplated District representation in Congress, and as illustrious a contemporary as Chief Justice Marshall expressed the view in 1820 that the District ‘voluntarily relinquished the right of representation, and has adopted the whole body of Congress for its legitimate government’” (quoting *Loughborough v. Blake*, 18 U.S. (5 Wheat.) 317, 324 (1820))).

In addition, Alexander Hamilton — another author of the *Federalist Papers* — apparently shared the view that the Constitution did not provide for representation of residents of the national capital. At the New York Convention called to ratify the federal Constitution, he unsuccessfully sought an amendment mandating “District Representation” for the capital in Congress. See 5 ALEXANDER HAMILTON, THE PAPERS OF ALEXANDER HAMILTON 189 (Harold C. Syrett & Jacob E. Cooke eds., 1962). Hamilton may have been motivated by the hope that the new capital would be located in New York.

20. See BOWLING, *supra* note 5, at 81-83. In countering these arguments, Federalists relied on the widely held view that the residents of the District would be privileged, because of their proximity to the capital. See also *id.* at 83-86; Raven-Hansen, *supra* note 11, at 172 n.21; Peter Raven-Hansen, *The Constitutionality of D.C. Statehood*, 60 GEO. WASH. L. REV. 160, 164 & nn. 14-15 (1991).

21. Commenting on this issue, Justice Story argued that the residents of the District would gladly accept the burdens of disenfranchisement, because they would be well-served by congressional governance. See 2 STORY, *supra* note 17, § 1219, at 128 (“There can be little doubt, that the inhabitants composing [the capital district] would receive with thankfulness such a blessing, since their own importance would be thereby increased, their interests be subserved, and their rights be under the immediate protection of the representatives of the whole Union.” (footnote omitted)). Story also blasted those who argued that, if placed under congressional governance, the District would become a place of tyranny. See *id.* § 1221, at 129-30.

political rights and for investing or participating in the economy of the capital, the residents of the capital district would receive the political and economic benefits of proximity to the seat of government.²² The compact was thus designed to create an ideal climate for the government of the nation by removing decisions about the national capital from local political influences and by creating economic incentives necessary to develop a thriving capital.

Accordingly, after the Constitution was ratified in 1788, one of the first tasks facing the new Congress was the selection of a precise location for the fortunate district that would comprise the seat of government.

B. Siting the Capital

The initial siting of the nation's capital stirred an intense economic, political, and philosophical conflict, pitting southerners favoring a capital along the banks of the Potomac River against northern commercialists. Although the battle over the capital has been characterized merely as one between saloonkeepers in different parts of the country,²³ the conflict also had more principled aspects. Most fundamentally, the capital location debate implicated beliefs about the ideal conditions of societal life.

The competing visions of the national capital corresponded roughly to the nascent political groupings of the American polity immediately after the ratification of the Constitution. The commercial or "Federalist" view was that the capital should be located in a large, established city with good commercial prospects. This group "saw urbanization, centralization and commerce . . . as both exciting and central to America's growth."²⁴ From this perspective, placing the capital in a substantial city would serve to improve the government both by providing more current information to decisionmakers and by subjecting the government to greater scrutiny by a vigorous press and an involved citizenry.²⁵ An urban location would also provide more amenities to those attendant at the capital.²⁶

Competing with the "Federalist" view were those with a pastoral or agrarian outlook, who saw utopia in the countryside and, in Thomas

22. The promise of economic benefit was subsequently enacted into law. See *infra* text accompanying notes 38-39.

23. See BOB ARNEBECK, THROUGH A FIERY TRIAL: BUILDING WASHINGTON, 1790-1800 24 (1991) (paraphrasing Fisher Ames).

24. BOWLING, *supra* note 5, at 24.

25. See *id.* at 11.

26. *Id.*

Jefferson's words, perceived "great cities as pestilential to the morals, the health, and the liberties of man."²⁷ Participating in a long political and literary tradition that idealized America as a garden and farmers as the foundation of the Republic, agrarians urged that the capital should avoid the existing cities of the Atlantic seaboard in favor of a place unburdened by commerce and its attendant underclass.²⁸ In particular, agrarians feared that urban mobs would exert pressure on Congress and subvert representative democracy.²⁹ Congress' unhappy experiences in Philadelphia confirmed these views.³⁰ Still, some agrarians realized that even if the capital was established in the wilderness, a substantial city would eventually grow up around Congress.³¹

27. 10 THE WRITINGS OF THOMAS JEFFERSON 173 (Andrew A. Lipscomb & Albert E. Bergh eds., 1904).

28. See BOWLING, *supra* note 5, at 10-11 ("Many Americans and their spokesmen in Congress believed that cities, with their commerce, local politics, luxury and mobs, were by definition anti-republican, and insisted that the United States should abandon the European precedent of placing capitals in large cities."). Although Jefferson is the most famous advocate for these views, many have echoed his concerns. See generally KUMAR, *supra* note 2, at 74 ("[F]or Jefferson, . . . America's pastoral utopia was the product of design, enterprise, and toil. America was potentially a cultivated garden, halfway between the wilderness of untouched nature and the refinements (too many) of commercial urban society."); PAGE SMITH, AS A CITY UPON A HILL: THE TOWN IN AMERICAN HISTORY 184-86 (1968) (describing the glorification of rural and frontier life in the United States); LEO MARX, THE MACHINE IN THE GARDEN: TECHNOLOGY AND THE PASTORAL IDEAL IN AMERICA 116-44 (1964) (discussing Jefferson's idealization of rural over urban lifestyles, despite his ultimate acceptance of the need for cities); LUCIA WHITE & MORTON WHITE, THE INTELLECTUAL VERSUS THE CITY: FROM THOMAS JEFFERSON TO FRANK LLOYD WRIGHT (1962) (tracing the American anti-urban tradition).

29. See BOWLING, *supra* note 5, at 6-7, 10-11, 23, 48, 81-82, 198. Reflecting similar thinking, de Tocqueville wrote in the 1830's that the absence of a predominant city in the United States helped to preserve representative democracy:

America has not yet any great capital whose direct or indirect influence is felt through the length and breadth of the land, and I believe that that is one of the primary reasons why republican institutions are maintained in the United States. In towns it is impossible to prevent men assembling, getting excited together, and forming sudden passionate resolves. Towns are like great meeting houses with all inhabitants as members. In them the people wield immense influence over their magistrates and often carry their desires into execution without intermediaries.

Therefore, to subject the provinces to the capital is to place the destinies of the whole empire not only into the hands of a section of the people, which is unfair, but also into the hands of the people acting on their own, which is very dangerous. Therefore the preponderance of capitals is a great threat to the representative system; it makes modern republics share this defect with those of antiquity, all of which perished because they did not know this system.

ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 278-79 (J.P. Mayer ed., 1969) (footnote omitted). Perhaps recalling Paris during the French Revolution, De Tocqueville also warned that the growing populations of Philadelphia and New York posed threats to the stability of the American republic. See *id.* at 278 n.1.

30. See *supra* text accompanying notes 8-10.

31. See, e.g., PELATIAH WEBSTER, ESSAY ON THE SEAT OF THE FEDERAL GOVERNMENT AND

In addition to utopian considerations, financial advantage figured heavily in the selection of a capital site. Property owners anticipated that the designation of their region as the national capital would bring windfall profits.³² Accordingly, in the years following the American Revolution, proposals were made to locate the capital at nearly fifty different sites, including Wilmington, Delaware; Annapolis and Baltimore, Maryland; Princeton and Trenton, New Jersey; New York City, New York; Philadelphia, Pennsylvania; and Norfolk, Richmond, and Williamsburg, Virginia.³³

The debate also turned on predictions of future development. Because the founding generation assumed that the capital needed to be centrally located, the questions of where the country would grow and, in particular, which routes to the West would achieve dominance were of cardinal importance. Accordingly, the northern and southern extremes of the country were never seriously considered for the capital, despite the availability of established cities like Boston and Charleston as drawing cards. The most promising route west was hotly debated; George Washington fervently believed that the Potomac River was ideally situated to convey the nation's commerce between coast and interior. Others, perhaps not merely coincidentally from the same regions as their chosen routes, favored the Susquehanna or Hudson Rivers.³⁴

THE EXCLUSIVE JURISDICTION OF CONGRESS OVER A TEN MILES DISTRICT 15-29 (1789), *quoted in* BOWLING, *supra* note 5, at 131.

The urban/agrarian dispute was briefly touched upon during the 1787 Constitutional Convention. See JAMES MADISON, *THE DEBATES IN THE FEDERAL CONVENTION OF 1787 WHICH FRAMED THE CONSTITUTION OF THE UNITED STATES OF AMERICA* 332 (Gaillard Hunt & James Brown Scott eds., 1920 & photo. reprint 1970).

32. In particular, George Washington hoped to bring economic success to his home state of Virginia by encouraging the development of the Potomac River valley. See BOWLING, *supra* note 5, at 106-26 (discussing Washington's obsession with the commercial prospects of the Potomac).

The faith placed in projections for the economic advantages of the federal town was reflected in the assumption that the capital would finance itself, without the expenditure of federal funds. The sale of lots at an undeveloped site was expected to finance the construction of the federal buildings and necessary infrastructure. Petitions to Congress from various locales asking to be selected as the seat of government often were accompanied by conditional grants of seed money. Speculatory optimism was such that, when the Potomac site was finally selected, no federal funds were set aside to finance the capital. See Act of July 16, 1790, ch. 28, § 4, 1 Stat. 130, 130 ("And be it [further] enacted, That for defraying the expense of such purchases and buildings, the President of the United States be authorized and requested to accept grants of money."). These expectations were not, however, borne out. See ARNEBECK, *supra* note 23 (describing slow sales of lots in Washington and inadequacy of funds provided by Maryland and Virginia).

33. See BOWLING, *supra* note 5, at 8 (also, illustrations section following p. 160 includes two maps showing "Sites Proposed for the Capital, 1782-1791"); ARNEBECK, *supra* note 23, at 11-24.

34. See BOWLING, *supra* note 5, at 8-13.

Concerns about the relationship between health and weather led many commentators to discuss the relative climates of proposed sites. Elizabeth Town, New Jersey, for example, was described as “inflicted with mosquitoes in summer;” because it was “near marshes, [it] may be liable to intermittents [flooding] in the spring and fall.”³⁵ Many Northerners felt the Southern climate was too conducive to indolence and disease. Massachusetts Representative Theodore Sedgwick argued,

It is the opinion of all the eastern states that the climate of the Patowmack is not only unhealthy, but destructive to northern constitutions. It is of importance to attend to this, for whether it be true or false, such is the public prepossession. Vast numbers of eastern adventurers have gone to the Southern states, and all have found their graves there.³⁶

In reply, James Madison recast the Potomac as a western river; the Potomac capital would be 250 miles inland, and “generally speaking, as we retire towards the western and upper country, we are generally removed from the causes of those diseases to which southern situations are exposed.”³⁷

In the end, George Washington’s tireless promotion of a Potomac site (where he had extensive land holdings), coupled with an agreement by southern representatives to accept federal repayment of state Revolutionary War debts in exchange for a southern capital, brought the seat of government to the South.³⁸ Through this agreement brokered by Thomas Jefferson, Congress effectively added a regional layer of understandings to the compact governing the capital. Indeed, regional disputes would figure prominently in later capital relocation efforts.

Legislation signed by President Washington on July 16, 1790 was carefully phrased to forestall future conflict over the capital’s location. The Act provided that the “permanent seat of government” would be located on the Potomac River and that the seat of government would be removed to the District on the first Monday in December 1800.³⁹ The same Act also required that “all offices attached to the said seat of government, shall accordingly be removed thereto by their respective holders, and shall, after the said day, cease to be exercised elsewhere.”⁴⁰

35. ARNEBECK, *supra* note 23, at 12 (quoting Secretary of Congress Charles Thomson).

36. *Id.* at 14.

37. *Id.*

38. See BOWLING, *supra* note 5, at 182-207; CONGRESSIONAL RESEARCH SERVICE, *supra* note 18, at 365.

39. See Act of July 16, 1790, ch. 28, §§ 1-3, 6, 1 Stat. 130, 130.

40. *Id.* § 6.

This provision cemented the compact's promise to the residents of the seat of government that they would benefit from economic development resulting from federal activities. Specific congressional authorization would be required to locate offices outside the site that were "attached" to the capital. Although still law to this day,⁴¹ the guarantee has been greatly eroded by time.⁴²

At the beginning, Americans envisioned a utopian capital that represented the triumph of Southern and Western agrarianism over Northern commercialism, a capital that sat on a major route to the West, and a capital that would provide a respite from the epidemics recurrent in large cities. The founding generation argued about economics, politics, living conditions, and the good life. This first round of the debate about the location of the federal city foreshadowed the future and continuing conversation.

II. Second Thoughts About the Potomac

Recriminations began almost as soon as the Potomac capital was chosen. Northerners continued to be jealous of the South's capital coup, and several determined attempts were made to remove the capital from the city of Washington⁴³ during the early 1800's. Still, Southerners' tenacity in defense of their and the District's interests ultimately prevailed, even after the British managed to burn the capital in 1814.⁴⁴ These early efforts to remove the capital indicate the degree of debate over utopia's site -- the commercialists had yet to concede the field to the agrarians. And ultimately, the agreements incorporated into the capital compact showed their resiliency.

A. *No Vacancy*

One of the first major efforts to remove the capital from the District of Columbia was sparked by the lack of creature comforts at the new seat

41. The 1790 legislation was codified in 1873 and recodified in 1947. See 4 U.S.C. § 71 ("All that part of the territory of the United States included within the present limits of the District of Columbia shall be the permanent seat of government of the United States."); *id.* § 72 ("All offices attached to the seat of government shall be exercised in the District of Columbia, and not elsewhere, except as expressly provided by law.").

42. See *infra* Section V

43. The city was named after President Washington in 1791 by commissioners appointed by him; the larger district became the "District of Columbia" at the same time. See BOWLING, *supra* note 5, at 225.

44. For a general account of efforts to move the capital before 1870, see *The Site of the National Capital*, HARPER'S NEW MONTHLY MAGAZINE (anon. 1870), reprinted in WASHINGTON, D.C.: A TURN-OF-THE-CENTURY TREASURY 37-48 (Frank Oppel & Tony Meisel eds., 1987).

of government. Creating a functioning capital out of farmland and forest turned out to be almost as difficult as reaching agreement on a site for the capital. Although the established towns of Georgetown, Maryland, and Alexandria, Virginia, were within the bounds of the District, the federal buildings were to be built on farmland at an inconvenient distance from the towns' amenities. In addition, there was a dearth of the skilled labor required for raising the imposing federal edifices that had been planned. As a result, construction proceeded slowly.⁴⁵

In addition, Congress erroneously believed that land speculation would fund most of the necessary construction. The funding plan involved a series of transactions in which landholders on the Maryland side of the District conveyed their land to federal commissioners. The commissioners then subdivided the land, returned some of the lots to the original owners, and sold certain lots to private individuals to raise money for the public buildings and to repay the landholders.⁴⁶ These arrangements illustrate the thinking behind the capital compact: The citizens of the District were largely expected to finance the capital in exchange for expectations of economic development fueled by the federal government. However, the plan left something to be desired, because slow sales of lots caused continuous money problems for the commissioners and further delayed construction.⁴⁷

When Congress and President Adams finally arrived at the new capital in November 1800, they found an alternately dusty and muddy place, lacking in accommodations and most other accoutrements of

45. See generally ARNEBECK, *supra* note 23 (chronicling the tortuous process of building the first federal structures in the District). Much of the construction that was completed was apparently not of the highest quality. See GAZETTE OF THE UNITED STATES (Philadelphia, Pa.), Dec. 11, 1802, at 2 ("The circular hall built about a year since for the House of Representatives is in a situation somewhat threatening to those who occupy it. . . . There is much reason to fear, that before long the whole dome and roof, forming an immense weight, will be precipitated, in mass, into the midst of the hall.")

46. See ARNEBECK, *supra* note 23, at 44-45; see also *Morris v. United States*, 174 U.S. 196, 245-50 (1899) (recounting the agreements governing the grants of land to the United States by the original landowners of the District of Columbia); *Van Ness v. Mayor of Washington*, 29 U.S. (4 Pet.) 232, 277-86 (1830) (same). Interpreting the agreements, the Supreme Court (Story, J.) held:

The grants were made for the foundation of a federal city, and the public faith was necessarily pledged when the grants were accepted to found such a city. The very agreement to found a city was of itself a most valuable consideration for these grants. It changed the nature and value of the property of the proprietors to an almost incalculable extent. The land was no longer to be devoted to mere agricultural purposes, but acquired the extraordinary value of city lots. In proportion to the success of the city would be the enhancement of its value, and it required scarcely any aid from the imagination to foresee that this act of the government would soon convert the narrow income of farms into solid opulence.

Id. at 280.

47. See *supra* note 32.

civilized society.⁴⁸ Before arriving, members of Congress had heard rumors of grasping landlords.⁴⁹ Their fears were justified. One local booster tried to put the best face on the situation:

We have *present* inconveniences -- our buildings too few to render accommodations comfortable, but we perceive houses in abundance rising, which gives an happy presage, that soon our rents will be moderated, and the emigrant procure accommodation without extortion.⁵⁰

The situation did not improve quickly.⁵¹ By 1804, Senator Robert Wright of Maryland was so desperate for lodging that he formally proposed removing the capital to Baltimore. He "assigned as reasons for this motion, that it was not his intention in presenting the bill, that it should pass; but that it had been offered with the view of acting as a spur to the inhabitants of Washington to effect a more complete accommodation of Congress."⁵² However, Wright's proposal touched a nerve, and other senators took it quite seriously. One senator chastised

48. See, e.g., 1 CONSTANCE MCLAUGHLIN GREEN, *WASHINGTON: VILLAGE AND CAPITAL, 1800-1878*, at 23 & n.2 (1962).

49. See ARNEBECK, *supra* note 23, at 560 (quoting Henry Lee) ("Now we hear that . . . the rooms are going thru divisions so as to make them uncomfortably small and when tolerably large that two beds are destined to the room. These arrangements will produce discontent.").

50. *Id.* at 586-87 (quoting letter from the *Norwich (Conn.) Courier* (Sept. 3, 1800)).

51. See, e.g., 1 GREEN, *supra* note 48, at 38-39. Green quotes poet Thomas Moore, who wrote of Washington after his 1804 visit to the city:

This embryo capital, where Fancy sees
Squares in morasses, obelisks in trees;
Where second-sighted seers e'en now adorn
With shrines unbuilt and heroes yet unborn
Though now but woods -- and Jefferson -- they see
Where streets should run and sages ought to be.

Id. at 39 (footnote omitted).

52. 13 ANNALS OF CONG. 282 (Mar. 19, 1804). An almost identical account of the debates appears in the *National Intelligencer*, a Washington newspaper. See *Proposition to Remove the Seat of Government*, NAT'L INTELLIGENCER (Wash., D.C.), Mar. 21, 1804, at 2.

Predictably, the Washington press was opposed to Wright's proposal: "There is not the least reason to expect that this measure will receive the approbation of Congress. It is much to be regretted that it has been introduced, as it is the tendency of all such propositions to injure, in some measure, the interests of the permanent seat of the government." NAT'L INTELLIGENCER (Wash., D.C.), Mar. 19, 1804, at 2.

At least one commentator ridiculed Wright for hoping to improve accommodations in Washington by proposing removal and then disclaiming any interest in actually removing. See UNITED STATES' GAZETTE, FOR THE COUNTRY (Philadelphia, Pa.), Apr. 6, 1804, at 1 ("Any other man but Mr. Wright would have been silly enough to suppose, that such a declaration made on the floor of the Senate, in the presence of many of the citizens of Washington then and there assembled would destroy the alarm that his Bill might otherwise have created.").

Wright for introducing legislation, “the sole object of which was to frighten the women and children of Washington.”⁵³

Significantly, the first substantive arguments trotted out in opposition to the bill revolved around the idea that a compact had been entered into with the states of the South and the residents of the District of Columbia. The South had agreed to assume \$21 million of state debts in exchange for the capital, and the government had induced citizens to invest millions of dollars of private money in the capital.⁵⁴

In fact, nearly all who spoke in opposition to Wright’s bill made reference to the pledge of faith the federal government made to the citizens of Washington and to the requirement to indemnify them for their losses upon a removal. Even those in favor of removal acknowledged that a bargain had been struck. One senator maintained that the costs of moving and indemnification of nearby property-owners would be far less than the cost of making Washington habitable.⁵⁵

Other issues also factored into the debate. Senator Jonathan Dayton of New Jersey half-heartedly offered Trenton, New Jersey, in the place of Baltimore as the new seat of government. Although Dayton declared that he was generally opposed to “a perpetual state of mutation,”⁵⁶ the New Jersey legislature had requested that he make such a motion, should the topic of removal present itself. Foreshadowing the suburbanization of Washington in the twentieth century, Senator Samuel Maclay of Pennsylvania pronounced himself in favor of removal. He believed that the lack of accommodations arose “from the city being surrounded by seats of trade, which naturally repressed its rise here. Those inconveniences were, he believed, of a nature not to be cured by time

53. 13 ANNALS OF CONG. 283 (Mar. 19, 1804) (speech of Sen. James Jackson (Ga.)).

54. Senator Jackson argued, “Would gentlemen be willing not only to lose all that had been expended, but likewise to indemnify the proprietors in the city, whose assessed property amounted to two and a half millions of dollars, and the proprietors of property in the whole District, the amount of which he was unable to state?” *Id.*

55. *Id.* (speech of Sen. Joseph Anderson (Tenn.)) (“[H]e believed, from an experience of the inconveniences attending the existing seat, it was their duty to change it. He allowed that, in such an event, an obligation would arise to indemnify the proprietors for the losses they would thereby sustain. This, however, he considered the lesser evil; as the sum required to make an indemnity would be less than that required for the improvements contemplated, and which were necessary to accommodate the Government.”); *see also id.* at 284 (speech of Sen. Jonathan Dayton (N.J.)) (“If . . . a removal took place on their account, Congress were bound to indemnify the proprietors.”). *But see id.* at 288 (Sen. John Quincy Adams of Massachusetts, who was opposed to removal, arguing that the fact that indemnity was proposed showed that the government was intended to reside permanently at Washington; he also argued that the millions required for indemnification would never be approved, because of the unpopularity of such a measure).

56. *Id.* at 284.

...⁵⁷ Senator Jackson stated that, although he was sure the capital in future centuries would be moved west to the banks of the Mississippi, George Washington's choice of the Potomac was "sacred" and that nothing short of a catastrophe could justify a removal.⁵⁸

A number of constitutional arguments both for and against the removal proposal were then presented by the Senators. The removalists argued that Congress had fixed the Potomac site by simple legislation and that one Congress could not forever bind its successors.⁵⁹ The Potomac loyalists maintained that the Constitution put in place a process for choosing the seat of government, after which the capital was forever fixed. Moreover, the Potomac loyalists argued, the first Congress designated the Potomac as the "permanent" seat of government. Many members of the first Congress were also members of the Constitutional convention and so were especially qualified to determine whether a permanent capital was intended by the Constitution.⁶⁰

A vote was taken following the debates, and the bill was defeated by a two-thirds majority.⁶¹ An almost unanimous Southern voting block, combined with Northerners unwilling to upset the capital compromise and risk reopening the issue of the funding system, handily defeated the advocates of creature comforts. The South had successfully defended the agrarian capital by reference, *inter alia*, to the compact surrounding the creation of the seat of government.

Of course, one of the principal causes of Washington's difficulties in Congress was that the city was too agrarian. Washingtonians

57. *Id.* at 285. This sentiment was echoed in a "Communication" to the *United States' Gazette, for the Country*, which stated that "nothing but the strong arm of *absolute power*, or the setting down of mercantile capital, can produce a populous city." UNITED STATES' GAZETTE, FOR THE COUNTRY (Philadelphia, Pa.), Mar. 27, 1804, at 1.

58. 13 ANNALS OF CONG. 285-86 (Mar. 19, 1804)

59. *Id.* at 286-87 (remarks of Sen. Anderson).

60. *Id.* at 286-88 (remarks of Senators Jackson, Wright, and Adams).

From a contemporary perspective, those who argued in favor of the constitutionality of removal seem to have the better argument. The genius of the United States Constitution -- its flexibility -- is incompatible with the notion that it would fix the national capital forever at the first site agreed upon. The District Clause does not explicitly state that the capital should be permanently fixed. Moreover, Madison wrote in the *Federalist Papers* that one of the advantages of the District Clause was that it created a federal zone from which the national government could relocate without political complaint from a host state. See THE FEDERALIST No. 43, *supra* note 13, at 279.

61. See 13 ANNALS OF CONG. 288 (Mar. 19, 1804). Senators Anderson (Tenn.), Armstrong (N.Y.), Breckenridge (Ky.), Bradley (Vt.), Maclay (Pa.), Plumer (N.H.), Stone (N.C.), Tracy (Conn.), and Worthington (Ohio) voted for removal. Senators Adams (Mass.), Baldwin (Ga.), Cocke (Tenn.), Dayton (N.J.), Franklin (N.C.), Hillhouse (Conn.), Jackson (Ga.), Logan (Pa.), Nicholas (Va.), Olcott (N.H.), Pickering (Mass.), Israel Smith (Vt.), John Smith (Ohio), John Smith (N.Y.), Samuel Smith (Md.), Sumter (S.C.), Venable (Va.), White (Del.), and Wright (Md.) (the sponsor of the motion) voted against removal.

responded that the city was gradually becoming more urban. In the aftermath of the debate, a Washington editorialist wrote defensively that the city was growing rapidly, possessed of a population of 4,500, three markets, a street three miles long (Pennsylvania Avenue), a bridge over the Anacostia River, and a planned bridge to span the Potomac. The writer concluded,

[W]e venture to affirm upon the whole that the general progress of the city has surpassed the expectations of its dispassionate friends, and that it only requires from the legislature good government, a moderate share of liberality in finishing the public buildings, and an unshaken indication of good will, to render it, in a short time, a commodious and agreeable residence for the government.⁶²

B. “[O]ur coming here was a matter of bargain and sale.”⁶³

Opposition to continued residence in the District of Columbia flared again in the winter of 1808. Washington’s situation was not much improved since 1804. The Capitol building was still unfinished, and the parts of the building that were completed suffered from poor workmanship.⁶⁴ The place fully deserved its subsequent description as “the City of Magnificent Intentions” with “[s]pacious avenues, that begin in nothing and lead nowhere.”⁶⁵ Considering this criticism, it is ironic

62. NAT’L INTELLIGENCER (Wash., D.C.), Mar. 21, 1804, at 2.

63. 18 ANNALS OF CONG. 1562 (Feb. 3, 1808) (statement of Rep. Ezekial Bacon (Mass.)).

64. See, e.g., *supra* note 45; UNITED STATES’ GAZETTE (Philadelphia, Pa.), Jan. 22, 1808, at 3 (“The house of representatives sat to day till they were fairly smoked out of their hall. The pipes, which conduct the warm air from the furnace beneath, and which are contrived to preserve a warm temperature in the hall, burst to day, and poured out a volume of smoke into the room.”); UNITED STATES’ GAZETTE (Philadelphia, Pa.), Jan. 30, 1808, at 2 (“Only the north and south wings [of the Capitol] are built; the centre is not begun. . . . It will cost more to finish the capitol, than it would to build an entire new structure at Philadelphia for the use of congress.”).

65. CHARLES DICKENS, AMERICAN NOTES 128 (1842).

One particular problem facing members of Congress was the difficulty of reaching the executive branch offices near the White House from Capitol Hill. The mile-and-a-half distance made inter-branch communication inconvenient. See, e.g., 18 ANNALS OF CONG. 1549-50 (Feb. 2, 1808) (Rep. William Milnor (Pa.)) (“We have a very splendid house . . . for the President of the United States; but where is it? A mile and a half hence, in another village; for as to city, it is a burlesque upon the term to call this a city. We have also public offices, so distant that members who have the slightest business to transact cannot do it without neglecting their duty.”); 18 ANNALS OF CONG. 1553 (Feb. 3, 1808) (Rep. Barent Gardenier (N.Y.)) (“The situation of the members was extremely inconvenient to them, both personally [sic] and as it regarded the discharge of their official duties, for it was impossible to attend their duty in the House and to do any business at any of the offices. Their duty at one place or the other must be sacrificed. The scattered situation of the buildings rendered this inevitable.”). *But see id.* at 1561 (Rep. John Eppes (Va.)) (“Complaints are made of the distance of the public offices. . . . When in Philadelphia they were, he understood, lounging places for idle members.”).

that the igniting spark behind the 1808 conflict appears to have been a proposal to move a significant federal activity, the United States Mint, from Philadelphia to Washington.⁶⁶

The debate started in earnest when, as rumored,⁶⁷ Representative Sloan of New Jersey offered a resolution to remove the seat of government to Philadelphia. Sloan argued that Washington was unhealthy and unsafe and that “in a great and flourishing Republic the seat of Government ought to be fixed where provisions are the best in quality and quantity.”⁶⁸ The ensuing discourse lasted several days and focused on two legal issues — the constitutionality of removal and whether it would constitute a breach of contract — and several policy issues, including the effect on Congress of relocating to a large,

In addition, Washington’s paucity of accommodations made it necessary for many members of Congress to live at some distance from Capitol Hill, further inconveniencing them. *See UNITED STATES’ GAZETTE* (Philadelphia, Pa.), Feb. 2, 1808, at 3 (“A considerable proportion of them, necessarily [sic] live from one to three miles from the capitol; and abundant rains, and a clayey soil render it not only very unpleasant, but more dangerous to the health.”).

66. *See* 18 *ANNALS OF CONG.* 1531 n.* (Feb. 2, 1808) (mentioning a previous discussion as to whether the Mint should remain at Philadelphia); *see also id.* at 1560 (Rep. Gardenier) (“[T]hey were threatened with a proposition to concentrate the public buildings. He did not like this patching, there would be no end to it.”).

Legislation intended to continue the United States Mint at Philadelphia instead of moving it to Washington had been introduced in the House on January 13, 1808. 17 *ANNALS OF CONG.* 1433-34 (Jan. 13, 1808). A rather heated debate on the proper location of the Mint and the potential removal of the government took place the following day:

Mr. [Matthew] LYON [(Ky.)] said he saw the hobby horse was going again. He understood a motion was to be made by that gentleman (Mr. Sloan) to remove the seat of government to Philadelphia. He should like very well to see the hobby horse dancing about once more.

Mr. [James] SLOAN [(N.Y.)] said the member from Kentucky (Mr. Lyon) . . . has a whim that I ride upon hobby horses, and it is a favourite topick [sic] of his. He is welcome to ride upon hobby horses, hobby mules, or hobby asses, if he chooses. I presume he would prefer the latter.

UNITED STATES’ GAZETTE (Philadelphia, Pa.), Jan. 16, 1808, at 3; *see also* 18 *ANNALS OF CONG.* 1890-91 (Apr. 1, 1808) (proposal for a general inquiry into whether moving the Bank of the United States, the Military Academy, and the Mint to Washington would “give prosperity to the seat of the General Government”).

At least one representative noted the irony of such criticism, commenting that the removalists “refuse to do what they ought towards clothing [the District], and then laugh at its nakedness.” 18 *ANNALS OF CONG.* 1536 (Feb. 2, 1808) (Rep. Lyon).

67. *See* *UNITED STATES’ GAZETTE* (Philadelphia, Pa.), Jan. 16, 1808, at 3 (discussed in the previous note); *UNITED STATES’ GAZETTE* (Philadelphia, Pa.), Jan. 18, 1808, at 2 (reprinting letter from “CIVIS” complaining of the expense of supporting the federal government at undeveloped Washington and predicting that “some patriotick member will move an eventual adjournment, to one or other of the populous cities of the Union”).

68. 18 *ANNALS OF CONG.* 1532 (Feb. 2, 1808).

commercial city, the savings to be had from a removal, and whether the District was more or less healthy than other locations.⁶⁹

While the constitutional debate essentially repeated the arguments made during the 1804 attempt to move the capital,⁷⁰ the issue that seemed to be most consistently on the minds of Members was related to the capital compact: whether the proposed removal to Philadelphia amounted to a “breach of contract” with District citizens. This solicitude may at least in part have resulted from the presence of many Washingtonians in the House gallery during the debates.⁷¹ Representative John Love of Virginia, the very first speaker to respond to Sloan’s motion, artfully linked the constitutional and contractual issues. Love maintained that the motion should have been styled as a constitutional amendment:

When that should be done, it would be time enough . . . to determine whether we should sanction the violation of obligations solemnly entered into, and destroy the contracts made with individuals under the faith of the seat of Government being permanently fixed at this place; who have under this view made conveyances of their property, and that same property has in innumerable instances been again conveyed in fee simple to other persons.⁷²

69. The debate sparked rumors that Washingtonians planned to assault Sloan for proposing removal. See UNITED STATES’ GAZETTE (Philadelphia, Pa.), Feb. 6, 1808, at 3 (“Some caricatures are said to be prepared for those who advocate a removal, and there is some talk of tar and feathers; but these considerations have little influence with any man of sense. It is said that Mr. Sloan is to be mounted on the old franked mare with the capitol behind him.”); see also UNITED STATES’ GAZETTE (Philadelphia, Pa.), Feb. 8, 1808, at 3 (“*Washington wit.* -- This morning advertisements were found on the doors of the capitol, the hotels, and boarding houses, offering a reward to any person who will invent machines to move, without obstruction, over rivers, hills, and mountains, the two wings of the capitol, the president’s house, the publick offices, slaughter houses, and shambles, by the mere touch of Jemmy Sloan’s hand.”). But cf. UNITED STATES’ GAZETTE (Philadelphia, Pa.), Feb. 9, 1808, at 3 (describing cartoons advocating removal).

70. See, e.g., 18 ANNALS OF CONG. 1534 (Feb. 2, 1808) (Rep. John Love (Va.), removal would be unconstitutional); *id.* at 1539 (Rep. Nathaniel Macon (N.C.), unconstitutional); *id.* at 1545 (Rep. Philip Key (Md.), unconstitutional); *id.* at 1551 (Rep. William Milnor (Pa.), removal would be constitutional); *id.* at 1555 (Rep. Barent Gardenier (N.Y.), constitutional); *id.* at 1562 (Rep. Ezekiel Bacon (Mass.), constitutional); 18 ANNALS OF CONG. 1583 (Feb. 8, 1808) (Rep. Lemuel Sawyer (N.C.), constitutional); *id.* at 1584-86 (Rep. Benjamin Tallmadge (Conn.), constitutional).

71. See N.Y. HERALD, Feb. 13, 1808, at 2 (“The subject of the removal of the seat of government to Philadelphia, which has lately been brought forward here, has excited an anxiety among the citizens of Washington which it is impossible to describe: The galleries of the house of representatives are crowded with spectators. This, indeed, is natural enough, when it is considered that hundreds of people would be *ruined* by such a measure”).

72. 18 ANNALS OF CONG. 1534 (Feb. 2, 1808).

Mr. Love punctuated his speech with the thought that "these important considerations" should not "give way to the arguments of . . . convenience and cheap living to ourselves."⁷³

Other opponents of removal took up the breach of contract cudgel with relish. For example, North Carolina Representative Nathaniel Macon said,

In examining this question, my mind has been forcibly turned to the situation of the people in Washington and its neighborhood, who gave up their landed property to the Government. . . . I consider the faith of the Government as much pledged that the seat of Government shall be permanently fixed here, as it can be to any contract under the sun.⁷⁴

Anti-removalists further warned that a key part of the original compromise that brought the capital to Washington was jeopardized by the removal proposal: Any breach of faith with the District's citizens would lead to repeal of the public funding system for repayment of the states' Revolutionary War debts, which the Southern states had agreed to in exchange for a southerly capital.⁷⁵

Members of Congress opposed to relocating the capital clearly had struck a nerve with the compact/breach of contract argument. One uncommitted delegate vowed that he would "rather spend time in a dungeon than violate the public faith."⁷⁶ The rhetorical pull of the breach of contract issue forced the removalists to address the question somewhat gingerly.⁷⁷ Many removalists were hopeful that should the

73. *Id.*

74. *Id.* at 1539. One representative exclaimed that "[t]he faith of our Government, like Caesar's wife, must be preserved not only inviolate, but unsuspected." *Id.* at 1544 (Rep. Key).

75. See 18 ANNALS OF CONG. 1571 (Feb. 5, 1808) (Rep. Thomas Blount (N.C.)); 18 ANNALS OF CONG. 1561 (Feb. 3, 1808) (Rep. Eppes) ("He defied the advocates of the resolution to show any difference between this act and that for establishing the funding system. If one might be repealed, the other might also with equal justice."). *But see* 18 ANNALS OF CONG. 1591 (Feb. 8, 1808) (Rep. Tallmadge stating that "if the advocates for this resolution should succeed, [Blount] will lay a resolution on the table to repeal the law establishing the funding system. This is threatening with a vengeance. . . . It reads to me somewhat like this: if you do a base action, I will immediately do a worse one to pay you for it. . . . Can [Blount] discover no distinction between a legislative provision to locate the seat of Government, and a solemn covenant entered into by the Government with individuals to pay them for value received!"). See generally BOWLING, *supra* note 5, at 168-75, 182-207 (discussing the politics of federal assumption of state debt and the seathood compromise that made assumption possible).

76. 18 ANNALS OF CONG. 1541 (Feb. 2, 1808) (Rep. Richard Johnson (Ky.)).

77. See 18 ANNALS OF CONG. 1556 (Feb. 3, 1808) (discussing the breach of contract rhetoric of the anti-removalists, Rep. Gardenier said, "With the arguments in support of this position was interwoven, somewhat naturally, but more artfully, the distress and ruin of those who owned real property here. While the judgment was attempted to be addressed, the heart was assailed too, and

removal resolution pass, District property owners would receive compensation.⁷⁸ One removalist opined rather hopefully that no pecuniary harm would befall the District proprietors should the government leave.⁷⁹ However, several representatives argued that the federal government owed no more to the District's citizens than to persons who settled near other government facilities subject to closure.⁸⁰

New York Representative Barent Gardenier faced the issue head-on. Calling District property owners rank speculators, Gardenier asked, "Is the public faith pledged because some men, who hoped to accumulate unmeasurable wealth, have been and must be forever disappointed?"⁸¹ Gardenier even claimed that only the avarice of District citizens led them to agree to live under Congress' exclusive jurisdiction. Gardenier said that he wished to leave the city,

[n]ot merely to restore the citizens to their franchises, for they seem willing enough to yield them, in consideration of the pecuniary advantages they derive from being near the Government. They have shown us, what it grieves me to see, American citizens yielding to the love of money the privileges of freemen. But, sir, I do not wish the Representatives of the people . . . to become familiar with such an exhibition of American debasement. I do not wish foreigners to remark on the paradox of the seat of Government of a free people, which should be the abode of liberty, being the seat of despotism.⁸²

Perhaps the most nuanced approach to the breach of contract issue was taken by Connecticut's Samuel Dana, who stated, "As to the breach of public faith, this argument does not influence me. . . . I consider it as an honorary pledge of the public faith, which constitutes, not a perfect obligation, as in case of debt, but an imperfect obligation -- a case of estimation and uncertainty."⁸³

on its weakest side.").

78. See, e.g., 18 ANNALS OF CONG. 1552 (Feb. 2, 1808) (Rep. Gardenier); 18 ANNALS OF CONG. 1590 (Feb. 8, 1808) (Rep. Tallmadge).

79. 18 ANNALS OF CONG. 1568 (Feb. 4, 1808) (Rep. James Kelly (Pa.)) ("[N]o possible proceeding, on the part of the House, could prevent improvements here.").

80. See, e.g., 18 ANNALS OF CONG. 1590 (Feb. 8, 1808) (Rep. Tallmadge). Representative Gardenier made the related point that the same section of the Constitution providing for the District also provides for the erection of various "needful buildings" and that the government had as much right to remove from a dockyard or an arsenal as it did from the District. See 18 ANNALS OF CONG. 1551-52 (Feb. 2, 1808).

81. 18 ANNALS OF CONG. 1558 (Feb. 3, 1808).

82. *Id.* at 1556.

83. 18 ANNALS OF CONG. 1571 (Feb. 5, 1808). Dana nevertheless declared his intention to

Of course, several other issues figured prominently in the 1808 removal debate. Numerous representatives were opposed to moving the capital to any large city because of the abuse they had suffered when Congress had met in Philadelphia.⁸⁴ Nativist sentiment showed in one comment: "Shall we gain by removal to a large commercial town, whose capital and interests are much in the hands of foreigners domiciliated among them, a motley crew, a heterogeneous mixture, coming from every portion of the globe?"⁸⁵ Agrarian utopianism showed in the comments of one representative who went so far as to argue that urban commercial interests would influence the nation's councils to favor war to the detriment of agriculture.⁸⁶

In response, Representative Gardenier wryly noted that "[i]f cities be so dreadful, we ought not to give our aid to build up another of these public nuisances."⁸⁷ Attempting to find common ground, one urban delegate maintained that "the interests of agriculture and commerce are intimately blended with each other; . . . the interests of the one cannot be greatly promoted without essentially aiding those of the other."⁸⁸

The House was also concerned with the potential fiscal impact of a removal. Some estimated that a quarter of a million dollars could be saved annually by shifting operations to Philadelphia.⁸⁹ Mention was

vote against removal. *Id.*

84. *See, e.g.*, 18 ANNALS OF CONG. 1536-37 (Feb. 3, 1808) (Rep. Lyon); *id.* at 1541 (Rep. Macon) ("If we must remove, let us go over the Alleghany. Remember that these large cities are the places where every advantage will be taken of our proceedings. Recollect the speculations, at the conclusion of the war, on the claims of our brave soldiers and officers. These large cities have always had too much influence in this body: go among them, and it will be increased an hundred fold.").

85. 18 ANNALS OF CONG. 1547 (Feb. 2, 1808) (Rep. Key).

86. *Id.* at 1547-48.

87. 18 ANNALS OF CONG. 1557 (Feb. 3, 1808).

88. 18 ANNALS OF CONG. 1551 (Feb. 2, 1808) (Rep. Milnor); *see also* 18 ANNALS OF CONG. 1559 (Feb. 3, 1808) (Rep. Gardenier) ("He [Gardenier] contended that [in cities] the farmer would gather new, and what might prove to himself valuable information concerning the commerce of his country. He might acquire in a city knowledge beneficial to himself, and the diffusion of which might be advantageous to his constituents. It was in the cities, that, together with commerce, the arts and sciences were cultivated and flourished. It was in the intercourse of men, either of a commercial or literary character, that men's minds became liberal and enlarged."); *id.* at 1563 (Rep. Bacon) ("It had been said that the Legislature, if in a commercial city, might be unduly influenced by commercial men. Mr. B. [Rep. Bacon] would invert the argument. He imagined that the inhabitants of the city would be beneficially influenced by the Legislature.").

89. *See, e.g.*, 18 ANNALS OF CONG. 1541 (Feb. 2, 1808) (Rep. Johnson); 18 ANNALS OF CONG. 1566 (Feb 4, 1808) (Rep. Josiah Masters (N.Y.)). *But see id.* (Rep. Van Horne (Md.)) ("It is said some great and responsible officer of the Government has stated that \$150,000, or \$200,000, a year may be saved by a removal. I should be glad to have him named to the House; I should be glad to know who among the officers of Government is intriguing for a removal to Philadelphia."); 18 ANNALS OF CONG. 1570 (Feb. 5, 1808) (Rep. John Taylor (S.C.)).

made of the supposedly sickly climate of Washington,⁹⁰ but representatives were quickly reminded that outbreaks of yellow fever in Philadelphia had forced the frequent evacuation of Congress when it sat there.⁹¹ The delicate subject of slavery was rarely mentioned during the debates but was clearly one reason for the Southerners to dig in their heels in favor of Washington.⁹²

After sporadically debating removal for a full week, the House was finally able to bring to closure the debate over the District's fate (at least for the time being). On February 9, 1808, the House voted against further consideration of the resolution to remove the seat of government to Philadelphia by a substantial margin of thirty-five to fifty-one.⁹³ The Philadelphia *United States' Gazette*, which had been advocating removal, put an optimistic spin on the outcome: "An erroneous notion is entertained by some that the question of a removal of the seat of government is at an end. On the contrary, it is merely laid upon the table

90. See 18 ANNALS OF CONG. 1535 (Feb. 2, 1808) (Rep. Sloan) (claiming that the District "is exposed to sickness and to death").

91. *Id.* at 1537 (Rep. Lyon) ("Have we not been compelled to suspend business and leave Philadelphia on account of the yellow fever? I have been a little sick here; and so I should perhaps any where else. . . . [I]t is a ridiculous story to talk of changing the seat of Government to Philadelphia on account of its superiority in healthiness.").

92. See 18 ANNALS OF CONG. 1567 (Feb. 4, 1808) (Rep. Taylor) ("I believe that there is, in Philadelphia, less sympathy than in either New York or Boston, for a certain subject, in which the Southern States are deeply interested. When formerly there, one Warner Mifflin, and his associates, continually kept Congress in hot water, by teasing and pestering them with something about slavery. They had no regard to our feelings.").

93. See 18 ANNALS OF CONG. 1595-96 (Feb. 9, 1808). Members voting for consideration were largely from the South (because they wanted to put Congress on record as opposing removal) and those voting against consideration were largely from the North. See *id.* Perhaps sensing defeat, Rep. James Sloan, the original sponsor of the legislation, voted against consideration. *Id.* Earlier, during the course of extensive procedural wrangling over his bill and without explanation, Sloan had withdrawn his motion. See 18 ANNALS OF CONG. 1570 (Feb. 5, 1808). However, Rep. Thomas Blount, an opponent of removal, quickly renewed it. See *id.* at 1570-71.

The issue that instigated the debate -- the proposed removal of the Mint -- was eventually resolved in favor of Philadelphia. See 18 ANNALS OF CONG. 1829-30, 1841-42 (Mar. 14 & 15, 1808). The location of the Mint was a subject of continuing congressional interest; for many years, legislation was passed at regular intervals requiring the Mint to remain at Philadelphia. See Act of May 14, 1800, ch. 70, 2 Stat. 86; Act of Mar. 3, 1801, ch. 21, 2 Stat. 111; Act of Mar. 3, 1803, ch. 36, 2 Stat. 242; Act of Apr. 1, 1808, ch. 41, 2 Stat. 481; Act of Dec. 2, 1812, ch. 2, 2 Stat. 787; Act of Jan. 14, 1818, ch. 4, 3 Stat. 403; Act of Mar. 3, 1823, ch. 43, 3 Stat. 774; Act of May 19, 1828, ch. 67, 4 Stat. 277.

and may be called up for consideration any day."⁹⁴ But it would be six years before removal was again seriously contemplated.⁹⁵

The failure of the 1808 removal motion highlights the importance of the concept of the capital compact in the minds of the first federal policymakers. The debates were dominated by the notion that the federal government's presence in the District of Columbia entailed a compact or "bargain" with mutual responsibilities. During the federal government's first decade in the District, members of Congress were acutely aware of and sensitive to the obligation of the government to the residents of the District. The debate over the compact is particularly noteworthy for Representative Gardenier's willingness to chastise District citizens for their federal disenfranchisement. Perhaps because of the federal government's complicity in the arrangement, few other members were willing to make such an explicit connection between the right to vote and the privileges of residence at the seat of government. Still, the outcome of the debate shows that Congress continued to accept the capital compact. In exchange for foregoing local control and for making the national capital a livable place, the District's citizens were entitled to receive the economic benefits of being at the seat of government. This view was captured succinctly in a toast given at a Washington dinner held in 1807 in honor of Captain Meriwether Lewis' return from explorations in the Northwest Territories with William Clark: "*The District of Columbia* -- Unrepresented in the national councils, may she never experience the want of national patronage."⁹⁶

94. UNITED STATES' GAZETTE (Philadelphia, Pa.), Feb. 14, 1808, at 3. The *Gazette* covered the removal debate thoroughly and even provided running commentary. See, e.g., UNITED STATES' GAZETTE (Philadelphia, Pa.), Feb. 6, 1808, at 3; UNITED STATES' GAZETTE (Philadelphia, Pa.), Feb. 8, 1808, at 3; UNITED STATES' GAZETTE (Philadelphia, Pa.), Feb. 10, 1808, at 3; UNITED STATES' GAZETTE (Philadelphia, Pa.), Feb. 11, 1808, at 3; UNITED STATES' GAZETTE (Philadelphia, Pa.), Feb. 12, 1808, at 3; UNITED STATES' GAZETTE (Philadelphia, Pa.), Feb. 15, 1808, at 3 (letter to the editor in favor of removal from "A Citizen of the United States"); UNITED STATES' GAZETTE (Philadelphia, Pa.), Feb. 16, 1808, at 3; UNITED STATES' GAZETTE (Philadelphia, Pa.), Feb. 17, 1808, at 2. The *Gazette* repeatedly predicted that the removal effort would fail, if at all, by a small margin, and that removal would be sought each year until the measure succeeded. UNITED STATES' GAZETTE (Philadelphia, Pa.), Feb. 8, 1808, at 3. The *Gazette* also intimated that some members had been intimidated or induced into opposing removal. *Id.* ("By intrigues, misrepresentations, and threats, a few friends of the measure have been seduced or terrified from their original purpose. The chief reason with the greater part of the Massachusetts democrats is the diminution of mileage, which would be 90 dols. less if Philadelphia were made the seat of government.")

95. See section II.C., *infra*.

96. NAT'L INTELLIGENCER (Wash., D.C.), Jan. 16, 1807, at 2.

C. *The Burning of Washington*

The next significant effort to relocate the capital came in the aftermath of the British assault on Washington in August 1814, during the War of 1812. The stated rationale for the renewal of the removal proposal was the need for a more defensible location for the nation's capital.

Despite fortifications built south of the city at Fort Washington and the raising of a volunteer militia from the District's residents, the British easily made their way past the American defenses on the evening of August 24, 1814. British troops burned the Capitol building and the Congressional Library, the President's house, the buildings housing the War and Treasury buildings, the bridge over the Potomac, and an arsenal at present-day Fort McNair.⁹⁷ The commandant of the Washington Navy Yard ordered its buildings, provisions, and ships destroyed, to prevent their capture by the invaders. Only one significant building survived: Blodget's Hotel, which housed the Patent Office and the General Post Office.⁹⁸ Although private property was left largely untouched, the British burned the offices of the *National Intelligencer*, a Washington newspaper identified with the governing Madison administration.⁹⁹ Washington's humiliation complete, the British lurked off the coast, threatening to repeat the conflagration.¹⁰⁰

Almost as soon as the British left, public debate began over continued federal residence in Washington. The *National Intelligencer* reported "some indistinct suggestions buzzed abroad" of a plan to remove the capital from Washington temporarily or permanently.¹⁰¹ The *Intelligencer* reminded readers of the property interests at stake and editorialized that removal "would be [an] injustice so great to the people of this district, to those who have enriched the public offices with population and laid out fortunes in the purchase of property in and about the city, as Congress cannot, dare not sanction."¹⁰²

Meanwhile, the federal government gradually returned to the District of Columbia. Private citizens made their homes available to house the

97. Congress' papers were saved, however. See, e.g., NAT'L INTELLIGENCER (Wash., D.C.), Sept. 9, 1814, at 1.

98. NAT'L INTELLIGENCER (Wash., D.C.), Sept. 3, 1814, at 3.

99. See William Barlow, *Jonathan Fisk's Attempt to Relocate the Nation's Capital*, 53 N.Y. HISTORICAL SOC. Q. 64, 66 (1969).

100. See I GREEN, *supra* note 48, at 61-62; see also N.Y. HERALD, Aug. 31, 1814, at 1 (anxiously reporting the destruction of Washington).

101. NAT'L INTELLIGENCER (Wash., D.C.), Sept. 2, 1814, at 2.

102. *Id.*

principal executive branch offices.¹⁰³ Congress, called to meet on September 19, convened in the cramped quarters of the Patent Office.¹⁰⁴ One week later, Representative Jonathan Fisk of New York introduced a measure calling for the creation of a committee to examine a removal of the seat of government “to a place of greater security and less inconvenience”¹⁰⁵ than Washington. In support of his motion, Fisk argued that the removal would only be temporary and that Congress needed to relocate to a more central and commercial location in order to direct the war effort.¹⁰⁶

A vocal group, primarily from the South, opposed Fisk’s proposal.¹⁰⁷ These representatives argued that it would be cowardly and degrading to relocate the capital under threat of enemy force of arms, that one removal would beget a series of removals, and that removal was unconstitutional. These members maintained that Congress would be breaking faith with the citizens of the District: “Hundreds and thousands of individuals had been induced, from a perfect confidence in the permanency of the Seat of the National Government, to expend their all in its improvement, who will be reduced to beggary and want if this resolution is adopted.”¹⁰⁸ Even those in favor of removal felt bound to the original agreement between the federal government and the District’s citizens. At least one representative proposed restitution for the prospective loss in property values.¹⁰⁹ Despite objections, the motion

103. See, e.g., NAT’L INTELLIGENCER (Wash., D.C.), Sept. 9, 1814, at 1. (“The Public Buildings having been mostly destroyed, the various offices are locating themselves in those private houses which are most commodious and conveniently situated for the purpose.”)

104. N.Y. HERALD, Sept. 7, 1814, at 3. For a description of Congress’ accommodations, see 28 ANNALS OF CONG. 353-54 (Oct. 5, 1814) (statement of Rep. Richard Stockton (N.J.)) (“[H]ere we are in the Patent Office; in a room not large enough to furnish a seat for each member, when all are present, although every spot up to the fire-places and windows, is occupied.”)

105. 28 ANNALS OF CONG. 312 (Sept. 26, 1814).

106. See *id.* at 311-14.

107. Given his state of origin, it was not surprising that President Madison also opposed removal. See *Extract of a letter from a Member of Congress, dated Sept. 28*, N.Y. HERALD, Oct. 5, 1814, at 1 (“The sense of the Senate is doubtful, and the President is decidedly hostile to any removal.”).

108. 28 ANNALS OF CONG. 313 (Sept. 26, 1814) (statement of Rep. Joseph Lewis (Va.)); see, e.g., *id.* at 315 (statement of Rep. Joseph Pearson (N.C.)) (“What would gentlemen do with those thousands of people who had expended their substance in building and improving the place, and, relying on the public faith pledged by solemn acts, had given their property into the hands of the Government?”); *id.* at 320 (statement of Rep. Joseph Hawkins (Ky.)) (“Remove from here momentarily or otherwise, and every prospect of the people of this city is blasted and withered.”). But see *id.* at 322 (statement of Rep. Thomas Oakley (N.Y.)) (“It should never be permitted that a few thousand inhabitants should rise and say they would be ruined, if the nation could be benefitted, provided the nation indemnified them for their loss.”).

109. See *id.* at 320-21 (statement of Rep. Oakley (N.Y.)) (“It was true, that a removal might injure individuals; but he presumed no gentlemen in the House would hesitate to make a fair and

passed easily by a vote of seventy-two to fifty-one, and a committee of seven (including Fisk) was appointed to consider the matter.¹¹⁰

Opening the removal question for debate produced jealous suitors. Several other cities — including Lancaster, Pennsylvania, Philadelphia, and nearby Georgetown — offered Congress the use of their facilities.¹¹¹ Local opposition was intense. The *Intelligencer* declared, “The greatest evil of such proceedings, which promise no success to their movers, is in their certain injury to the People of this City and District, who are far from deserving such treatment at the hands of their constitutional protectors.”¹¹² Other local commentators also focused on the potential economic ruin of a capital removal.¹¹³ Of course, arguments based on fairness were not the only ones marshalled in defense of Washington. For example, The *Intelligencer*’s second editorial on Fisk’s motion contained a strong appeal to patriotism: “How would the sainted sires of those who coldly agitate this question, lament that their descendants could for a moment deliberate on a precipitate retreat from the seat of government, because five or six thousand men had by surprize possessed it for a few hours?”¹¹⁴

At first, it seemed that the House of Representatives was persuaded by the removalists. Although Fisk’s own committee reported unfavorably on the expediency of removal, Fisk quickly secured a vote in the House overturning his committee’s recommendation.¹¹⁵ After extensive debate focusing on the harm that would be done to the people of the District by

liberal compensation by way of indemnity to such sufferers. It was a cardinal point in his politics, Mr. O. said, that the national faith should be preserved inviolate, even when improperly pledged, unless where considerations of a paramount nature forbade it.”); see also DAILY NAT’L INTELLIGENCER (Wash., D.C.), Oct. 10, 1814, at 2 (reprinting article from *The Philadelphia True American*) (“Although there *appears* to be a majority of one in the House in favor of removing, there *appears not* to be a majority for the measure if it is to be unattended by an indemnification.”).

110. See 28 ANNALS OF CONG. 323 (Sept. 26, 1814).

111. See NAT’L INTELLIGENCER (Wash., D.C.), Sept. 28, 1814, at 3; NAT’L INTELLIGENCER (Wash., D.C.), Oct. 1, 1814, at 3; NAT’L INTELLIGENCER, (Wash., D.C.) Oct. 5, 1814, at 2.

112. *The Seat of Government*, NAT’L INTELLIGENCER (Wash., D.C.), Sept. 27, 1814, at 3.

113. See, e.g., Letter addressed to “the Congress of the U. States” from “JUSTICE,” NAT’L INTELLIGENCER (Wash., D.C.) Sept. 30, 1814, at 3 (“There are at least thirty thousand persons, whose interests are directly affected by the question now pending before Congress for the removal of the seat of Government. Of these at least ten thousand will be brought from a state of comfort to absolute indigence, if the seat of government should be removed.”); see also Barlow, *supra* note 99, at 70-71.

114. *Desertion of the Capitol*, NAT’L INTELLIGENCER (Wash., D.C.), Sept. 28, 1814, at 3.

115. See 28 ANNALS OF CONG. 341-42 (Oct. 3, 1814).

a removal,¹¹⁶ the proposal was referred to another committee, also chaired by Fisk, for preparation of legislation.¹¹⁷

One week later, on October 13, the Fisk committee reported a bill for the temporary removal of the seat of government "during the continuance of the present war between the United States and Great Britain."¹¹⁸ Replying to the argument that the District's citizenry would be ruined by a removal, Fisk emphasized that the removal was only temporary. Fisk "viewed the interests of the citizens of this District with the same consideration as he did those of all other citizens; but they had, he presumed, too much good sense and patriotism to ask Congress, merely out of regard to their personal views, to compromit the national interests."¹¹⁹

Although members grumbled that "[i]t is a poor reason, because the enemy has destroyed the public property, that we should destroy the private,"¹²⁰ the Fisk bill continued to move toward passage by surviving hostile motions.¹²¹ Acting as a Committee of the Whole, the House edited the bill to insert Philadelphia as the temporary capital and, in an attempt to assuage Washingtonians' apprehensions, to authorize the expenditure of \$500,000 over five years for the construction of public buildings in the District of Columbia.¹²²

Surprisingly, when the amended bill was voted on by the House for the final time, it was rejected.¹²³ Perhaps some representatives were

116. See, e.g., 28 ANNALS OF CONG. 366 (Oct. 6, 1814) (statement of Rep. Pearson (N.C.)) ("I demand of gentlemen to be informed, what will be the political condition of the thirty thousand people who inhabit this District, should the Seat of Government be removed and the jurisdiction of Congress, thus as it unquestionably would be, withdrawn from them?").

Of particular note is the extended debate between Representatives Richard Stockton and Joseph Pearson over the constitutionality of removal. New Jersey's Stockton maintained that the Constitution would have been explicit on the point had the Framers intended to fix permanently one capital. See 28 ANNALS OF CONG. 348-49 (Oct. 5, 1814). Pearson, of North Carolina, argued that Congress expressly accepted the District of Columbia as the "permanent" seat of government, thereby binding the federal government to fulfill the promises made by Congress to states and to individuals. See 28 ANNALS OF CONG. 363 (Oct. 6, 1814).

117. See 28 ANNALS OF CONG. 376 (Oct. 6, 1814).

118. 28 ANNALS OF CONG. 387 (Oct. 13, 1814).

119. *Id.* at 389.

120. *Id.* at 392 (statement of Rep. Robert Wright (Md.)).

121. See 28 ANNALS OF CONG. 395 (Oct. 15, 1814).

122. See *id.* at 395-96.

123. *Id.* at 396. As with earlier removal efforts, regional origin was a fairly good predictor of representatives' votes. Southern members of Congress voted almost unanimously against removal, and Northern members voted largely, but not exclusively, for removal. Interestingly, several Western members (from Ohio and Kentucky) cast their ballots for removal. *Id.*

Some commentators were quite distraught over the bill's defeat and blamed the capital's agrarian location for the war with the British. See, e.g., *Non-removal of the Seat of Government*, N.Y. HERALD, Oct. 19, 1814, at 3 ("[B]elieving fully that, had not Congress met in a place so

disappointed by the selection of Philadelphia as the temporary capital or by the appropriations for public buildings in Washington.¹²⁴ Others simply may have wanted the issue to be discussed more fully before reaching a final conclusion.¹²⁵ One commentator has suggested that pressure from the Madison administration caused some representatives to change their votes.¹²⁶

Irrespective of the reasons for the bill's defeat, the 1814 effort to remove the seat of government demonstrates that the compact between the federal government and residents of the District of Columbia still had strong rhetorical saliency two dozen years after it was consummated. Members of Congress repeatedly returned to the theme of this bargain in their debates, and even those in favor of removal admitted that the rights created by the compact needed to be protected. After the defeat of the removal motion, North Carolina's Pearson punctuated the debate when he said,

[W]e and the nation should know and reflect on the numerous obligations by which the Seat of Government is bound to its present spot -- obligations resting not on fluctuating notions of policy, but flowing from the Constitution, sanctioned by repeated laws, rivetted by compacts with States and individuals, and rendered sacred by the plighted faith of the nation.¹²⁷

insulated from society, so unfriendly to correct information, where practical men on practical questions could not be consulted, where the deputies of the woods had more influence on commercial measures, than those whose habitudes of life enable them to speak with unerring certainty, on subjects daily familiar to them in all their various bearings and attitudes, we should never have been cursed with embargoes and restrictions, nor been plunged into a war that more and more wears the awful face of approaching rain.”)

124. See DAILY NAT'L INTELLIGENCER (Wash., D.C.), Oct. 13, 1814, at 3 (reprinting article from *The Philadelphia True American*) (“Should [the removers] fail in their object at this moment, they may be able, by withholding appropriations for public buildings, to accomplish indirectly what they may not be able to bring about by direct means.”).

125. See, e.g., 28 ANNALS OF CONG. 395 (Oct. 15, 1814) (“Mr. Farrow, of South Carolina, rose, and stated the reasons why, though he should eventually vote against the bill, he should now vote against the rejection of it.”).

126. See Barlow, *supra* note 99, at 74 (“[W]hile sectionalism and partisanship provided the proposal's original and continuing strength, the decisive role in its rejection was played by the Republican administration.”). Given the narrowness of the margin in favor of removal in the House, the likely defeat of the measure in the Senate, and the opposition of President Madison, some members may have determined that removal was a lost cause. See DAILY NAT'L INTELLIGENCER (Wash., D.C.), Oct. 13, 1814, at 3 (reprinting article from *The Philadelphia True American*) (predicting the failure of the removal measure by a narrow margin in the Senate); see also DAILY NAT'L INTELLIGENCER (Wash., D.C.), Oct. 18, 1814, at 3 (predicting President Madison would veto any removal measure that failed to gain widespread backing in Congress).

127. 28 ANNALS OF CONG. 361 (Oct. 6, 1814).

Washington's relatively agrarian character also contributed to its staying power. Even during a time of war, when military information might be more readily available in a commercial center, the American aversion to large cities prevented the capital from being moved.

At any rate, Washington gradually began to repair itself. District residents raised money to loan to Congress for construction. In February 1815, legislation was passed to permit reconstruction of the public edifices in their previous locations. Soon thereafter a peace treaty was signed with the British, and a temporary congressional meeting-place was erected on the present site of the Supreme Court. By the end of 1819, the Capitol building was ready once again for occupancy.¹²⁸

The District of Columbia thus survived, if barely, its early years as the capital of the United States. The city's essential difficulty during this period was that, although it conformed to the agrarian ideal because of its lack of commerce, the agrarian ideal was not conducive to the style of living to which representatives from the more urban and opulent Northeast were accustomed. Nevertheless, the rhetoric of agrarian utopianism was available to counteract the more worldly arguments of the urbanites. Also working in Washington's favor was the South's determination to preserve the consideration it received for agreeing to fund the state's debts, the unwillingness of some Northerners to disturb the delicate regional balance established by the compact, and the reluctance of Congress to violate so quickly its promise to Washingtonians and the nation of a "permanent" capital on the Potomac.

The 1814 removal attempt was the last serious effort to relocate the federal capital to another spot on the Eastern seaboard. Despite their hopes that the issue had been settled,¹²⁹ Washingtonians would not be able to relax their vigilance for long. The spectacular growth of the interior part of the nation led to predictions that the capital eventually would be drawn to the West.¹³⁰ Ironically, the next threat to the

128. See 1 GREEN, *supra* note 48, at 65-68.

129. See, e.g., DAILY NAT'L INTELLIGENCER (Wash., D.C.), Oct. 18, 1814, at 3 ("The decision of the House of Representatives has, as we had anticipated, put to sleep now, and we trust for ever, the project of a removal of the Seat of Government from Washington, the seat designated, and the city planned by the immortal Hero and Patriot whose name it bears.").

130. See, e.g., William B. Meyer, *Leaving Washington Behind*, 38 AM. HERITAGE 102, 103 (1987) (discussing nineteenth century predictions that the capital would be moved to the West as the population resettled); text accompanying note 58; Roy F. Nichols, *The Mystery of the Dallas Papers (Part I)*, 73 PENN. MAG. HIST. & BIOGRAPHY 349, 368 (1949) (reprinting Dec. 1, 1845 letter from Vice President George Mifflin Dallas to his son; "In a few years, the political strength beyond the Alleghennies will control the nation, and may remove the Capitol to Cincinnati, or even farther towards the valley of the Mississippi. This will be for your time.").

stability of the capital compact would come from within, from the Virginia side of the District.

III. The Retrocession of Alexandria

Retrocession of portions of the District to Maryland and Virginia was often raised during the first half of the nineteenth century, shedding significant light on the meaning of the capital compact. For a number of reasons, the towns of Alexandria and Georgetown (which both predated the selection of Washington as the capital) periodically sought to withdraw from the capital compact.¹³¹ Alexandria and Georgetown benefitted little from federal spending in Washington City,¹³² Congress was generally neglectful of issues important to the unenfranchised citizens of the District, and residents of the capital were hampered in prosecuting suits against residents of states.¹³³ In other words, the material benefits of the capital compact were not sufficient to compensate the residents of Alexandria and Georgetown for their loss of federal representation. However, some partisans of Washington City objected to such proposals, due at least in part to their fear that retrocession would be a first step toward breaking the compact and removing the capital to some other location.¹³⁴

Because of the chronic nature of retrocession proposals, Washingtonians can be forgiven for not paying much attention when in February, 1846, the Virginia legislature heeded Alexandria's request and unanimously voted to accept Alexandria back into Virginia "when the same shall be receded by the Congress of the United States."¹³⁵ The ensuing debate over retrocession made explicit reference to the capital compact. Alexandrians argued that "[t]he inhabitants of the town and county of Alexandria are, as we conceive, subject to all the evils, without any of the benefits, of being citizens of this District; and are denied many valuable privileges enjoyed by citizens of the States."¹³⁶ Harkening

131. See Amos B. Casselman, *The Virginia Portion of the District of Columbia*, 12 RECORDS COLUMBIA HIST. SOC'Y 115, 123-29 (1909) (discussing retrocession attempts and their rationale).

132. See, e.g., Adam H. Kurland, *Partisan Rhetoric, Constitutional Reality, and Political Responsibility: The Troubling Constitutional Consequences of Achieving D.C. Statehood by Simply Legislation*, 60 GEO. WASH. L. REV. 475, 483 n.32 (1992) (noting the fact that no federal headquarters facilities were built on the Virginia side of the District).

133. See 1 GREEN, *supra* note 48, at 29-30, 86, 88, 133, 173-74, 198. In the case of Alexandria, other factors influencing retrocession included the desire of Alexandrians to continue in the slave trade and to complete a canal to the West. See *id.* at 173-74; 2 WILHELMUS BOGART BRYAN, *A HISTORY OF THE NATIONAL CAPITAL* 262 (1916).

134. See 1 GREEN, *supra* note 48, at 30, 174; 2 BRYAN, *supra* note 133, at 262-63.

135. *Re-Annexation*, DAILY NAT'L INTELLIGENCER (Wash., D.C.), Feb. 6, 1846, at 4.

136. *Recession of Alexandria*, DAILY NAT'L INTELLIGENCER (Wash., D.C.), Mar. 6, 1846, at

back to the original impetus for the capital compact, Washingtonians replied that the federal capital would be subject to assault from the heights on the Virginia side of the Potomac, should a civil war occur.¹³⁷ One correspondent, writing under the pen name of "Justice," published a lengthy series of newspaper essays on the unconstitutionality of retrocession.¹³⁸ Among other things, Justice argued that "the establishment of the seat of Government, in these ten miles square, is a contract or compact among all the contracting parties, and the consent of all must be obtained [prior] to its abrogation."¹³⁹

Virginia Representative R.M.T. Hunter, chairman of the House Committee on the District of Columbia, took up the issue of retrocession with relish. Petitions from Alexandrians requesting retrocession were referred to his committee, which issued a favorable bill and report.¹⁴⁰

1 (reprinting letter from citizens of Alexandria to General John Mason); see also *id.* (reprinting Mason's reply) ("I have always thought that the extent of territory taken by Congress for its exclusive jurisdiction might have been less on both sides of the Potomac, and particularly that the town and county of Alexandria, separated as it was from the site of the city of Washington by the river, was a surplussage of no advantage to the Union; and I still think that the good town of Alexandria . . . would have been better fostered by its natural mother (the Old Dominion) than by the care of the Congress of the United States, charged with the interests of so many States, and whose members, living at a distance, of necessity know but little of the local affairs of the District; and that, independent of the recovery of the franchise and privileges belonging to representative Governments, so dear to Americans, the commerce and growth of the town . . . must be rapidly increased, when you make an essential part of the interest of the Potomac and mingle as brother-citizens with the people bordering on this side of the river, from its mouth to its head, and are heard with them in the councils of Virginia.").

137. See *Retrocession*, DAILY NAT'L INTELLIGENCER (Wash., D.C.), May 11, 1846, at 1.

138. See *Retrocession in the District of Columbia*, DAILY NAT'L INTELLIGENCER (Wash., D.C.), Feb. 25, 1846, at 1; *Retrocession in the District of Columbia, No. II*, DAILY NAT'L INTELLIGENCER (Wash., D.C.), Mar. 5, 1846, at 1; *Retrocession in the District of Columbia, No. III*, DAILY NAT'L INTELLIGENCER (Wash., D.C.), Mar. 9, 1846, at 1; *Retrocession in the District of Columbia, No. IV*, DAILY NAT'L INTELLIGENCER (Wash., D.C.), Mar. 13, 1846, at 1; *Retrocession in the District of Columbia, No. V*, DAILY NAT'L INTELLIGENCER (Wash., D.C.), Apr. 3, 1846, at 1; *Retrocession in the District of Columbia, No. VI*, DAILY NAT'L INTELLIGENCER (Wash., D.C.), Apr. 20, 1846, at 1; *Retrocession in the District of Columbia, No. VII*, DAILY NAT'L INTELLIGENCER (Wash., D.C.), May 1, 1846, at 1.

139. *Retrocession in the District of Columbia, No. V*, DAILY NAT'L INTELLIGENCER (Wash., D.C.), Apr. 3, 1846, at 1. Justice defined the parties to the compact to include "the Constitution and Congress, as the principals, and the States of Virginia and Maryland, and the then and succeeding inhabitants of this District, as accessories..." *Id.*

Similar arguments about the inviolability of the compact were made by at least one other commentator. See "Pro Patria," *Alexandria—Retrocession*, DAILY NAT'L INTELLIGENCER (Wash., D.C.), July 1, 1846, at 1 ("Have the other States in their sovereign capacity not a vital interest in this common ground of the constitution as forming one of the bonds of union, and more especially the Southern States, without whose inflexible determination the seat of Government would not have been fixed on the banks of the Potomac, and partly on the south of that river?").

140. See *Retrocession of Alexandria to Virginia*, DAILY NAT'L INTELLIGENCER (Wash., D.C.), Mar. 20, 1846, at 1 (reprinting committee report).

The Committee report rather shortsightedly concluded that “there is much more than space enough for all the public grounds and buildings ever likely to be necessary for the seat of Government”¹⁴¹ in the District north of the Potomac. With respect to the compact, the committee found that the federal government had not kept its bargain with the residents of Alexandria.¹⁴² Moreover, the committee opined that nothing in the Constitution prohibited retrocession since the national capital could be removed entirely to some other place, and so the present District of Columbia (or portions thereof) must be capable of cession back to the granting states.¹⁴³

When the legislation was debated in the House, some members questioned the motives behind retrocession.¹⁴⁴ Other members were concerned that it was improper to permit a portion of the District to withdraw from its jurisdiction without seeking the consent of the entire population of the District.¹⁴⁵ However, these objections did not hold

141. *Id.*

142. *Id.* (“The people of the county and town of Alexandria have been subjected not only to their full share of those evils which affect the District generally, but they have enjoyed none of those benefits which serve to mitigate their disadvantages in the county of Washington. The advantages which flow from the location of the seat of Government are almost entirely confined to the latter county, whose people, as far as your committee are advised, are entirely content to remain under the exclusive legislation of Congress. But the people of the county and town of Alexandria, who enjoy few of those advantages, are (as your committee believe) justly impatient of a state of things which subjects them not only to all the evils of inefficient legislation, but also to political disfranchisement.”).

On a related matter, the Committee concluded that the capital compact was severable: “Nor is there any thing in the acts of cession, or the circumstances attending them, to sanction the idea which has been expressed, that it was a contract between the United States and the States of Virginia and Maryland jointly, and thus that good faith would require the asset of both States to a retrocession to either. A reference to these acts will show that each State contracted for itself only with the General Government, and did not contemplate the action of any other State as necessarily connected with its own.” *Id.*

143. *Id.* (“If [Congress] may remove the site of its exclusive legislation from the Potomac to the Mississippi, it would seem to be clear that they might remove that site from the boundaries of Alexandria county to the north bank of the Potomac.”). See generally *Phillips v. Payne*, 92 U.S. 130 (1875) (holding that in determining the constitutionality of Alexandria’s retrocession, the Supreme Court would not look behind Virginia’s de facto possession of the disputed territory). But see 45 CONG. REC. 672-79 (Jan. 17, 1910) (reprinting letter from Hannis Taylor to Sen. Thomas H. Carter (Jan. 12, 1910) (making a detailed argument that the retrocession of Alexandria was unconstitutional because it impaired the federal government’s contractual obligations to Maryland, Virginia, and the original landowners of the District)).

144. See CONG. GLOBE, 29th Cong., 1st Sess. 778 (May 8, 1846) (statement of Rep. Culver) (“One reason [for retrocession] might be that under the Constitution and laws, fugitive slaves -- fugitive slaves from this District -- could not be captured and retained. If so, this would be no very strong reason for voting for this bill.”). One Representative argued that there were other improper motives, including burdening the federal government with Alexandria’s debt and enhancing the power of eastern Virginia slaveowners. See *id.* at 778-80 (statements of Rep. Payne).

145. See, e.g., *id.* at 778 (statement of Rep. Payne); *id.* at 780 (statement of Rep. McClelland).

much weight with most members, who voted ninety-six to sixty-five in favor of the measure.¹⁴⁶

The Senate Committee on the District of Columbia recommended against retrocession,¹⁴⁷ but, perhaps distracted by the war with Mexico, the full Senate quickly passed the measure.¹⁴⁸ Washingtonians were surprised; one leading paper noted that “[w]e certainly did not expect to have this day to announce to our friends and fellow-citizens of the District of Columbia an event of so much interest to them as the final passage in Congress of the bill to retrocede to the State of Virginia that part of the District which formerly formed a part of Virginia.”¹⁴⁹

Alexandria’s retrocession was thus enacted with remarkably little debate. However, time has shown the measure to have had unfortunate consequences for the seat of government. The Civil War would soon give Congress cause to regret its hasty action.¹⁵⁰ Moreover, retrocession established a precedent for the constitutionality of complete removal of the capital and sparked removal speculation.¹⁵¹ And, by separating the District of Columbia from one of its patron states, retrocession may have contributed to the political isolation the District of Columbia is presently experiencing. Still, by basing their request for retrocession on the failure of the national government to fulfill its part of the compact to stimulate economic development,¹⁵² Alexandrians strengthened the validity and enforceability of the capital compact.

146. *See id.* at 781.

147. *See* CONG. GLOBE, 29th Cong., 1st Sess. 985-86 (June 17, 1846); CONG. GLOBE, 29th Cong., 1st Sess. 1042-43 (June 30, 1846) (discussing committee chairman’s reasons for opposing the bill).

148. *See* CONG. GLOBE, 29th Cong., 1st Sess. 1046 (July 2, 1846).

149. *Retrocession to Virginia of the Town and County of Alexandria, D.C.*, DAILY NAT’L INTELLIGENCER (Wash., D.C.), July 3, 1846, at 4.

150. During and immediately after the Civil War, several attempts were made to reannex Alexandria to the District of Columbia. *See, e.g.*, CONG. GLOBE, 37th Cong., 1st Sess. 224 (July 22, 1861); CONG. GLOBE, 37th Cong., 1st Sess. 420 (Aug. 3, 1861); CONG. GLOBE, 39th Cong., 1st Sess. 3576-81 (July 5, 1866); CONG. GLOBE, 39th Cong., 1st Sess. 3701-09 (July 10, 1866); CONG. GLOBE, 39th Cong., 1st Sess. 3734-41 (July 11, 1866); CONG. GLOBE, 40th Cong., 1st Sess. 26, 32 (Mar. 8, 1867). None of the reannexation proposals ultimately succeeded.

151. *See* CONG. GLOBE, 29th Cong., 1st Sess. 1046 (July 2, 1846) (speech by Sen. Allen in favor of a removal of the capital to the West to counterbalance the influence of the East). *But see id.* (speech by Sen. John Calhoun) (“If the seat of Government was ever changed, it would be in consequence of some other cause than the retrocession of Alexandria, which could not possibly in any way affect that matter.”).

152. Ironically, even though it withdrew from the compact, Alexandria is currently receiving many benefits of the capital compact, often at the expense of the District of Columbia. For example, one of the largest federal activities in the national capital region, the Pentagon, is located in the former county of Alexandria. *See infra* section V.C.

IV. Westward the Course of Empire Takes Its Way

Although some feared that the retrocession of the Virginia portion of the District would set the stage for a removal of the capital, retrocession had no immediate consequences. In fact, Washington's status as the seat of government went relatively unchallenged through the Civil War.¹⁵³

But calls to move the capital reached a crescendo just a few years after the close of the Civil War. The pro-slavery sympathies of many Washingtonians and Lincoln's assassination in the city did not endear the capital to Northerners.¹⁵⁴ The disruptions caused by the War left the capital in poor physical shape, making it easier to imagine relocating to a new capital.¹⁵⁵ A popular movement urging removal of the capital to a more central location developed, spurred by Western land speculation,¹⁵⁶ jealousy of the East's preponderant influence in national councils,¹⁵⁷ and the active promotion of journalists.

In terms of the compact, the Western region sought to benefit from the agreement governing the capital just as the North and the South had each secured advantages from the original arrangement. Western boosters argued that the corrupt, indolent capital city should be supplanted by an

153. See BOWLING, *supra* note 5, at 243. *But see, e.g.*, CONG. GLOBE, 30th Cong., 1st Sess. 53 (June 13, 1848) (petition advocating removal of the seat of government to Cincinnati, Ohio, in light of pro-slavery sentiments within the District of Columbia); CONG. GLOBE, 31st Cong., 1st Sess. 516 (Mar. 13, 1850) (petition advocating abolition of slavery in the District of Columbia or removal of the seat of government); CONG. GLOBE, 32d Cong., 1st Sess. app. at 355 (Mar. 13, 1852) (remarks of Rep. John McNair (Pa.)) ("Many members who have a great distance to come to the seat of Government would vote for moving it West tomorrow, and there is now a petition in the hands of one of the members for that purpose."); CONG. GLOBE, 36th Cong., 1st Sess. 1047 (Mar. 8, 1860) (bill to remove the capital from the city of Washington "to some other more central and convenient place").

154. *See, e.g.*, 1 GREEN, *supra* note 48, at 291.

155. *See, e.g.*, Linda Wheeler, *History of the District is Written in Red Ink*, WASH. POST, Jan. 9, 1995, at D1.

156. *See, e.g.*, JOHN F. SMITH, RED, WHITE AND BLUE: A SHORT TREATISE ON A SUBJECT OF GREATER IMPORTANCE TO THE PEOPLE OF THE UNITED STATES THAN ANY THAT HAS BEEN PRESENTED TO THEM SINCE THE DECLARATION OF INDEPENDENCE 5 (1862) (pamphlet published by land speculators suggesting removal of the capital "from among the disloyal inhabitants, who now surround it, to a more central position," namely, to undeveloped land at the junction of the Ohio and Mississippi rivers); *The Capital Debate*, CHI. TRIB., Jan. 24, 1870, at 2; EVENING STAR (Wash., D.C.), Jan. 26, 1870, at 2 ("The real-estate speculators out West are already quarreling for the spoils in case of the removal of the capital.").

157. *See, e.g.*, *The Capital Question*, MO. REPUBLICAN, Sept. 1, 1869, at 2 (letter to the editor) ("The vast and all absorbing question is the influence which the removal of the capital would exert upon the legislation of the country and the distribution of its patronage. . . . The supremacy of the seaboard in the national councils, and the wholesale appropriation of the national resources and honors can never be overcome so long as they have the capital.").

industrious, brawny commercial city in the agricultural heartland — another variation on the utopian theme. Through national capital removal, the frontier democrats sought to create a capital in their own image, freed of the influence of the established, propertied classes of the seaboard.¹⁵⁸

As a result of Western agitation, several “National Capital Removal” conventions were held, Congress was petitioned, and federal legislation was introduced to choose a new site for the capital. Ultimately, the movement failed to achieve its goals, but it unintentionally produced a lasting monument in Washington: Congress appropriated funds for the construction of an elaborate edifice next to the White House, now known as the Old Executive Office Building. The purpose of the appropriation, at least in part, was to anchor the national government more firmly in the city. As we shall see, a key aspect of Washington’s successful defense was the need to preserve the compact among the federal government, the states, and the residents of the District.

A. Formation of the National Capital Removal Movement

The winter of 1867 saw the first concrete steps toward a movement to urge the removal of the capital from Washington. On December 16, Congressman John A. Logan of Illinois introduced a resolution calling for the creation of a committee to investigate relocating the capital.¹⁵⁹ Logan’s motion was promptly buried in the Ways and Means Committee.¹⁶⁰ Undeterred, he tried again six months later to introduce a resolution appointing a committee “to inquire into the propriety and expediency of removing the seat of the General Government from [the] city of Washington to a point near the geographical center of the Republic.”¹⁶¹ Logan’s motion bore the scars of the then-recent civil war; the preamble to his resolution claimed as rationales for the proposal that Washington harbored a “disloyal element” and that the legislatures of neighboring states were hostile to the federal government.¹⁶²

158. See generally FREDERICK JACKSON TURNER, *THE FRONTIER IN AMERICAN HISTORY* 30-32, 243-68 (1920 & photo. reprint 1986) (outlining thesis that the availability of free land on the Western frontier created American democracy).

159. CONG. GLOBE, 40th Cong., 2d Sess. 209 (Dec. 16, 1867).

160. See *id.*; see also CONG. GLOBE, 40th Cong., 2d Sess. 935 (Feb. 3, 1868) (Representative Carmen A. Newcomb of Missouri introduced legislation to relocate the national capital to St. Louis, Missouri; the legislation was referred to the Committee of Ways and Means).

161. CONG. GLOBE, 40th Cong., 2d Sess. 3174 (June 15, 1868); see also CHI. TRIB., June 16, 1868, at 1.

162. CONG. GLOBE, 40th Cong., 2d Sess. 3174 (June 15, 1868).

Labeled “a foul slander on the people of this District” by opponents,¹⁶³ the Logan resolution failed to garner even enough support to overcome a procedural hurdle to its introduction.¹⁶⁴

Undaunted, other Westerners soon pursued the cause of national capital removal. In the summer of 1869, the *Chicago Tribune* began to advocate relocating the capital to the Mississippi River Valley.¹⁶⁵ Interestingly, the *Tribune* did not seek the crown for its home city.¹⁶⁶ Declaring that Chicago was “content with her position as a commercial metropolis”¹⁶⁷ and that the city would be injured economically by the requirement that any prospective capital surrender exclusive jurisdiction to Congress, the *Tribune* opined that St. Louis was best situated among the possible alternatives to serve as the new capital because of its centrality. Why St. Louis would not also suffer economically was not explained. Washingtonians reacted swiftly and negatively to the Western proposal to relocate the capital, arguing that it would be impossible to stop the capital once put on wheels¹⁶⁸ and that their property values would be significantly reduced by removing the capital.¹⁶⁹

163. *Id.*

164. *Id.* The vote on suspending the House rules to permit the introduction of Logan’s legislation was 43 in favor, 67 against, and 79 abstentions. *See id.* For further reaction to the removal proposal, see CHI. TRIB., June 16, 1868, at 2 (“From Our Own Correspondent”: “I wonder that any of your Western cities exert themselves at all to possess the seat of government. A thriving business place has no use for a Capitol. . . . [T]hat Chicago, St. Louis, or any flourishing place should ask the reinforcement of the capitol is accountable for only on the principle of vaulting ambition which o’erleaps itself. Do you want to lose your right of suffrage? . . . There is not one corner of the country that is not better represented in Congress than Washington. . . . If this town had reaped any vast business advantages from its selection, you would have ground for jealousy.”).

165. *Removal of the Capital*, CHI. TRIB., July 5, 1869, at 2 (“It is time that the public mind, at least in the Western, Southwestern and Pacific States, were definitely turned to the question of the future location of our National Capital, as one demanding not merely discussion, but speedy action.”).

166. The Washington *Evening Star* editorialized that the *Tribune* was pushing the capital removal idea to give its writers something to discuss during a slow summer. *See* EVENING STAR (Wash., D.C.), Aug. 9, 1869, at 2. Later, the *Star* suggested that economic benefit would accrue to prominent Chicagoans should the capital be removed to St. Louis: “It has been a matter of some surprise why the project of taking the U. S. capital to St. Louis should have originated in the rival city of Chicago. It turns out now, however, that Judge Caton and other Chicagoans prominent in the speculation are largely interested in real-estate in the vicinity of St. Louis. So the milk in that cocoa nut is accounted for!” EVENING STAR (Wash., D.C.), Oct. 28, 1869, at 2. “Judge Caton” was Illinois Supreme Court Justice John D. Caton, the chief shareholder of the Illinois and Mississippi Telegraph Company. *See* 2 DICTIONARY OF AMERICAN BIOGRAPHY 575-76 (Allen Johnson & Dumas Malone eds., 1958).

167. *Removal of the Capital*, CHI. TRIB., July 5, 1869, at 2.

168. *See The General Government Behind a Locomotive*, EVENING STAR (Wash., D.C.), Aug. 9, 1869, at 2.

169. *See, e.g.*, CHI. TRIB., Aug. 14, 1869, at 2 (quoting an unnamed Washington newspaper on the effect of removing the capital on Washington’s property values). The *Tribune’s* nonchalant reply was that Western property values would be increased by a corresponding amount. *Id.*

Also in 1869, St. Louis publicist Logan U. Reavis¹⁷⁰ published a tract entitled *A Change of National Empire*¹⁷¹ which laid out the political and economic arguments for moving the national capital to St. Louis. Reavis theorized that the wealth and population of the nation had changed so much since the selection of Washington, D.C., that the capital should be moved to St. Louis, a more central location.¹⁷²

The *Tribune* followed its initial advocacy with a series of editorials setting forth Washington's inadequacies¹⁷³ and recommending a close examination of issues pertinent to a migration of the capital, including a comparison of the relative advantages and disadvantages of various locations.¹⁷⁴ The *Tribune's* advocacy had its desired effect. In August 1869 citizens of St. Louis began to form a movement to advocate national capital removal.¹⁷⁵ Several prominent citizens, including Logan Reavis and St. Louis' congressman and mayor, issued a call for a meeting of two citizens from each congressional district to convene in October of 1869 in St. Louis.¹⁷⁶

170. One writer who was opposed to the capital removal idea described Reavis as "a person . . . whose intellects are as deformed and outre as his body. Imagine a man with a terribly crooked leg, with a narrow head covered with a jungle of red hair, a stove-pipe hat of ancient conception, his nether extremities clothed in jean pantaloons, while the balance of his external clothing is a long linen duster, reeking with sweat." *EVENING STAR* (Wash., D.C.), Oct. 26, 1869, at 2. Reavis' obituary noted that, in addition to promoting the capital removal movement, he published a history of St. Louis and "was engaged in various literary enterprises and newspaper publications. He leaves a widow and two children in almost destitute circumstances." *Death of L. U. Reavis*, *N.Y. TIMES*, Apr. 29, 1889, at 11 (reporting Reavis' death on April 25, 1889 in St. Louis).

171. *LOGAN U. REAVIS, A CHANGE OF NATIONAL EMPIRE; OR ARGUMENTS IN FAVOR OF THE REMOVAL OF THE NATIONAL CAPITAL FROM WASHINGTON CITY TO THE MISSISSIPPI VALLEY* (St. Louis, Mo., 1869).

172. *See id.* at 47 ("In its relation to our northern and southern boundaries, [St. Louis] occupies substantially the geographical center of the country. Its position, when considered from the East and West, is not central, geographically speaking; yet I will show by the population, commercial, political, and conclusive arguments, that its geographical position, in reference to the East and West, is adjusted, and thus rendered the favored place for the seat of national empire for the New Republic.").

173. *See Removal of the National Capital*, *CHI. TRIB.*, July 10, 1869, at 2 (arguing that Washington was militarily vulnerable, inconvenient for much of the population, and tainted by an unsavory moral atmosphere).

174. *See Removal of the Capital*, *CHI. TRIB.*, July 5, 1869, at 2 (comparing Cincinnati, Chicago, Memphis, and St. Louis as potential capital sites and recommending St. Louis as the best situated); *see also Removal of the Capital*, *CHI. TRIB.*, July 21, 1869, at 2 (discussing the financial aspects of moving the capital); *Removal of the Capital*, *CHI. TRIB.*, Aug. 6, 1869, at 2 (estimating that new buildings immediately required by the federal government would cost some \$14 million to construct).

175. *See The Inauguration of a "Capital" Movement*, *CHI. TRIB.*, Aug. 5, 1869, at 2.

176. *See Meeting at St. Louis to Consider the Question of Removing the National Capital -- A National Convention Called to Meet at St. Louis*, *CHI. TRIB.*, Aug. 11, 1869, at 1; *The National Capital, The Lever That Is to Move It*, *MO. REPUBLICAN*, Aug. 11, 1869, at 2; *The National Capital*,

RELOCATING THE NATIONAL CAPITAL

As the convention approached, the residents of St. Louis exhibited a certain lack of interest in the preparations, so much so that the papers chided the citizenry for their apathy.¹⁷⁷ Nevertheless, the convention opened as scheduled on the afternoon of October 20, 1869. The West was most prominently represented among the approximately ninety delegates in attendance.¹⁷⁸

The first day's proceedings were occupied with procedural matters and numerous speeches by notables in attendance. Many of these speeches seemed to have an air of defensiveness or tentativeness. This hesitancy may have been due to the fact that national capital removal would require the combined efforts of all of the Western states for success, yet the supposed benefits of a relocation would accrue disproportionately to the place that won the honor. Proponents were certainly aware that too great an eagerness to win the capital for one's hometown might be unseemly and could work against the unity necessary to carry the capital to the Mississippi Valley.¹⁷⁹

MO. REPUBLICAN., Aug. 13, 1869, at 3. The St. Louis *Republican* worried, however, that the time was not yet ripe for a convention. See *The Capital Question*, MO. REPUBLICAN., Aug. 13, 1869, at 2 ("We do not think the removal question has been sufficiently discussed to justify at this time so serious a consideration of the subject by the different States as the above action [calling for a convention] would imply. There is hardly a prospect that the Convention would be attended by a full representation from the States beyond the region of the Mississippi Valley, if even these were fully represented."); see also *The Capital Removal*, MO. REPUBLICAN., Aug. 15, 1869, at 2 (reprinting *New York Times* editorial concerning the haste with which national capital removal was being promoted).

177. See, e.g., *Capital Convention*, MO. REPUBLICAN, Oct. 19, 1869, at 2. At least one Washington paper noted that this apathy indicated the good sense of St. Louis' citizens. See EVENING STAR (Wash., D.C.), Oct. 21, 1869, at 2 ("The plain inference to be drawn from all this is that the citizens of St. Louis -- her real business men, as distinguished from the hotel bummers and speculators in outside lots -- have the sagacity to see that the possession of the National Capital would be the drawing of an elephant of the hugest proportions.").

178. See *Capital Convention*, MO. REPUBLICAN, Oct. 21, 1869, at 2 (listing delegates from Alabama, Alaska, Colorado, Illinois, Indiana, Iowa, Kentucky, Kansas, Louisiana, Montana, Missouri, Nebraska, New Mexico, Oregon, Pennsylvania, and Tennessee). Nearly two-thirds of the delegates came from just three states -- Illinois, Iowa, and Missouri, and one of the Illinois delegates was Joseph Medill, owner of the *Chicago Tribune*. A Washington paper claimed that a number of the delegates supposedly from other states were in fact from St. Louis or had real estate interests in St. Louis. See *That Convention*, EVENING STAR (Wash., D.C.), Oct. 27, 1869, at 2 ("The Tennessee and Alabama delegations were picked up about the hotels of St. Louis by a smelling committee.").

179. See, e.g., MO. REPUBLICAN, Oct. 21, 1869, at 2 (speech of L.R. Shyrock) ("Gentlemen, permit me to say . . . that this is no local movement; it is no movement inaugurated by any party, any clique, any State or any city; but it is the spontaneous movement of the people in this glorious country that we are pleased to call the Mississippi Valley."); *id.* (speech of St. Louis Mayor Nathan Cole) ("We trust, gentlemen, that your object is solely to seek a removal -- not a location, and we hope that all your deliberations may be conducted with that spirit of harmony and concord which will tend most to this great purpose . . ."); *id.* (speech of John Hogan) ("As it stands at present we have to ask of Congress this boon of right belonging to us; and that body, composed as it is at present of

The main work of the convention took place on its second day. After debate, the conventioners resolved, *inter alia*, that the location of the national capital was not permanently fixed by the Constitution, that the capital should be moved to the Mississippi Valley, that in anticipation of this move no further improvements or additions should be made to the public buildings in Washington, and that Congress should appoint a commission to determine the precise location of the new capital on the Mississippi.¹⁸⁰ Much of the debate centered around making the resolutions more palatable to all sections of the country.¹⁸¹ The convention also created an executive committee to insure future discussion of the national capital removal issue.¹⁸²

The third and final day of the convention consisted primarily of an organizational meeting of the executive committee, which made plans to call a second convention, possibly at Washington, D.C. Upon adjournment, the delegates went on a Mississippi River steamboat excursion to one of the proposed locations for the new capital, at Carondolet, Missouri.¹⁸³

During the convention, General William Tecumseh Sherman wrote to a St. Louis newspaper that he thought no existing city in the West "would or should surrender the exclusive jurisdiction necessary for the National Capital"¹⁸⁴ because of the damage such jurisdiction would cause to commercial and manufacturing activities.¹⁸⁵ Commenting on

a majority from the East, united as it were in interest, we too must be united if we desire to accomplish this object. That, however, is one trouble with us; we are never properly united upon any great object like the one at present before us."). In addition, the *Chicago Tribune* cited with approval the keynote speeches "saying [the convention] had met to discuss whether the capital should be removed, and not to select a location for it." *The Capital Convention*, CHI. TRIB., Oct. 21, 1869, at 2.

180. *Capital Convention*, MO. REPUBLICAN, Oct. 22, 1869, at 2; see also CHI. TRIB., Oct. 22, 1869, at 2 ("The resolutions unanimously adopted yesterday by the National Capital Convention in St. Louis will be read with interest, as not only a strong expression of the sense of the convention, but a compendious argument in favor of the measure it proposes.").

181. See, e.g., *Capital Convention*, MO. REPUBLICAN, Oct. 22, 1869, at 2 (speech of E.W. Russell, delegate from Iowa) ("I could not do my duty to myself or the State I have the honor to represent, if I did not enter at least a mild protest against the injudicious attempt to give this Convention a purely Western aspect. (Cheers.) . . . We wish not only to remove the capital of the United States to the Mississippi Valley, but to remove it for the benefit of the people of the East, the people of the South and of the North, and of the whole country, as well as the people of the West.").

182. *Id.* at 3.

183. See *Third Day's Proceedings*, MO. REPUBLICAN, Oct. 23, 1869, at 1; *Adjournment of the National Capital Convention -- A Decided Success*, CHI. TRIB., Oct. 23, 1869, at 1.

184. *The National Capital -- Gen. Sherman's View*, MO. REPUBLICAN, Oct. 22, 1869, at 2.

185. Sherman stated:

I have interests in St. Louis, and if allowed to vote on this question, I would vote against surrendering St. Louis city and county with its vast commercial and manufacturing interests to the exclusive jurisdiction of a Congress that would make

General Sherman's letter, the Washington *Evening Star* enthusiastically seconded Sherman's thoughts:

Imagine the city of St. Louis with all its important business interests putting itself voluntarily in the position of having to wait for a dozen years the tardy legislation of Congress, as Washington does, to enable it to deal with a canal nuisance, a market-house nuisance, or a street nuisance!¹⁸⁶

A *Chicago Tribune* editorial maintained, however, that the business interests of the new capital city need not suffer since it was no longer necessary for Congress to exercise exclusive jurisdiction over any significant area, due to the military powers of the federal government.¹⁸⁷

The convention itself received somewhat disappointing reviews. Even as staunch a supporter of national capital removal as the *Missouri Republican* had cause to question the convention's efficacy:

It may, to be sure, be doubted whether the project of removing the Capital has been materially advanced by holding a Convention The fact that . . . there were comparatively few delegates present besides [those from Missouri], does not indicate that there exists an indifference on the subject among the people of the Mississippi Valley, but rather a distrust in the time and method of proclaiming their opinions and desires. . . . We considered the calling of the Convention, in the way and at the time it was called, a mistake; but though it did not prove a great success, numerically, it committed no serious blunders, and, on the other hand, behaved with great discretion.¹⁸⁸

these interests subordinate to the mere political uses of a Federal Capital. Nor would any National Congress make the Capital where it had not exclusive and absolute jurisdiction, for its own protection and that of the employes of the Government.

Id. Sherman also noted that it might be possible to move the capital to an undeveloped site in the West, because no existing business concerns would have to be sacrificed. *Id.*

186. *The National Capital*, EVENING STAR (Wash., D.C.), Oct. 25, 1869, at 2.

187. See *Gen. Sherman on the Capital Convention*, CHI. TRIB., Oct. 28, 1869, at 2. *But see Removal of the Capital*, DAILY MORNING CHRON. (Wash., D.C.), Nov. 8, 1869, at 2 (arguing that St. Louis would have to surrender completely its municipal rights in order to secure the capital); *Removing the Capital*, MO. REPUBLICAN, Nov. 15, 1869, at 2 (letter to the editor) ("Congress claims and exercises supreme power in the District of Columbia. Would Congress be content with anything less in the District of St. Louis?").

188. *Removing the Capital*, MO. REPUBLICAN, Oct. 23, 1869, at 2. However, the *Republican* praised the Convention for its resolution against further appropriations for public buildings in Washington. *Id.* The *Republican* also printed an editorial in support of the removal movement that cited historical examples of centrally located capitals as reasons to leave Washington. See *Removal of the Capital*, MO. REPUBLICAN, Oct. 25, 1869, at 2.

The Washington papers made hay out of the convention's various failings, emphasizing the convention's lack of broad representation¹⁸⁹ and the fact that a number of delegates apparently fell ill after drinking the water in St. Louis.¹⁹⁰ On the Monday following the convention, the *Evening Star* took pains to print on its front page a legal opinion that argued, among other things, that "interests, to an unlimited extent, have grown up around [Washington] in full faith that it would remain there forever. To root up and destroy these interests would be vandalism, if it were in the power of Congress to do it."¹⁹¹ Another Washington paper, the *Chronicle*, noted that the federal government could be legally liable to the people of Washington for removing, just as residents of towns from which colleges moved had secured damages from the colleges.¹⁹² Other Eastern newspapers were skeptical of the prospects of removal,¹⁹³ but the New York *Post* nevertheless took the opportunity to offer New York City as the next capital.¹⁹⁴

189. See *That Convention*, EVENING STAR (Wash., D.C.), Oct. 27, 1869, at 2 ("In our opinion, the St. Louis convention has shown the utter weakness of the removal project, and we are very glad it has been held in order to demonstrate how groundless is the idea that any considerable portion of the people of the country have any disposition to see the seat of Government removed from its present position.").

190. EVENING STAR (Wash., D.C.), Oct. 23, 1869, at 2 ("It is stated that the Convention adjourned two days sooner than was intended, in consequence of most of the members being griped [sic] with diarrhea from drinking the filthy water."). The *Star* also took note of several personal disputes between members of the convention. See EVENING STAR (Wash., D.C.), Oct. 25, 1869, at 2.

191. EVENING STAR (Wash., D.C.), Oct. 25, 1869, at 1.

192. See *The Grand Job*, DAILY MORNING CHRON. (Wash., D.C.), Nov. 9, 1869, at 2 ("Removal amounts to a forcible wresting of [Washingtonians'] interests, and the owners would then become invested with definite rights, capable of being prosecuted in a United States court or of being assigned to third parties. The land bought, the houses built, the money invested in Washington were all on condition, which condition was the implied promise of the Government that the Capital should forever remain where it now stands.").

193. See, e.g., *The St. Louis Capital Convention*, NEW HAVEN REG., reprinted in MO. REPUBLICAN, Oct. 28, 1869, at 2.

194. See *The Seat of Government*, N.Y. EVENING POST, Nov. 22, 1869, at 2 ("Should a change be made at any time, it will probably result from the growing importance of having the political and the commercial centres of the country in one city; and Congress will sit in the midst of a new and beautiful District of Columbia, in the upper part of the Central Park, while the coming President will look out from his White House on Prospect Hill, over Manhattan Island, with its two rivers and the finest harbor in the world."); EVENING STAR (Wash., D.C.), Nov. 23, 1869, at 2 (discussing the *Post's* proposal). See generally CHI. TRIB., Oct. 30, 1869, at 2 ("New York has one argument in favor of being made the seat of government which no other city in the country can urge. This is that, being wholly incapable of self-government, she needs to be brought under the immediate jurisdiction of Congress.").

B. Capital Appropriations

Despite the convention's shortcomings, it generated new enthusiasm for the removal project, at least among Western newspapers and members of Congress. The *Chicago Tribune* argued that the proposal was gathering supporters, particularly among powerful financial and railroad interests.¹⁹⁵ The *Cincinnati Enquirer* wrote that Western and Southwestern voters should elect their representatives on the basis of support for national capital removal.¹⁹⁶ The *Detroit Post* advocated an elaborate plan, later endorsed by the *Missouri Republican*, for transferring various government offices to the West in stages.¹⁹⁷ And the *Sacramento Union* seconded the call for Congress to halt all expenditures on new buildings in Washington.¹⁹⁸

Moreover, there were rumors that the Western congressional delegation would attempt to block further any appropriations for new buildings in Washington. The *Missouri Republican* reported that the reaction to the convention among the region's congressional representatives was positive and that a test of support for national capital removal would soon take place when appropriations for an expensive new building for the Departments of State and War were considered.¹⁹⁹

195. See *The St. Louis Convention*, CHI. TRIB., Oct. 26, 1869, at 2 ("Every day adds to the ranks of [removal] supporters among men of true conservative wisdom and influence. . . . The New England capitalists are interested in its favor, because their large investments of capital are here. The all-powerful railway and carrying interests traversing the heart of the country east and west are interested in it, for they do not lead to its present, but will lead to its future location. The nation at large is interested in it, on grounds of impartial justice and expediency.").

196. See *The Removal of the National Capital*, CINCINNATI ENQUIRER, reprinted in MO. REPUBLICAN, Oct. 28, 1869, at 2.

197. See *Removal of the Capital*, DETROIT POST, reprinted in MO. REPUBLICAN, Oct. 28, 1869, at 2; *Gradual Removal of the Capital*, MO. REPUBLICAN, Oct. 29, 1869, at 2.

198. See *Removal of the Capital*, SACRAMENTO UNION, reprinted in MO. REPUBLICAN, Oct. 30, 1869, at 1. However, at least one Western newspaper, the *Ohio State Journal*, editorialized against moving the capital because it would be impractical, costly, and of limited utility to the country. See *Removal of the Capital*, OHIO ST. J., reprinted in EVENING STAR (Wash., D.C.), Nov. 17, 1869, at 2.

199. See *A Capital Question*, MO. REPUBLICAN, Oct. 24, 1869, at 1 ("The project of removing the capital out West would seem to have more strength than Washingtonians believe. The Western members are pretty well suited on the subject, and in its favor. . . . From all that I can learn here this evening, it is very likely that a trial of strength between the removers and anti-removers will come up at the next session of Congress. An appropriation of \$1,599,000 is to be asked for to put up a new building for the State and War Departments, and Western members are determined, it is said, to fight the proposition at every stage. . . . The Western men report that every additional dollar expended on Federal works in Washington will be made an argument against removing the capital, and they are determined to furnish no more arguments on that side."). However, Western influence was insufficient to block an initial step in preparation for the new building. See *A Resolution in Relation to a Site for a Building for the State Department*, 41st Cong., 2d Sess., 16 Stat. 367 (Dec. 14, 1869) (creating a commission to select a site for a new building to house the State Department

However, one newspaper was skeptical of the diligence with which the Western members of Congress would apply themselves to the removal project, since those representatives stood to lose thousands of dollars in mileage reimbursements if the capital were moved closer to their districts.²⁰⁰

Around this time, Washingtonians became sufficiently concerned about the national capital removal movement to mount a response.²⁰¹ Some considered urging President Grant to use his influence to put an end to the movement.²⁰² On January 22, 1870, a delegation of District citizens, including John W. Forney, the publisher of the *Washington Daily Morning Chronicle*, called on the President to emphasize "that the continued agitation for the removal of the capital was affecting their interests injuriously, and paralyzing the development of the District."²⁰³ Grant replied that he hoped to make the District a model city and that "he appreciated the disadvantages under which the citizens of the District labored, and that he would help them out to the full extent of his power."²⁰⁴ In a subsequent meeting with the mayor of Washington,

and to consider accommodations for the War Department).

200. See *The St. Louis Capital Convention*, NEW HAVEN REG., reprinted in MO. REPUBLICAN, Oct. 28, 1869, at 2 ("Now, the mileage of an Oregon member is over twenty thousand dollars, and a trans-Mississippi member gets anywhere from three to ten or fifteen thousand dollars. Transfer the capital to St. Louis, Keokuk, or Promontory Point, and these members would not get mileage enough to pay their whiskey bills for a winter season.").

201. See generally *Washington Correspondence*, MO. REPUBLICAN, Nov. 14, 1869, at 1 ("The fact is, the people here are getting awfully scared about the matter, and I don't wonder at it when one reflects that property here will become almost valueless should the Government be removed.").

The Washington press countered the arguments of the removal movement by prominently publishing a multi-part essay on the reasons why Washington was the proper location for the capital. See *Where Should Be the Capital, No. I*, EVENING STAR (Wash., D.C.), Feb. 2, 1870, at 1; *Where Should Be the Capital, No. II*, EVENING STAR (Wash., D.C.), Feb. 4, 1870, at 1; *Where Should Be the Capital, No. III*, EVENING STAR (Wash., D.C.), Feb. 5, 1870, at 1; *Where Should Be the Capital, No. IV*, EVENING STAR (Wash., D.C.), Feb. 7, 1870, at 1.

202. See CHI. TRIB., Nov. 15, 1869, at 2; see also *The People of Washington*, DAILY MORNING CHRON. (Wash., D.C.), Nov. 10, 1869, at 2 (denying that any such request had been sent to President Grant but arguing that Washingtonians had the right to present such a request if they desired).

203. *Interview with President Grant Relative to District Matters*, EVENING STAR (Wash., D.C.), Jan. 22, 1870, at 1.

204. *Id.* For a somewhat different account of the same meeting, see *In Trouble*, MO. DEMOCRAT, Jan. 24, 1870, at 1:

Col. Forney -- some people spell it, most indecently, Fawney, -- editor of the *Washington Chronicle* . . . has called on the President, with sundry other national paupers -- such as Corcoran, the rich banker -- who inhabit the national poor-house, customarily known as the District of Columbia, and there get their streets paved and lighted for them at the expense of the nation. These meritorious paupers represent that the talk of moving the Capital and dispensing with the poor-house altogether affects them very unpleasantly, and that business does not "develope," Congress will not improve the streets, and their real estate does not rise in value as fast as they would like to have it. Wherefore they pray the President to

Grant indicated that, although he was sympathetic to their concerns, Washingtonians should not expect any new appropriations for the city in the immediate future: "A recommendation of this character at present would be disregarded. Western members were specially tenacious in regard to this subject. Time and more information would soften the asperities of the moment."²⁰⁵

In addition, on January 22, 1870, members of Congress initiated a prolonged effort to block further appropriations for federal construction in the District. Two Illinois Congressmen took the floor to argue the benefits, and even the necessity, of relocating the capital to the Mississippi Valley. Representative Moore argued that while the center of population and wealth of the country at the end of the eighteenth century had determined the location of the capital at Washington, the new, more western center of population and wealth dictated a relocation.²⁰⁶ Responding to the objection that Washington was steeped in associations with the nation's leaders, Moore noted pointedly that "[n]ot long since these regions round about, so sacred to memory and so dear to patriotic heroes, were filled with traitors in league with traitors to overthrow the grand fabric of free government which our dead patriots had reared by their unselfish toil."²⁰⁷

Later that day, Congressman John Logan reentered the debate with an exhaustive catalogue of the justifications for removal.²⁰⁸ He prefaced his remarks with a vituperative attack on the "grasping"²⁰⁹ citizens of the District for having the temerity to question congressional actions pertaining to Washington.²¹⁰ Promising to introduce a resolution calling for the creation of a committee to study the constitutional and practical issues relating to moving the capital, Logan spelled out his analysis of several of those issues. He made a detailed

do something at once to stop this horrid state of things.

The President . . . informed the delegation of paupers that he appreciated their disadvantages, and would help them out to the best of his power. We guess that the dry smile of irony which sometimes lurks about the corners of his mouth was visible about that time, if he made any such reply.

205. *Interview with President Grant in Regard to District Matters*, EVENING STAR (Wash., D.C.), Jan. 27, 1870, at 1; see also CHI. TRIB., Jan. 28, 1870, at 1.

206. CONG. GLOBE, 41st Cong., 2d Sess. 671 (Jan. 22, 1870)

207. *Id.* at 672.

208. See *id.* at 679-85.

209. *Id.* at 682.

210. See *id.* at 679 ("I . . . sat down to see if I could not put together some reasons why we should not relieve the present capital of the United States of this great imposition that is being inflicted on it by the Congress of the United States.").

argument that the Constitution was no bar to relocating the capital, because Congress had done just that when it adjusted the permissible southern limit of the capital on the Potomac from the mouth of the "Eastern Branch" (Anacostia River) to that of "Hunting creek," in order to include Alexandria, Virginia, within the boundaries of the capital.²¹¹

Most interesting for our purposes, Logan granted that, should the capital be moved, compensation would be due to the citizens of the District, "notwithstanding their sneers at our efforts now."²¹² However, Logan dismissed arguments that removal would violate a compact with the states of Maryland and Virginia to which the federal government was a party: "Congress entered into no contract, express or implied, that the Government should be forever fixed here; the acts of cession do not so stipulate, and had Congress done so it would have transcended its powers."²¹³

Along related lines, Logan reacted vehemently to the notion that the federal government had invested too much money in Washington to be able to leave:

[S]uch an objection surely comes with ill grace from a citizen of Washington or the District of Columbia. Not only have we spent here the money required in erecting the public buildings belonging exclusively to the national Government and used by its officers, but for this District we have spent the money of the national Treasury in building gas and waterworks, in bridging the Potomac, in grading streets, in paying police, in the erection and maintaining [of] various eleemosynary institutions, in building prisons, offices, &c., too numerous to name at this time. And the very persons who have received the benefit of these expenditures and have grown rich upon them turn around and coolly inform us that we have spent too much upon them to leave them, and fearing that the bill of expenditures has not assumed sufficient proportions to frighten us from this move, are now taxing their ingenuity to persuade us to invest more money here.²¹⁴

Logan closed on a more positive note, marshalling the great territorial, mineral, and agricultural wealth of the West as reasons enough for the proposed move.²¹⁵

211. *Id.*; see also *supra* note 1.

212. CONG. GLOBE, 41st Cong., 2d Sess. 682 (Jan. 22, 1870).

213. *Id.* at 681.

214. *Id.* at 682.

215. See *id.* at 684-85.

RELOCATING THE NATIONAL CAPITAL

The only recorded congressional reaction that day to the Illini speeches was from Congressman Washburn of Wisconsin, who briefly argued that advances in technology made relocation unnecessary and that removal would cost the taxpayers \$100,000,000 and would destroy \$500,000,000 of private property in the city of Washington.²¹⁶

A number of Western state legislatures also began to address the removal issue. In January 1870, the Kansas legislature resolved that its federal Senators and Representatives should vote against all further appropriations for public buildings in Washington and should advocate the removal of the capital to Fort Leavenworth, Kansas.²¹⁷ Somewhat less parochially, the legislature of Iowa and the constitutional convention of Illinois resolved that their congressional delegations should labor to remove the seat of government to some undetermined point in the Mississippi Valley.²¹⁸

On motion of Representative John Coburn of Indiana, the House passed a resolution on February 11, 1870, calling for an accounting of all moneys expended "for public and private purposes" in Washington from the date the capital was fixed at Washington through June 1869.²¹⁹ The response from the Treasury Department indicated that a grand total of \$43,726,390.53 had been spent.²²⁰ Although no immediate action was taken on the report, these figures would reappear the following year as part of the Westerners' brief for possession of the capital.

216. *See id.* at 692-93. Predictably, the Washington papers lauded Washburn's speech and dismissed Logan's efforts. *See* EVENING STAR (Wash., D.C.), Jan. 24, 1870, at 2 ("Gen. Logan made the best possible use of his material; but the subject has been so thoroughly exhausted that even his energy and industry could supply nothing new. His labored effort was completely neutralized by the five-minute speech of Mr. Washburn, of Wisconsin, who, in brief, cogent language, expressed the common-sense view of the people of the whole country as well as those of his influential part of the great west, upon the absurd and impracticable attempt to remove the national capital.").

217. *See* RESOLUTION OF THE LEGISLATURE OF KANSAS IN FAVOR OF THE REMOVAL OF THE NATIONAL CAPITAL FROM WASHINGTON TO FORT LEAVENWORTH MILITARY RESERVATION, KANSAS, S. MISC. DOC. NO. 28, 41st Cong., 2d Sess. (Jan. 26, 1870).

218. *See* RESOLUTION OF THE LEGISLATURE OF IOWA IN FAVOR OF REMOVING THE CAPITAL OF THE UNITED STATES, AND OPPOSING ANY APPROPRIATIONS FOR BUILDINGS IN THE DISTRICT OF COLUMBIA, S. MISC. DOC. NO. 73, 41st Cong., 2d Sess. (Mar. 7, 1870); RESOLUTION OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF ILLINOIS IN FAVOR OF THE REMOVAL OF THE NATIONAL CAPITAL TO SOME POINT IN THE MISSISSIPPI VALLEY, S. MISC. DOC. NO. 135, 41st Cong., 2d Sess. (May 13, 1870). In response to a resolution from his state's constitutional convention, Representative Crebs of Illinois dutifully introduced a resolution calling upon the House Committee on Public Expenditures to inquire into national capital removal. *See* H.R. MISC. DOC. NO. 105, 41st Cong., 3d Sess. 4 (Mar. 3, 1871) (reprinting Crebs' motion of June 15, 1870).

219. CONG. GLOBE, 41st Cong., 2d Sess. 1229 (Feb. 11, 1870) (passed by unanimous consent); *see also id.* at 1221 (motion fails to receive unanimous consent).

220. H.R. EXEC. DOC. NO. 156, 41st Cong., 2d Sess. (Feb. 22, 1870).

The capital removal issue flared again on Capitol Hill in the spring of 1870 when Senator Morrill of Vermont proposed spending \$500,000 to begin work on a new building for the State, War, and Navy Departments²²¹ and an additional sum to enlarge the grounds surrounding the Capitol building.²²² The debate over the appropriations soon turned to whether or not the government ought to spend further money adorning the capital before the issue of national capital removal was settled.²²³ It was apparent that despite ardent arguments from some Western senators,²²⁴ there was little support in the Senate for removal of the capital. For example, a Senator from Missouri even claimed that there were not 100 citizens of Missouri who wanted the capital in St. Louis.²²⁵ Other senators darkly warned of conflict between the states should the issue of removal be reopened.²²⁶ However, the House refused to support the proposed expenditures,²²⁷ and the measures were rejected in conference.²²⁸ Thus, the Western advocates of removal were

221. CONG. GLOBE, 41st Cong., 2d Sess. 3337 (May 10, 1870).

222. CONG. GLOBE, 41st Cong., 2d Sess. 3352 (May 11, 1870).

223. See CONG. GLOBE, 41st Cong., 2d Sess. 3337-42, 3351-52, 3722-23, 3892-97 (May 10, 11, 23, & 27, 1870); see also *Senate Debate on the Question of Removing the National Capital*, CHI. TRIB., May 28, 1870, at 1.

224. See, e.g., CONG. GLOBE, 41st Cong., 2d Sess. 3341 (May 10, 1870) (Sen. Yates) ("Sir, somebody asked the time when this capital would be removed. I answer it here to-day that the capital of the United States of America will be removed in less than ten years from this time. These are not idle words.")

225. CONG. GLOBE, 41st Cong., 2d Sess. at 3896 (May 27, 1870) (Sen. Drake) ("I venture to say there cannot be found one hundred men in the State of Missouri who would vote for Missouri to give up the city of St. Louis to the nation for a capital."); see also *id.* at 3894 (Sen. Tipton of Nebraska indicating that public opinion in his home state was against removal). See generally *Washington*, CINCINNATI COM., May 28, 1870, at 3 ("There was a renewal of the debate on the removal of the Capital, in which it was very plainly developed that any such idea has not the ghost of a chance with the Senate as at present constituted.")

For a collection of Western opinion in opposition to removing the capital, see *The Capital-Movers, Col. Forney Pours Hot Shot Into Their Ranks*, EVENING STAR (Wash., D.C.), Oct. 24, 1870, at 1 (letter to the editor).

226. CONG. GLOBE, 41st Cong., 2d Sess. 3894 (May 27, 1870) (Sen. Stewart (Nev.)) ("I should have taken no special interest in this appropriation if it had not been indicated here that it was to be defeated because of an intention to remove the capital and thereby invite agitation in the country upon a question that can only injure our credit, disturb the peace of the community, cultivate sectional strife, and finally lead to no good whatever to any human being."); *id.* at 3895 (Sen. Howard) ("The mere agitation of the question is in some sort, according to my judgment, injurious to the public taste and to the public feeling, as well as detrimental to the owners of property in this District and to the stability of the Government itself.")

227. CONG. GLOBE, 41st Cong., 2d Sess. 4323-24, 4356 (June 10 & 11, 1870); see also CONG. GLOBE, 41st Cong., 2d Sess. app. at 466-68 (June 10 & 11, 1870) (speeches of Rep. G.W. McCrary of Iowa and Rep. John Beatty of Ohio criticizing expenditures for a new State Department building and for enlarging the Capitol grounds).

228. CONG. GLOBE, 41st Cong., 2d Sess. 5393 (July 9, 1870) (Sen. Justin S. Morrill (Me.)) ("With regard to another proposition, which excited a good deal of attention, the amendment for the

initially victorious in their efforts to encourage removal and to block the construction of the new State, War, and Navy Building.

C. *The Cincinnati Convention*

Although pleased with the defeat of appropriations for Washington, the removalists did not rest long. As part of the St. Louis convention's charge to continue to agitate for removal of the capital, the Executive Committee of that convention eventually issued a call for a second capital moving convention to be held in Cincinnati, Ohio in the fall of 1870.²²⁹ But perhaps to an even greater degree than its predecessor, the second convention suffered from problems of attendance, public apathy, and dissension among supporters of the movement's goals.²³⁰

At the convening of the meeting on October 25, 1870, the relatively few delegates were met by indifference among Cincinnati's citizens and an openly hostile press.²³¹ Some ascribed Cincinnati's cold shoulder to jealousy, since St. Louis seemed the most likely candidate to win the new

extension of the Capitol grounds, and that for erecting a building for the State Department, the Senate committee recommend, in view of all the considerations, that the Senate recede from those amendments, and agree with the action of the House on those matters.").

229. See generally EVENING STAR (Wash., D.C.), Oct. 7, 1870, at 2 (announcing opening of convention in Cincinnati on October 25, 1870). The executive committee also issued a pamphlet advocating national capital removal. See L.U. REAVIS, A PAMPHLET FOR THE PEOPLE: CONTAINING FACTS AND ARGUMENTS IN FAVOR OF THE REMOVAL OF THE NATIONAL CAPITAL TO THE MISSISSIPPI VALLEY (St. Louis, Mo., 1870).

230. EVENING STAR (Wash., D.C.), Oct. 24, 1870, at 2 (delegates for the upcoming convention had been appointed from only four states); EVENING STAR (Wash., D.C.), Oct. 18, 1870, at 2 (describing apathy within national capital removal movement as the convention approached); "When Rogues Fall Out," &c., EVENING STAR (Wash., D.C.), Oct. 11, 1870, at 2 (gleefully pointing out that a dispute between Chicago and St. Louis over the size of their respective populations derived from St. Louis' desire to become the new capital). But see CINCINNATI COM., Oct. 20, 1870, at 4 (labeling the demise of the national capital removal movement as "an agreeable delusion").

231. See *National Capital Convention*, MO. REPUBLICAN, Oct. 26, 1870, at 2 ("Cincinnati [h]ad determined to let the convention alone. Her citizens treated the event with indifference, abstained from giving the convention their presence, and ignored the opportunity afforded of extending hospitalities to the representatives of sister states. The press generally pooh-poohs the matter."); see also *Removal of the National Capital, Opening of the Convention, Fifty-one Disgusted Delegates in Attendance, Letters from Horace Greeley and John W. Forney*, CINCINNATI DAILY GAZETTE, Oct. 26, 1870, at 2 ("A reporter was . . . in attendance at the time and place [designated for the convention to begin], and found a few gentlemen engaged in a futile effort to fill the spacious hall, reminding him very forcibly of the misguided hen who 'spread herself' in an attempt to cover twenty-one eggs."); *A Capital Convention*, CINCINNATI DAILY GAZETTE, Oct. 26, 1870, at 2 (criticizing the legitimacy of the delegates' appointment and their instructions from their home states); *The Capital Movers To-Day*, EVENING STAR (Wash., D.C.), Oct. 25, 1870, at 1 ("There is less enthusiasm manifested by those present than was expected, the ardor of the advocates of removal apparently having considerably abated."). For a more positive view of the opening of the convention, see *Removal of the Capital, The National Convention in Session*, CINCINNATI COM., Oct. 26, 1870, at 2.

capital.²³² Nevertheless, the conventioners soldiered on, appointing officers, listening to messages from interested persons who were unable to attend,²³³ and passing resolutions in favor of national capital removal and against further public expenditures in Washington.²³⁴ After a certain amount of acrimony,²³⁵ the convention adjourned on October 26.²³⁶ Its legacy included the appointment of an executive committee empowered to call another capital moving convention, and the appointment of a smaller committee whose duty it was to petition Congress in favor of national capital removal.²³⁷ An unintended

232. See CINCINNATI DAILY GAZETTE, Oct. 28, 1870, at 2.

233. Horace Greeley, editor of the *New York Tribune*, wrote to the Convention, arguing that "Washington seems to me an unfortunate location for our National Metropolis, and sure to be rendered less and less acceptable by the march of events." *Removal of the National Capital*, CINCINNATI DAILY GAZETTE, Oct. 26, 1870, at 2. Greeley failed to heed his own favorite aphorism, "Go west, young man," when it came to national capital removal; his letter indicated that New York City would be the most appropriate location for a new capital. *Id.* At least one Cincinnati newspaper agreed with Greeley. See CINCINNATI COM., Oct. 27, 1870, at 2.

The reading of John W. Forney's letter opposing capital removal created a minor controversy at the convention. *National Capital Convention*, MO. REPUBLICAN, Oct. 26, 1870, at 2. Forney was the publisher of the Washington *Chronicle* and a former clerk of the House and Secretary of the Senate. 3 DICTIONARY OF AMERICAN BIOGRAPHY 526-27 (Allen Johnson & Dumas Malone eds., 1959) He noted that many Westerners, including Gen. W.T. Sherman, Hon. Thomas Ewing of Ohio, Sen. Jacob Howard of Michigan, and Sen. Benjamin Wade of Ohio, were against national capital removal. Forney also complained that property values in the District had been hurt for many years by the controversy over slavery; now that the slavery issue was resolved, others stepped forward to depress property values by proposing that the capital should be moved. Because many delegates were opposed to the reading of Forney's letter, it was not read in its entirety. See *National Capital Convention*, MO. REPUBLICAN, Oct. 26, 1870, at 2; see also *Forney and the Capital Movement*, MO. REPUBLICAN, Oct. 27, 1870, at 2 (criticizing Forney as a political opportunist whose influence would be reduced if the capital were to be moved from Washington).

234. See, e.g., *National Capital Convention*, MO. REPUBLICAN, Oct. 26, 1870, at 2; *National Capital Convention*, MO. REPUBLICAN, Oct. 27, 1870, at 3; *The Great Fizzle*, EVENING STAR (Wash., D.C.), Oct. 27, 1870, at 1.

235. See, e.g., *The Capital-Moving Humbug*, EVENING STAR (Wash., D.C.), Oct. 26, 1870, at 1.

236. See, e.g., *Removal of the Capital, Second and Last Day's Proceedings*, CINCINNATI COM., Oct. 27, 1870, at 2; *The Capital Moving Farce, Close of the Humbug Convention*, EVENING STAR (Wash., D.C.), Oct. 27, 1870, at 1.

237. See *Removal of the National Capital*, CINCINNATI DAILY GAZETTE, Oct. 27, 1870, at 1. A concise summary of the convention's activities was published by the *Cincinnati Enquirer*:

The Capital Convention -- one of the most stupendous farces of the year -- brought its labors to an abrupt close yesterday. From the first, it was a failure; and, as might have been prophesied, nothing definite was accomplished. The few gentlemen who attended the convention . . . adopted resolutions favoring a more central location for the National head; determined to memorialize Congress upon the subject of adding nothing more to the present capital calculated to add to its permanency; reaffirmed the resolution of the St. Louis Convention; made provision for future conventions; appointed an executive committee; abused Cincinnati and adjourned *sine die*.

EVENING STAR (Wash., D.C.), Oct. 28, 1870, at 1 (reprinting *Cincinnati Enquirer* article).

outcome of the convention was a falling out among some of the chief supporters of national capital removal. For example, the *Chicago Tribune* criticized Logan Reavis for prematurely arranging the convention,²³⁸ and several Cincinnati papers were so put off by the convention that they abandoned their previous support for removal altogether.²³⁹

D. Presidential Intervention

Undaunted by the Cincinnati Convention's difficulties, citizens of St. Louis continued to organize in support of national capital removal.²⁴⁰

The memorial eventually submitted to Congress focused on the fact that Washington was not centrally located with respect to population or commerce: "[A] political seat of a representative system like ours should be located at the heart of the country, where the ebb and flow of the tides and currents of public opinion will traverse the most direct routes from the center to the extremities and back again." MEMORIAL OF THE CINCINNATI CONVENTION IN RELATION TO THE REMOVAL OF THE NATIONAL CAPITAL, H.R. MISC. DOC. NO. 105, 41st Cong., 3d Sess. 2 (Dec. 20, 1870). Signatories to the memorial included Joseph Medill and Logan Reavis, as well as the governors of Iowa and Nebraska and several members of the city council of St. Louis. Horace Greeley also joined in the memorial "to the extent of urging that the whole subject of a final location of the capital of the Union be considered and set at rest before any further expenditures be incurred for the erection of public edifices at Washington." *Id.*

238. See *The Capital Convention*, CHI. TRIB., Oct. 27, 1870, at 2 ("The second Capital Convention, now closing at Cincinnati, is a failure, simply because the few St. Louis managers who engineer it have so much more persistency than brains. . . . A man of tact would have perceived that the [first] National Convention, though sufficiently successful in itself, was not an experiment to be repeated until a far wider public opinion had been created in favor of the general object. Failing to see this, the St. Louis engineers of this second effort have met with a *fiasco*."); see also *Capital Moving Recrimination*, CINCINNATI DAILY GAZETTE, Nov. 3, 1870, at 2 ("There is a grave issue between Mr. L. U. Reavis, author of 'St. Louis the Future Great City of the World,' and managing member of the late lamented Capital Moving Convention, and the Chicago Tribune, published at the past great city of the world, which has declared that the convention was a failure, and has charged its failure to Reavis.").

239. See *The Great Abortion, The Reavis Convention*, EVENING STAR (Wash., D.C.), Oct. 28, 1870, at 1 (noting change in position of the *Cincinnati Enquirer*); *Capital Moving*, *id.*, at 2 (noting change in position of the *Cincinnati Daily Gazette*). For the *Gazette*, the danger of reigniting sectional rivalries seemed to weigh most heavily against removal. See *Dead Head Capital Convention*, CINCINNATI DAILY GAZETTE, Oct. 28, 1870, at 2 ("[The capital movers'] ostensible purpose is bad. . . . Their main effort is to excite the West to hostility against the East, and to make the Western section regard Washington City as an alien. And they propose to advocate the miserable currish policy of combining the Western section against all expenditures for the improvement of the National Capital.").

240. See, e.g., *The Capital-Movers and the Cattle Nuisance*, EVENING STAR (Wash., D.C.), Nov. 7, 1870, at 1 ("A letter from St. Louis says that the West is to be flooded with petitions for signature for presentation to Congress, asking, among other things, that no further appropriations be made for this District, and that Congress, at the coming session, authorize a commission to examine and report upon a site for the future capital."); *Capital Meeting*, MO. REPUBLICAN, Nov. 22, 1870, at 2; *The St. Louis Capital Movers -- A Lying Telegram*, EVENING STAR (Wash., D.C.), Nov. 25, 1870, at 2; *Capital Removal Association*, EVENING STAR (Wash., D.C.), Nov. 29, 1870, at 2; N.Y. TRIB., Dec. 6, 1870, at 6; *Capital Removal Association*, MO. REPUBLICAN, Dec. 8, 1870, at 2; *The Removal of the Capital*, MO. REPUBLICAN, Dec. 15, 1870, at 3.

However, it was a statement by President Grant that brought full national attention to the issue of moving the capital. On the evening of December 21, 1870, a torchlight procession of Washingtonians welcomed members of Congress back to the city and visited the President at the White House.²⁴¹ The leader of the delegation wished Grant well and mentioned the capital removal issue. Grant responded:

As to the removal of the capital, I think that it is improbable in the extreme. Nor do I believe that the removal should be subject to a mere majority of the representatives of the people elected for a single term. I think the question of removal, if ever presented, should go through the same process, at least, as amendments to the Constitution, even if there be the Constitutional power to remove it, which is not settled. This language may seem rather unpopular for a person coming from the part of the country I do, but it is expressed with earnestness, nevertheless, and without reserve.²⁴²

Grant's remarks prompted several lengthy editorials in the papers. The *New York Times* concurred with Grant's sentiments with respect to the need for a constitutional amendment, arguing that otherwise, "the provision of new sites for the capital would become a favorite occupation of large numbers of railroad and land operators, and we should have reason to be thankful if the Government business did not at last come to be transacted in a set of vans, like that of a traveling showman or photographer."²⁴³

Horace Greeley's *New York Tribune* contributed to the national discourse by reprinting a prolix letter concerning capital removal from Logan Reavis to President Grant.²⁴⁴ In his letter, Reavis thoroughly

However, the continued agitation for removal created certain dissensions within Western ranks. See, e.g., *Removal of the Capital*, EVENING STAR (Wash., D.C.), Nov. 14, 1870, at 2 (reprinting article from Davenport, Iowa, *Democrat*) ("The movement is now really weak -- not necessary. It might be a mighty power. Most of the States west of the Alleghenies acquiesce in the removal, but in nothing else. Ask any one of the Western States where they would have the seat of government of the nation removed to, and the answers will be as various as the States are numerous.").

241. *The "Welcome" Demonstration*, EVENING STAR (Wash., D.C.), Dec. 22, 1870, at 4.

242. *Id.*; see also *The Boys in Blue*, N.Y. TRIB., Dec. 22, 1870, at 1.

243. *The National Capital*, N.Y. TIMES, Dec. 26, 1870, at 2. Foreshadowing the "City Beautiful" movement that sought to improve Washington at the turn of the century, the *Times* also advocated that the current capital be made "a fitting expression of what is best in the national character, and, above all, of the national love of improvement." *Id.*; see also *What Washington Should Be Made*, EVENING STAR (Wash., D.C.), Dec. 28, 1870, at 1 (seconding the *Times*' opinion).

244. See *The National Capital*, N.Y. DAILY TRIB., Jan. 28, 1871, at 3. Reavis' letter was also reprinted in pamphlet form. LOGAN U. REAVIS, A LETTER TO PRESIDENT GRANT ON THE SUBJECT OF THE REMOVAL OF THE NATIONAL CAPITAL (St. Louis, Mo., 1871) (also titled *The National Capital Movable* on the page headings). The *Washington Evening Star* commented on the *Tribune's*

rehearsed the facts supporting his argument that the national capital should be more centrally located and more representative of the nation as a whole than Washington.²⁴⁵ Reavis based his case on predictions that a preponderance of the nation's population, commerce, and political power soon would be concentrated in the West.²⁴⁶ Reavis quoted from various congressional debates on the topic of the location and relocation of the capital to buttress his case that centrality was key.²⁴⁷ He maintained that constitutional objections to removal were no obstacle, citing as precedent Congress' decision to retrocede Alexandria to Virginia.²⁴⁸ He also noted statements of prominent persons, including Charles Sumner, William Seward, and Horace Greeley, in support of capital removal.²⁴⁹

Interestingly, Reavis argued that the people of Washington were themselves victims of the presence of the federal government. Because Washingtonians were governed poorly by the Congress and were denied voting representation, they had few opportunities to develop their own capacities outside of government work.²⁵⁰ Removal of the capital "would place the people of the District of Columbia upon their own resources, and develop their smothered energies."²⁵¹

Reavis closed his letter to Grant by claiming that his arguments "can only be ignored by a stolid stupidity at variance with the genius of our national progress and continental greatness"²⁵² and by demanding the immediate removal of the capital. Grant's response is not recorded.

decision to publish the Reavis article: "The raving Reavis not being able to get access to the Western papers for his tedious drivel in favor of the removal of the capital, finds space, to the extent of a dozen columns, in that asylum for visionary humbugs, the New York *Tribune*. The leading papers of the West not only decline to publish his stuff, but ridicule him and his project without stint." *EVENING STAR* (Wash., D.C.), Jan. 30, 1871, at 2.

245. REAVIS, *supra* note 244, at 9.

246. *Id.* at 10-14.

247. *Id.* at 14-23.

248. *Id.* at 21-23.

249. *Id.* at 32-33.

250. Reavis noted the acute irony that federal voting representation was at that time being restored to persons who were in revolt against the federal government, but had never been given to citizens of the District. *Id.* at 37.

Reavis also addressed a position imputed to President Grant, "that the presence of the Capital at any place tends to demoralize the people and exercise an injurious influence upon the public interests where it may be." *Id.* Grant was rumored to have stated that he would sell his property in St. Louis were the capital to be moved there. Harkening back to the original debates about whether the capital city should be located at a seat of commerce, Reavis argued that it was only because Washington was solely dependent on the government for sustenance that demoralization took place: A city like St. Louis, with ample commerce of its own, would not be so degraded. *Id.* at 38.

251. *Id.* at 38.

252. *Id.* at 39.

Commenting on Reavis' missive, the *Tribune* took a somewhat ambivalent position on the question of national capital removal. The paper was sympathetic to Grant's position that "though the Constitution does not expressly prescribe it, something very like a Constitutional Amendment"²⁵³ should be required prior to removal. But the *Tribune* also supported immediate resolution of the question of a new capital and a halt to expenditures on further federal buildings in Washington.²⁵⁴ The paper editorialized that the likely southward expansion of the country indicated a potential capital site at New Orleans or even in Latin America.²⁵⁵ Still, the editors were not sure that geographic centrality was crucial, since the capitals of many powerful nations were not near the center of their territory. Magnanimously, and in opposition to editor Horace Greeley's previous comments,²⁵⁶ the *Tribune* did not advocate moving the capital to New York City, even though its "politics and municipal rule are so thoroughly rotten that even the presence of Congress and the Federal departments could not further corrupt them."²⁵⁷

E. *Denouement*

In the midst of the press debate during the winter of 1871, state legislatures continued to press for removal.²⁵⁸ Many of these importunings were referred to the Committee on Public Expenditures, which recommended tabling them without comment. A minority of the Committee,²⁵⁹ however, issued a report on March 3, 1871, critical of

253. *Removing the Capital*, N.Y. DAILY TRIB., Jan. 28, 1871, at 6.

254. *Id.*

255. *Id.*

256. *See supra* note 233.

257. *Removing the Capital*, *supra* note 253, at 6.

The *Chicago Tribune* also responded editorially, arguing that "economy, safety, and equity" all indicated a removal to the West. *Capital Removal*, CHI. TRIB., Feb. 1, 1871, at 2. Economy, because Congress would not have to provide for basic municipal services in an established, commercial city; and safety, because Washington had shown itself to be defensible, if at all, only at great cost during the War of 1812 and the Civil War. *Id.* The equitable argument was not detailed; the *Tribune's* editors commented rather elliptically that "[t]he equity of a more central and national location is a more subtle fact, which will not strike the minds of all people, not even of the West, with its full force at first glance." *Id.*

258. *See* MEMORIAL OF THE LEGISLATURE OF THE STATE OF KANSAS, ASKING FOR THE REMOVAL OF THE NATIONAL CAPITAL TO SOME MORE CONVENIENT AND CENTRAL LOCATION, H.R. MISC. DOC. NO. 91, 41st Cong., 3d Sess. (Feb. 20, 1871); RESOLUTIONS OF THE LEGISLATURE OF INDIANA, INSTRUCTING MEMBERS OF CONGRESS TO VOTE AGAINST APPROPRIATIONS FOR PERMANENT IMPROVEMENTS IN THE CITY OF WASHINGTON, AND IN FAVOR OF A REMOVAL OF THE NATIONAL CAPITAL TO A CENTRAL PORTION OF THE MISSISSIPPI VALLEY, H.R. MISC. DOC. NO. 100, 41st Cong., 3d Sess. (Feb. 23, 1871).

259. Representatives John Coburn (Ind.) and Philetus Sawyer (Wis.).

the majority's refusal to act.²⁶⁰ The minority report, in addition to recounting the usual constitutional and developmental arguments in support of moving the capital, argued that its removal from Washington would cost little because of the need to replace most of the federal government's antiquated facilities in the near future.²⁶¹ The report noted that only five federal buildings in Washington were then considered to be adequate for their purposes and complained that great expenditures were being planned for a number of new buildings, including the new edifice for the State, War, and Navy Departments.²⁶²

However, on the same day that the minority issued its report, Congress approved construction of the proposed State, War, and Navy building: Because this approval committed the federal government to spending millions more in Washington, it effectively ended whatever momentum the national capital removal movement had developed. In February 1871, the Senate considered legislation authorizing construction of a new building and enlargement of the Capitol grounds.²⁶³ The legislation also proposed the creation of a public park between the Capitol, the White House, and the Washington Monument.²⁶⁴ Opposition to the measures in the House provided an occasion for "a Capital-moving speech"²⁶⁵ by Rep. Logan.²⁶⁶ However, the House

260. See REMOVAL OF THE NATIONAL CAPITAL, H.R. REP. NO. 52, 41st Cong., 3d Sess. (Mar. 3, 1871).

261. See *id.* at 11.

262. See *id.* at 9-10. The report estimated that \$15,000,000 would be required "within a few years in new structures, or additions to old ones." *Id.* at 10. The report also complained that the federal government paid for a number of expenses that were purely local, such as for the maintenance of streets, poor-houses, hospitals, and police. *Id.* at 11.

263. See CONG. GLOBE, 41st Cong., 3d Sess. 1110-11 (Feb. 10, 1871).

264. See *id.* at 1111. The proposed park was to be funded by the sale of undeveloped federal land elsewhere in the city. This aspect of the legislation prompted debate on possible removal of the capital: A senator from Iowa offered to vote for sale of the land contingent on removal of the capital, while others sprang to the city's defense. See CONG. GLOBE, 41st Cong., 3d Sess. 1428-32 (Feb. 20, 1871).

265. EVENING STAR (Wash., D.C.), Mar. 2, 1871, at 1; see also EVENING STAR (Wash., D.C.), Mar. 3, 1871, at 2:

General Logan was "on the rampage" in the House yesterday in opposition to the appropriation for a new State Department building, and ventilated his Capital-moving theory to a considerable extent. He did not seem hopeful of its immediate removal, but said that when the West got its new apportionment then we should see what we should see. Unfortunately for General Logan's hopes the effectual quietus has been put upon the Capital-moving humbug by the western people themselves; and no ridicule and depreciation heaped upon it has been as severe as that of the western press. Even the Chicago paper that originated the project long since threw up the sponge and abandoned the further advocacy of the absurd project as a hopeless waste of printer's ink.

266. See CONG. GLOBE, 41st Cong., 3d Sess. 1856 (Mar. 2, 1871) (remarks of Rep. Logan) ("Now, let me say that my expectation of the ultimate removal of this capital is one reason, coupled

and Senate eventually compromised by agreeing to fund only the new executive office building.²⁶⁷

Lacking broad support, the capital removal movement largely faded from the national agenda shortly after the approval of appropriations for the State, War, and Navy building.²⁶⁸ But the movement's lasting legacy was to remind the nation of the rights created and the obligations imposed by the capital compact. Arguably, national capital removal failed because its sponsors failed to comprehend the compact, particularly its regional aspects. While the North and the South originally had bartered for the privileges associated with hosting the capital, the West brought nothing to the table except a certain bravado and an acute sense of injustice. Moreover, the West's proposal excited regional jealousies and intruded on the process of national reconciliation after the Civil War. Removal proponents also misunderstood the nature of the burdens that the

with others, why I oppose these appropriations. And, sir, one of the great objects which these gentlemen have in bringing forward these appropriations on every opportunity, one object they have in extending and multiplying public buildings and purchasing additional grounds, is to secure the investment in this city of so much money as will prevent the people from ever changing the location of the capital of this nation."); *see also id.* at 1854-55 (discussing reasons why the conference was unable to agree on the public buildings and grounds appropriations); *Appropriation Bills in Danger*, N.Y. TIMES, Mar. 3, 1871, at 1 ("Considerable discussion followed [the report of the Committee of Conference], particularly upon the necessity of a new building for the State Department, in which Gen. LOGAN indulged in his usual silly froth and foam about what he was pleased to term these outrageous expenditures. He seemed to be altogether oblivious of the part he played the other day in helping to log-roll through a million and a half for simply the beginning of various public buildings outside of Washington, and other schemes for Illinois and Missouri, to the extent of nearly a million more.").

267. An Act Making Appropriations for the Legislative, Executive, and Judicial Expenses of the Government for the Year Ending June Thirty, Eighteen Hundred and Seventy-two, ch. 113, § 2, 16 Stat. 475, 494 (Mar. 3, 1871) (appropriating \$500,000 for the construction of a fireproof building, three stories in height, to house the State, War, and Navy Departments); *The General Appropriation Bill*, EVENING STAR (Wash., D.C.), Mar. 4, 1871, at 1. Western representatives fought the appropriation to the end, prompting sometimes sharp debate. *See, e.g.*, CONG. GLOBE, 41st Cong., 3d Sess. 1919 (Mar. 3, 1871) (remarks of Rep. Cox) ("Any man who does not think with his heels or dance on his head knows very well the capital never will be removed from Washington. [Laughter.]"). A small majority voted to accept the conference report, however. CONG. GLOBE, 41st Cong., 3d Sess. 1920 (Mar. 3, 1871).

268. Logan U. Reavis organized a third and final capital moving convention in Louisville, Kentucky, in October of 1874. *See Removal of the Capital. The Effort Toward the Mississippi Valley -- Call for Another National Convention.*, N.Y. TIMES, Aug. 21, 1874, at 4. The convention failed to attract many delegates or much more than ridicule by the press. *See The National Capital. The Convention of Advocates of Removal to the Mississippi Valley -- Twenty-five Delegates Present.*, N.Y. TIMES, Oct. 21, 1874, at 1 (describing low attendance at the convention); *The Capital Mover*, N.Y. TIMES, Aug. 24, 1874, at 4 ("[T]he nation, which has before it so many troublesome problems demanding immediate solution, will not care to spend much time in listening to Mr. REAVIS as he evolves his theories of 'centres.' People and power may go West, but the capital will not follow them."). Undaunted, Reavis issued a call for a fourth convention to be held in March 1877; this time, his call went unheeded. *See The Capital Mover Again*, N.Y. TIMES, Mar. 17, 1877, at 2.

compact imposed on residents of the national seat of government. As a result, many Westerners exhibited a distinct lack of interest. This group included President Grant and General Sherman, both of whom might have been expected to look fondly on the West's removal proposal.

Ironically, removalists may have also misinterpreted the American agrarian bent. Although it drew strength from the nation's preference for a capital located near the agricultural heartland, the removal movement was in direct opposition to deep-rooted beliefs about the dangers of locating the governmental capital in a place of great commercial vitality.²⁶⁹ The American utopian quest may have shifted further to the West, but large, commercial Western cities possessed perhaps fewer agrarian qualities than even Washington. When it came to a location for the seat of government, an enervated Washington was preferable to an energized St. Louis.

National capital removal failed to catch fire because it contravened both the capital compact and American notions of the ideal location for the capital. Although the idea of capital relocation thereafter entered a period of quiescence, the basic thrust of national capital removal -- redistributing the benefits of the capital compact -- would be resurrected with a vengeance in the twentieth century.

V. "Sneaking Out Bit By Bit"

Washington's first century as the capital shows that the regional aspects of the capital compact were essential in bonding the capital to the

269. See, e.g., *The Theory of a National Capital*, EVENING STAR (Wash., D.C.), Apr. 3, 1871, at 2:

It has been stated in the councils of the Thiers government that it is most desirable for the future peace and security of France that the capital of the nation be removed from Paris. It has passed into a proverb that Paris is France, and such a supremacy of any city in a nation is destructive of republican institutions, even where the city itself is republican in its politics. Under monarchical government it seems necessary and proper that the chief city of the nation in point of wealth, population, cultivation and influence should be the capital of the nation, that indispensable adjunct of kingly rule -- a splendid court -- requiring such a city for its support and development; but the simpler genius of a republic does not seem compatible with such a capital. Thus, London, Berlin, Madrid, Vienna, seem very proper political heads of their several nations; but the popular sentiment of this whole country would cry out against any attempt to make New York city the capital of the United States. . . . The same general dislike of a large city being the seat of government which was thus early in the history of the Union manifested [by the rejection of Philadelphia as the capital], appears likewise in the States With a species of natural instinct that scents danger to republican institutions in large cities, that feeling objects to their becoming political centers -- and this seems the idea that has at last been caught up by the best friends of republican government in France.

See also *Where Should Be the Capital*, No. II, *supra* note 201; *supra* text accompanying notes 27-31, 184-87.

Potomac site. Those closest to the District of Columbia were most interested in preserving the capital in the District. However, the social and technological developments of the twentieth century profoundly altered the regional considerations related to the location of the federal government's activities. Today, jurisdictions closest to the District of Columbia avidly seek to cannibalize the capital for the benefits of the compact.

After national capital removal was stymied in the 1870's, the District of Columbia was essentially prosperous and secure as the location for most centralized federal government activities until World War II. Thereafter, the city's success collided with the American penchant for agrarian dispersion and improvements in transportation and communication that made it possible to scatter agencies across the country. Although changing Congress' seat is no longer a politically viable topic, modern day capital movers have increasingly attempted to bring particular aspects of the capital home. At first, Congress and the Executive Branch sought to ease congestion in the capital by transferring agencies to other cities; however, congestion was eventually eased more by the exodus of a significant number of the District's inhabitants to Washington's suburbs. As a result of this population shift, congressional representatives of the capital's suburbs have begun to use their clout to relocate federal agencies from the District to their districts.

A. Stability

The defeat of the national capital removal movement in 1871 set the stage for a relatively lengthy period of stability, lasting until World War II. The ornate State, War, and Navy building was finally completed in 1888 amid much fanfare and at a cost of over ten million dollars.²⁷⁰ Near the turn of the century, Washington became a principal object of attention of the "City Beautiful" urban planning movement. The Mall between the Capitol and the Washington Monument was eventually beautified by, among other things, the removal of a railroad station and

270. LEE H. BURKE, HOMES OF THE DEPARTMENT OF STATE, 1774-1976, 43-49 (n.d.); ALFRED GOLDBERG, THE PENTAGON: THE FIRST FIFTY YEARS 5 (1992). For a description of the building (which still stands), see BURKE, *supra*, at 44-45 ("Upon its completion, January 31, 1888, it was reputed to be the largest and finest office building in the world (covering, together with lawns and terraces, more than five acres of ground space), . . . composed of granite, hand-hewn. The building has five stories exclusive of basement and sub-basement. It has a total floor area of about 10 acres and contains nearly 1¼ miles of corridors 12 feet wide. These are paved with alternative 1-foot squares of black slate and white marble set in transversal rows." (quoting E. WILDER SPAULDING & GEORGE V. BLUE, THE DEPARTMENT OF STATE OF THE UNITED STATES 49-50 (rev. ed. 1936))).

railroad tracks, and plans were made for an extensive network of parks and parkways.²⁷¹

The demands placed on Washington by general mobilization during the first World War strained the capital's stock of office and housing space.²⁷² A massive federal building program in the "Federal Triangle," between Pennsylvania Avenue and the Mall, eased some of the office crunch during the 1920's.²⁷³ New Deal public works programs added significantly to the number of federal buildings, which soon included new edifices for the Supreme Court, the Library of Congress, the Agriculture Department, the Interior Department, and the Bureau of Engraving and Printing.²⁷⁴ But at least one New Dealer, motivated in part by Eastern opposition to New Deal policies, suggested removal of the capital to the heartland of the nation.²⁷⁵

However, a trend that ultimately has posed more of a threat to Washington began to emerge during the 1930's. That decade saw the first signs of federal dispersal of significant government offices to Washington's suburbs. For example, components of the National Institutes of Health were moved to Bethesda, Maryland, in 1938.²⁷⁶

271. See, e.g., Jon A. Peterson, *The Hidden Origins of the McMillan Plan for Washington, D.C., 1900-1902*, in *HISTORICAL PERSPECTIVES ON URBAN DESIGN: WASHINGTON, DC, 1840-1910* 3-18 (Antoinette J. Lee ed., 1983); J. JOHN PALEN, *THE URBAN WORLD* 280 (1975); 2 CONSTANCE McLAUGHLIN GREEN, *WASHINGTON: CAPITAL CITY, 1879-1950*, at 132-46 (1963).

However, at least one turn-of-the-century critic was not pleased with Washington's climate or morals and suggested relocation to a new utopia "upon one of the delightful plateaus in some rock-ribbed corner of your vast confines." Meyer, *supra* note 131, at 103 (quoting Cyrenus O. Ward). In a similar vein, Missouri's Ozark region made a bid for the national capital in 1906. *A New Capital*, N.Y. TIMES, Mar. 25, 1906, at 8.

272. See, e.g., 2 GREEN, *supra* note 271, at 237-38, 250-51, 257.

273. *Id.* at 291.

274. *Id.* at 393-94. Chief Justice William Howard Taft began arguing the need for a Supreme Court building in 1925; construction was completed in 1935. See Maxwell Bloomfield, *Supreme Court Buildings*, in *THE OXFORD COMPANION TO THE SUPREME COURT OF THE UNITED STATES* 99, 102 (James W. Ely, Jr., et al. eds., 1992).

275. See John Crowe Ransom, *A Capital for the New Deal*, 2 AM. REV. 129, 142 (1933) ("The fight which Mr. Roosevelt makes every day is chiefly against an opposition which has its centre in the money markets of the East, where private capitalism makes its most desperate and dangerous gamble. . . . How could he better claim to represent [Southern and Western] sections against the East.. than by setting in to move the seat of government to a place where it will be fairly representative of the national geography?"). Ransom's agrarian/utopian proposal was designed to help lift the nation out of the Depression. Accordingly, the proposal envisioned the construction of a new capital of some 100 hundred square miles on undeveloped land along the Mississippi. See *id.* at 139-40. See generally Meyer, *supra* note 131, at 103 (discussing Ransom's proposal).

276. See 2 GREEN, *supra* note 271, at 411. Prior to World War II, other agencies removed from Washington proper included the Census Bureau, the Naval Medical Center, and the Social Security Board. See Letter from Legislative Reference Service, Library of Congress, to Representative Henry S. Reuss (Sept. 6, 1961) [hereinafter "LRS Letter"], reprinted in *H.R. 8248 -- To Amend the Federal Property and Administrative Services Act of 1949 to Provide an Orderly*

Perhaps the complaints of Maryland and Virginia representatives that they had received little direct economic return despite the capital's proximity would finally be answered.²⁷⁷

B. World War II

Washington's virtual monopoly on federal headquarters buildings and personnel was forever broken by World War II. The war established a precedent for situating principal offices of federal agencies outside of Washington, a practice which continues to this day. These relocations, while in part reflecting Americans' agrarian bent, threaten the implicit compromise behind the designation of Washington as the nation's capital.

1. General Removal Efforts

In 1941, even before the United States formally entered the war, the federal government began considering the transfer of bureaus out of the capital city at the urging of Illinois Representatives Everett Dirksen and Adolph Sabath.²⁷⁸ Mr. Sabath introduced a resolution encouraging the executive branch to "transfer from the District of Columbia to Chicago or elsewhere"²⁷⁹ agencies whose duties could be performed as efficiently in another location. President Roosevelt, whose general attitude toward the District of Columbia was considered to be indifferent

Program of Decentralization and Relocation of Facilities and Personnel of Executive Agencies: Hearings Before the Government Activities Subcommittee of the Committee on Government Operations, House of Representatives, 87th Cong., 1st Sess. 165, 166-67 (Nov. 29 & 30, 1961) [hereinafter Hearings on H.R. 8248].

277. See, e.g., *Evidence Before the Committee on Claims of the House of Representatives on Senate Bill 5252, Sixtieth Congress, First Session to Provide for the Payment of Certain Moneys Advanced by the States of Virginia and Maryland to the United States Government to Be Applied Toward Erecting Public Buildings for the Federal Government in the District of Columbia* 13-14 (Dec. 16, 1908) (Sen. Isidor Rayner of Maryland stating that his state had received no economic benefits from the presence of the federal government at Washington, despite having provided money in 1790 for the construction of federal buildings in Washington).

278. *To Transfer from the District of Columbia Departments, or Bureaus Thereof, and Independent Agencies to Other Localities: Hearings Before the Subcommittees of the Committee on Public Buildings and Grounds, House of Representatives, Seventy-Seventh Congress, First Session, Pursuant to H. Res. 209, pt. 1, at 2-3 (July 24, 1941) (statement of Rep. Dirksen) [hereinafter Sabath Hearings]; 87 CONG. REC. 3528-29 (1941) (statement of Rep. Sabath).*

279. H. Res. 209, 77th Cong., 1st Sess., reprinted in *Sabath Hearings*, supra note 278, pt. 1, at 1; see also H. Con. Res. 36, 77th Cong., 1st Sess. (concurrent resolution with language identical to that of Resolution 209), reprinted in *id.* at 2.

at best,²⁸⁰ also spoke in favor of removing agencies from Washington in order to ease the growing housing shortage in the city.²⁸¹

Hearings were held on Sabath's proposal, and Sabath testified that housing and temporary lodgings in Washington were difficult to obtain, while Chicago had many vacant buildings and was suffering economically.²⁸² However, the hearings were marred by parochial squabbling over which cities would receive the transferred agencies.²⁸³ As a result, Congress took no action. Nevertheless, by September, the Roosevelt administration ordered the Home Owners Loan Corporation to move out of its large headquarters in Washington to New York City.²⁸⁴

The pre-war trickle of agencies out of Washington turned to a flood after the United States became a combatant. Less than two weeks after Pearl Harbor, President Roosevelt announced that twelve non-defense agencies and 10,000 employees would be moved from Washington to cities around the country in order to make room for the war effort.²⁸⁵ The immediate beneficiaries included Chicago, New York, Philadelphia, Pittsburgh, and St. Louis. At least thirty-six agencies and over 30,000 positions were eventually shifted out of Washington during the course of the war.²⁸⁶

These wartime removals met with some resistance in Congress. Senator Pat McCarran of Nevada was a particularly determined foe of Roosevelt's plan and introduced a resolution in the Senate opposing any transfers of agencies out of the District as being *ultra vires*.²⁸⁷ McCarran, chairman of the Senate Committee on the District of

280. See, e.g., 2 GREEN, *supra* note 271, at 425-26 ("One old friend of the President privately assigned his indifference [about Washington] to a distaste for all urban affairs engendered in part by his struggles as Governor with Tammany in New York City and, in part, by his addiction to rural life as the Squire of Hyde Park knew it").

281. See *Roosevelt Weighs Moving Agencies to Near-by Cities*, N.Y. TIMES, May 3, 1941, at 9.

282. See *Sabath Hearings*, *supra* note 278, at 5, 8; see also *id.* at 13 (statement of Rep. Sabath) ("Why should the city of Washington and the District of Columbia have all the advantages and all the benefits that they enjoy? With it all, they are never satisfied.").

283. See, e.g., *Sabath Hearings*, *supra* note 278, pt. 1, at 9-10 (members of Congress criticize Chicago's political system and police and suggest that government agencies should be transferred to their own districts, not to Sabath's); see also *id.*, pt. 2 (1941-42) (describing additional hearings establishing the desire of several members to transfer federal agencies from Washington to their home districts).

284. See LRS Letter, *supra* note 276, at 166-67.

285. *President Shifts 10,000 Employees Out of Washington*, N.Y. TIMES, Dec. 20, 1941, at 1 ("The population of the [District] has increased more than 100,000 in the last year, and office space, as well as suitable living quarters, has become virtually exhausted."); LRS Letter, *supra* note 276, at 168.

286. LRS Letter, *supra* note 276, at 166.

287. S. Res. 216, 77th Cong., 2d Sess., 88 CONG. REC. 323 (Jan. 10, 1942).

Columbia, held hearings on the issue, stating that, "as I view it, the District of Columbia . . . was set up [as] a place where . . . federal government transactions should go, and . . . all protection should be afforded so that the seat of government should at all times be secure in the place selected."²⁸⁸ McCarran suggested that private businesses should be forced to move from the District instead of federal government offices. He feared that congressional oversight of federal agencies would become difficult and that the finances of the District and the home lives of government employees would be harmed.²⁸⁹ In a statement to the press, McCarran also argued that the transfer was unnecessary, since the federal government then owned 5,000 acres of unused land in the District on which additional offices and housing could be built.²⁹⁰

McCarran's resolution was debated in the Senate in January of 1942. He strenuously questioned the President's authority to order the relocations, noting that no executive order had been issued and that, by law, federal agencies were required to be located in the District of Columbia.²⁹¹ However, at least one Senator felt that only agencies statutorily established at the seat of government were required to be in Washington.²⁹² Due in part to wartime deference to the executive branch, the resolution did not carry.²⁹³

2. *The Pentagon*

Anticipating war in Europe, the War Department undertook the most massive transfer of all: Its entire headquarters was moved outside of the District of Columbia to the hastily constructed Pentagon building in

288. *Joint Hearing by the Committees on the District of Columbia*, 77th Cong., 1st Sess. 3 (Dec. 22, 1941).

289. *See id.* at 2-6. Much later, Congress would act to give the Secretaries of the Army and the Air Force the authority to requisition commercial buildings in the District of Columbia for military purposes. *See* 10 U.S.C. §§ 4780, 9780 (enacted in 1958).

290. *See Richmond, Va., Gets the Patent Office*, N.Y. TIMES, Dec. 28, 1941, at 24.

291. *See, e.g.*, 88 CONG. REC. 330 (Jan. 14, 1942) (statement of Sen. McCarran) ("If Congress will transfer these agencies away from the seat of government, there will then be no question of the propriety of the action.").

The 1790 "seat of government" legislation (4 U.S.C. §§ 71-72) established the federal government at the District of Columbia and requires explicit legislative authorization to conduct federal headquarters activities outside of the District. *See supra* text accompanying note 41.

292. *See* 88 CONG. REC. 334 (Jan. 14, 1942) (statement of Sen. Alben Barkley (Ky.)). However, 4 U.S.C. § 72 arguably establishes the opposite presumption. The statute states that, barring express provision of law, all offices "attached" to the seat of government must be within the District of Columbia. The statute, which does not further define the meaning of "attached," does not by its terms require that only statutory federal offices be within the District.

293. *See* 88 CONG. REC. 345 (Jan. 14, 1942); LRS Letter, *supra* note 276, at 169-70.

Virginia. This removal, more than any other, established a precedent for permanent location of major federal agencies outside of the seat of government and arguably spelled the beginning of the end for the capital compact.

At the outset of war in 1939, the War Department vacated its offices in the ornate State, War, and Navy building and moved to temporary buildings on the Mall. At the same time, a new 500,000 square foot headquarters building was under construction in the Foggy Bottom section of the District.²⁹⁴ By the summer of 1941, however, the War Department determined that even this location was not sufficiently commodious for the tremendous number of personnel required should the United States enter the world war. Therefore, the War Department proposed the construction of a pentagonal office building for 40,000 employees across the Potomac River in Virginia.²⁹⁵

The War Department selected a site in Virginia because construction costs would be cheaper, the proposed location was less congested than others within the city, and construction outside of the District would permit the Army Corps of Engineers to have charge of the project.²⁹⁶ In addition, Virginia Representative Clifton Woodrum, who chaired the House Appropriations subcommittee with jurisdiction over the proposed construction, looked favorably on the project.²⁹⁷

The proposal to build the Pentagon was conceived in a very short period of time. When considering supplemental appropriations to construct some temporary buildings for the War Department in Arlington, Virginia, Woodrum's subcommittee encouraged the War Department to investigate the possibility of consolidating the entire workforce (then spread among over a dozen buildings) into one large building in the same

294. This building was transferred to the State Department in 1947. See GOLDBERG, *supra* note 270, at 9 n.*.

295. See *id.* at 5-9, 14.

296. See *id.* at 14, 16; 40 U.S.C.A. § 19 note (1982) (noting that responsibility for public buildings in Washington, D.C. was removed from the Army Corps of Engineers in 1925); 87 CONG. REC. 6301 (July 24, 1941) (statement of Rep. Woodrum).

297. See GOLDBERG, *supra* note 270, at 20; 87 CONG. REC. 6302 (July 24, 1941). As a result of Woodrum's support, two Virginia construction firms were selected as the contractors for the project, instead of the New York companies that had been originally recommended. See GOLDBERG, *supra* note 270, at 29.

area.²⁹⁸ Within a few days, the War Department developed a plan to construct a \$35,000,000 building at Arlington.²⁹⁹

The Washington business community objected that federal buildings belonged in the District and, presciently, that the Pentagon would draw other agencies outside of the city.³⁰⁰ The press reaction was also critical.³⁰¹ President Roosevelt and the War Department answered the objections by promising that, after the emergency ended, the War Department headquarters would return to the District and the Pentagon would become a records storage facility.³⁰²

The debate in the House focused largely on the practical difficulties involved in moving thousands of workers away from the established infrastructure of the city. Some representatives were at that very time seeking to decentralize the federal government, thereby redistributing the benefits of the capital compact.³⁰³ However, they were opposed to the new building, believing that many of their arguments about the necessity of decentralization would lose force should such a large facility come into being.³⁰⁴ These objections had little effect; the House appropriated funds for construction just a few days after the subject was first publicly broached.³⁰⁵

The debate in the Senate often had a broader focus and is particularly helpful in illuminating regional aspects of the capital compact. Senator McCarran argued that building the headquarters of a

298. See 87 CONG. REC. 6301 (July 24, 1941) (statement by Rep. Woodrum) ("The committee had before it an estimate of \$6,500,000 for several temporary office buildings. . . . The committee was not very well satisfied with the set-up. It did not appeal to the committee to try to solve this space problem by just sticking buildings here, there, and the other place. We asked the War Department to give the matter consideration, utilizing some of its land."); see also *First Supplemental National Defense Appropriation Bill for 1942: Hearings Before the Subcomm. of the House Comm. on Appropriations, 77th Cong., 1st Sess. 488-95* (July 17, 1941) (considering temporary buildings in or near the District of Columbia) [hereinafter *Woodrum Subcommittee Hearings*].

299. See *Woodrum Subcommittee Hearings, supra* note 298, at 500-01 (July 22, 1941).

300. See GOLDBERG, *supra* note 270, at 22.

301. See, e.g., ALBERT E. COWDREY, *A CITY FOR THE NATION: THE ARMY ENGINEERS AND THE BUILDING OF WASHINGTON, D.C., 1790-1967*, at 56 (n.d.); *Stimson's New Offices*, LIFE, Dec. 21, 1942, at 83 ("Looming across the Potomac like a Cecil B. DeMille backdrop, the War Department's new \$85,000,000 Pentagon Building is just a colossal pain-in-the-neck to thousands of bewildered Washington visitors and harassed employees. They resent the eight and two-fifths miles of barren corridors, the jammed ramps, the pile-up at entrances and exits, the parking and transportation problems, the staggered working hours.").

302. See GOLDBERG, *supra* note 270, at 22, 24. In anticipation of honoring this promise, the Pentagon's floors were built to withstand very high loads -- up to 150 pounds per square foot. See *id.* at 33.

303. See 87 CONG. REC. 6368 (July 28, 1941) (statement by Rep. Dirksen).

304. *Id.* But see *id.* at 6363-64, 6369 (statements by Rep. Sabath) (favoring the construction despite his decentralization proposal).

305. *Id.* at 6375.

significant federal agency outside of the District of Columbia would cause jealousy among the states and would eventually destroy the seat of government. His statement is worth quoting at length:

A tract which was later the District of Columbia was by constitutional provision declared to be the seat of government of the United States. Certainly the building in which the War Department is to be housed is as much an essential part of the Government of the United States as any other building which is under the sovereignty of the United States. If it belongs anywhere, it belongs in the District of Columbia.

. . . My reason for expressing myself as I do is simply in order that I may bring to the attention of the Senate the possibility that we may be taking one step which ultimately will lead to another one, so that finally we shall have the buildings housing the Federal Government scattered all over the country. . . . [I]f the State of Virginia is to have this building, the State of Maryland will claim the right to have the Navy Building, some other state will claim the right to have the Internal Revenue Building, and so on, until the idea of a seat of government will have been lost sight of. In my opinion a policy leading to such a result is not the policy which the Congress should pursue.

The very aim and object of the writers of the Constitution and founders of the Government, when they provided that there should be a district, not to exceed 10 miles square, ceded by the States to be the seat of government, was to avoid such conflicts and difficulties as the Government experienced in the early days when, prior to the time when the seat of government was placed in the District of Columbia, it had eight different capitals. The Government had been scattered almost from one end of the country to the other before it finally settled in the District of Columbia, and if we start scattering the seat of government by locating buildings outside the District, pretty soon the Government will have no particular seat whatever.³⁰⁶

306. 87 CONG. REC. 7133-34, 7136 (Aug. 14, 1941). During committee hearings, Senator Overton of Louisiana expressed similar concerns about relocating the War Department outside of the District of Columbia. See *First Supplemental National Defense Appropriation Bill for 1942: Hearings on H.R. 5412 Before the Subcomm. of the Senate Comm. on Appropriations, 77th Cong., 1st Sess. 74-75* (Aug. 1, 1941) ("The District of Columbia has been selected as the seat of government where the various departments of the Government would be located, so as to be under the exclusive legislative authority and jurisdiction of the Congress of the United States. Now it is proposed to have what is perhaps the most responsible department connected with our Government taken outside of the jurisdiction of the Congress and placed in the jurisdiction of a State.").

One Senator noted the disparity that would be created, as the Virginians surrounding the Pentagon would have the right to vote while District residents would continue to be denied the federal franchise.³⁰⁷ Other objections were raised, including that the Pentagon's Virginia location would diminish the sense of ownership the nation's citizens had in the capital,³⁰⁸ that greater automobile congestion would ensue,³⁰⁹ and that no complete survey of locations within the District had been performed.³¹⁰ However, with the assistance of Virginia's Senators³¹¹ and the willingness of other Senators to defer to the War Department's desires,³¹² the necessary appropriations quickly passed the Senate and became law on August 25, 1941.³¹³ By May 1942, one million square feet of office space was ready for occupancy.³¹⁴

The promises to return the War Department to the District after the war were not kept, and the entire defense establishment was eventually moved into the Pentagon.³¹⁵ Furthermore, the building is currently undergoing a renovation that will take over a decade and cost over a billion dollars.³¹⁶ Representative Woodrum's 1941 investment of political capital in aiding the construction of the Pentagon in Virginia has paid off in spades for his home state. One Pentagon historian has described the effect of the building on Virginia:

307. 87 CONG. REC. 7137 (Aug. 14, 1941) (statement of Sen. Murdock).

308. *Id.*

309. *Id.* at 7139 (statement of Sen. Andrews).

310. *Id.* at 7140 (statement of Sen. Maloney).

311. *Id.* at 7136 (statement by Sen. Glass of Virginia in favor of new War Department building).

312. See, e.g., *id.* at 7141-42 (statement by Sen. Adams) ("The War Department is an administrative agency created by the Congress. We have the right to put it where we choose. Perhaps it would be better to concentrate Government agencies, but I am a little cold to the argument that there is a great difference between one side of the Potomac River and the other in reference to the location of a building to administer the laws enacted by Congress. I am really unable to concern myself about that question. I am concerned with a location that will promote the efficiency of the Department.").

313. First Supplemental National Defense Appropriation Act, 1942, Pub. L. No. 77-247, 55 Stat. 669, 685-86 (1941).

314. See COWDREY, *supra* note 301, at 56.

315. Nevertheless, to this day the Pentagon maintains a Washington, D.C., mailing address.

316. See, e.g., *Hearings on National Defense Authorization Act for Fiscal Year 1993 -- H.R. 5006 and Oversight of Previously Authorized Programs Before the Readiness Subcomm. of the House Comm. on Armed Services*, 102d Cong., 2d Sess. 507-08, 524-28 (1992) (prepared statements concerning Pentagon renovations). *But see* David H. Hackworth, *Let the Pentagon Sink*, ATLANTA CONST., Aug. 3, 1994, at 13 (arguing against Pentagon renovations) ("The inhabitants and business of the Pentagon should be moved to Omaha, Neb., the former home of the deactivated Strategic Air Command, where modern facilities are available at little cost to the taxpayers. . . . Middle-American values from those good people in Omaha could seep back into a work force that could be reduced by at least 70 percent.").

The Pentagon proved . . . to be a key catalyst for the transformation over a period of several decades of a near-bucolic landscape into a vast urban complex. . . . From the process emerged a major new economic and political center in the state of Virginia.³¹⁷

However, the construction of the headquarters of the largest federal department outside of the seat of the government had another, less desirable effect, one calling into question the continued validity of the capital compact: The Pentagon would serve as inspiration for numerous post-war efforts to remove other federal agencies from the District of Columbia.

C. *The Post-War Centrifuge*

Post-war demobilization saw Americans eager to start over. It was therefore no surprise that removal of the capital was proposed in the press, and, again, the Western agrarian ideal was presented as the surest path to utopia.³¹⁸ Although perhaps reflecting the spirit of the times, the removal suggestion was not acted upon. Instead, federal agencies increasingly were drawn out of the District of Columbia to the suburbs or to other cities.

Immediately after World War II, agencies sought to return to the status quo ante. Several federal agencies that had been relocated as well as 8,000 out of the 30,000 relocated employees were permitted to return to the District of Columbia.³¹⁹ These retransfers into Washington apparently were made at the urging of the agencies themselves and were conducted under the President's war power authority.³²⁰

However, the advent of the Korean War in 1950 sparked another drive to remove federal agencies from Washington. The Truman administration sought legislative authority to "disperse" federal agencies to the Maryland and Virginia suburbs and to "decentralize" other agencies to remote parts of the country.³²¹ An initial attempt to secure

317. See GOLDBERG, *supra* note 270, at 177.

318. See Richard L. Neuberger, *Should We Move the Capital to the Rockies?*, N.Y. TIMES MAGAZINE, Oct. 6, 1948, at 49 ("Washington, which was to have been the compact, friendly capital of a rural nation, has long since burst the breeches cut for it. Why not a return to the Arcadian ideal of the Founding Fathers? Why not a fresh start somewhere along the eastern ramparts of the Rockies, not many miles from the geographic center of the United States? There may be found wide meadows and wooded valleys guarded by granite battlements.").

319. See LRS Letter, *supra* note 276, at 173.

320. See *id.* at 172.

321. See S. REP. NO. 216, 82d Cong., 1st Sess. (Apr. 11, 1951); *Hearings Before the Subcommittee on Public Buildings and Grounds of the Committee on Public Works, House of Representatives, Eighty-Second Congress, Second Session, on H.R. 1728*, 82d Cong., 2d Sess. (Feb.

appropriations (but not authorization) for such a program failed because of congressional concern that the executive branch lacked authority to move agencies established by their organic acts at the "seat of government."³²²

A key feature of the Truman plan was its dispersal provision, which contemplated the construction of general purpose office buildings at several sites "located within a perimeter of approximately 20 air miles from the zero milestone of the District of Columbia."³²³ The plan included money for a "circumferential highway" to provide better transportation between these sites and the District. Office space for approximately 20,000 employees was initially envisioned.³²⁴ The rationale for the plan was that government buildings were too concentrated in Washington, making them vulnerable to Soviet nuclear attack. In addition, it was hoped that dispersal would decrease housing and traffic congestion in the District.³²⁵ Other aspects of the plan included the decentralization of some 25,000 employees to other cities and the demolition of a number of temporary buildings constructed on the Washington Mall.³²⁶

Although decentralization of government agencies outside of the Washington area was well received, the suburban dispersal program was expensive,³²⁷ and Congress balked at spending so much money on a

5, 6, & 8, 1951) ("A bill to authorize a program to provide for the construction of federal buildings outside of, but in the vicinity of and accessible to, the District of Columbia, and for other purposes"); *Hearing Before the Committee on Public Works, House of Representatives, Eighty-First Congress, Second Session, on H.R. 9864*, 81st Cong., 1st Sess. (Dec. 8, 1950).

322. 97 CONG. REC. 4048, 4146-47 (Apr. 18 & 23, 1951) (statements by Sen. Case); see 4 U.S.C. § 72; see also *supra* text accompanying notes 41 & 291; H.R. Rep. No. 298, 82d Cong., 1st Sess. 24 (Apr. 6, 1951) ("It is the opinion of the [House Committee on Appropriations] that an appropriation should not be provided until an overall plan has been considered and basic legislation providing for a comprehensive program has been enacted."); LRS Letter, *supra* note 276, at 166, 173-74. But see *Hearings Before a Subcommittee of the Committee on Appropriations, House of Representatives, Eighty-Second Congress, First Session*, pt. 2, at 188-89 (Mar. 21, 1951) ("Third Supplemental appropriation Bill for 1951") (testimony in support of the Truman Administration's position that the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. § 490 (e)), which permitted the Administrator of General Services "to assign and reassign space of all executive agencies . . . in and outside of the District of Columbia," created sufficient authority for a widespread dispersal and decentralization program).

323. S. REP. NO. 216, *supra* note 321, at 6.

324. See *id.*

325. See *id.* at 2-5. The government committee that crafted the dispersal proposal "assumed, with strong endorsement from the President, that Washington should remain the seat of the Capital unless it becomes completely untenable." *Id.* at 4.

326. See *id.* at 5.

327. Estimates for the dispersal program alone, including the cost of highway construction, put the cost at over one hundred million dollars. See *id.* at 6. No additional funding was proposed for decentralization. See *id.* at 7.

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project that had a dubious value for national defense and that would benefit only a small portion of the country.³²⁸ Indeed, the benefit to national security may not have been sufficiently considered by dispersal advocates; many senators questioned why Soviet bombers would not be able to strike agencies located a few miles from Washington as well as agencies within the city.³²⁹ Senator Everett Dirksen of Illinois, who as a representative had advocated decentralization of federal government activities in 1941,³³⁰ led the opposition to the dispersal program, arguing that the bill would provide little protection against nuclear attack.³³¹ On Dirksen's motion, the bill was returned to committee.³³²

Members of Congress subsequently introduced legislation that required the permanent decentralization of many federal agencies from the Washington area but that omitted the dispersal program. One proposal mandated that 50,000 positions be transferred from Washington within two years of enactment.³³³ However, the Truman Administration was still committed to dispersal and refused to support the decentralization legislation.³³⁴

328. See, e.g., 97 CONG. REC. 4170 (Apr. 23, 1951) (statement of Sen. Johnson) ("I know that a great many other Senators agree with me that decentralization is perhaps a good thing, and that it ought to be encouraged and expedited. I am very much in favor of it, but I am positively opposed to dispersal as outlined in the present bill."); *Hearings on H.R. 1728*, *supra* note 321, at 144 (reprinting letter from Sen. Alexander Wiley to Rep. Charles A. Buckley (Feb. 14, 1951)) (proposing decentralization of the Congress, the Supreme Court, the Executive Office of the President, the Atomic Energy Commission, and the Defense Department "to split up geographically the gigantic Federal payroll, and in so doing, to pump economic life blood particularly into smaller communities.") [hereinafter "Wiley Letter"].

In surprising contrast to current attitudes, the senators from Maryland and Virginia who spoke on the subject were not keen to increase the number of federal agencies in the Washington suburbs. See, e.g., 97 CONG. REC. 4163-64 (Apr. 23, 1951) (statement of Sen. Byrd (Va.)); *id.* at 4167 (statement of Sen. Butler (Md.)).

329. See Wiley Letter, *supra* note 328, at 143.

330. See *supra* text accompanying note 278.

331. 97 CONG. REC. 4169 (Apr. 23, 1951) ("[I]f the dismal picture [of nuclear attack on the capital] painted by [Sen. Spessard Holland of Florida, the Senate sponsor of the bill] should ever eventuate, the dimensions of this bill, involving 20,000 employees and four buildings at a cost of \$107,000,000 will be puny, as against a problem which is really upon the doorstep of the country and the capital itself.")

332. 97 CONG. REC. 4175 (Apr. 23, 1951); see also Pub. L. 253, ch. 664, 65 Stat. 736, 744 (Nov. 1, 1951) (forbidding the use of supplemental appropriations for fiscal year 1952 to accomplish dispersal).

333. See *Hearings Before the Executive and Legislative Reorganization Subcommittee of the Committee on Expenditures in the Executive Departments, House of Representatives, Eighty-Second Congress, Second Session, H.R. 4323, H.R. 4728, H.R. 4924, and S. 2251*, at 3-4 (July 25, 1951; Feb. 14 & 21, 1952) (reprinting H.R. 4728, 82d Cong., 1st Sess.); see also *id.* at 38 (Feb. 14, 1952) (statement of Rep. Holifield) ("In view of the impasse which developed on the dispersal program, the decentralization feature was extracted and embodied in a new bill with certain changes.")

334. See Letter from F.J. Lawton, Director, Bureau of the Budget, to Rep. Chet Holifield (Feb.

The failure of the dispersal program to win approval, as well as technological advances in atomic weaponry, led the Eisenhower administration to adopt a more thorough approach to relocating the government during time of war. Government continuity in times of crisis would be assured by the construction of classified shelters in locations proximate to Washington known collectively as the "Federal Arc."³³⁵ A special facility was even built for congressional use at the Greenbrier resort in West Virginia.³³⁶

Congress' refusal to approve a wholesale plan for dispersing federal agencies around the District did not prevent increasing numbers of agencies and their employees from following the Pentagon into the nearby suburbs. In these cases, Congress was persuaded to specifically authorize the particular agency to acquire a site "in or near the District of Columbia."³³⁷ Prominent examples of significant federal agency offices established in the suburbs during the 1950's include the Central Intelligence Agency (McLean, Virginia), the Atomic Energy Commission (Germantown, Maryland), the National Aeronautics and Space Administration (Beltsville, Maryland), and the Bureau of Standards

13, 1952) ("[T]he possibilities of permanent and effective decentralization of activities at a considerable distance from Washington were at first overestimated and . . . no mandatory decentralization program would accomplish its purpose without serious loss of efficiency."), *reprinted in Hearings, supra* note 333, at 42. Executive branch officials also interposed the objection that decentralization would make larger numbers of cities the object of nuclear attack and would hamper communications in event of war. *See id.* at 43.

335. *See* Ted Gup, *The Doomsday Blueprints*, TIME, Aug. 10, 1992, at 32 (outlining plans to relocate government headquarters to Raven Rock, near Gettysburg, Pennsylvania, and Mount Weather, near Berryville, Virginia); *see also* TIM WEINER, BLANK CHECK: THE PENTAGON'S BLACK BUDGET 52-53 (1991); Steven Emerson, *America's Doomsday Project*, U.S. NEWS & WORLD REP., Aug. 7, 1989, at 26. However, even this strategy was soon outmoded. *See* Tim Weiner, *Pentagon Book for Doomsday Is to Be Closed*, N.Y. TIMES, Apr. 18, 1994, at A1 ("In the 1980's, new nuclear warfighting strategies that foresaw a months-long battle demanded ways to connect the President, the Secretary of Defense and top military leaders who could give orders to fire nuclear weapons from anywhere in the nation. A few isolated bunkers to save the lives of civilian leaders no longer sufficed.")

At least one member of Congress proposed a shelter program for the national leadership. Rep. Chet Holifield of California introduced legislation in 1950 that called for an analysis of his proposal to create an alternate seat of government. *See* 96 CONG. REC. app. 1242 (Feb. 20, 1950); 96 CONG. REC. 1621 (Mar. 3, 1950). Holifield's proposal set the stage for bantering between a member of Congress who suggested Paducah, Kentucky, as the site for the alternate capital because of its proximity to Mammoth Cave, and another member, who suggested Des Moines, Iowa, as the site, where the capital "would be completely hidden by the tall corn." *See* 96 CONG. REC. 984 (Feb. 20, 1950); *see also* Denver, *Wartime Capital?*, NEWSWEEK, Dec. 11, 1950, at 72 (suggesting that Denver might be an appropriate location for the federal government during nuclear war).

336. *See* Ted Gup, *The Last Resort*, WASH. POST MAGAZINE, May 31, 1992, at 11.

337. LRS Letter, *supra* note 276, at 176-77.

(Gaithersburg, Maryland).³³⁸ The federal government thus helped to create, by gradual accretion, the largely suburbanized metropolis now defined by statute as the “National Capital region.”³³⁹ And, as predicted by Senator McCarran during the congressional debate over the Pentagon,³⁴⁰ the concept of a seat of government safeguarded by a compact began to deteriorate.

D. Recent History

The departure of agencies from the seat of government has intensified as communications and transportation technologies have improved over the last several decades. Modern technology permits society’s components to be located at ever greater distances from each other and threatens the viability of many older American cities, including the District.³⁴¹ Compounding the effects of progress, members of Congress have increasingly engaged in a tug of war to secure federal agencies for their constituents. Congress has continued to press for a comprehensive relocation policy that would eliminate statutory barriers to moving agencies out of the District of Columbia to the suburbs or

338. *See id.*

339. *See* 40 U.S.C. § 71(b) (1986) (defining “National Capital region” as including “the District of Columbia; Montgomery and Prince Georges Counties in Maryland; Arlington, Fairfax, Loudoun, and Prince William Counties in Virginia; and all cities now or hereafter existing in Maryland or Virginia within the geographic area bounded by the outer boundaries of the combined area of said counties.”).

340. *See supra* text accompanying note 306.

341. *See, e.g.,* DIANA KLEBANOW, FRANKLIN L. JONAS, & IRA M. LEONARD, *URBAN LEGACY: THE STORY OF AMERICA’S CITIES* 263 (1977) (“Whereas the technology and transport of the nineteenth century had promoted the centralization of business and industry, the technological trends of the twentieth century have promoted their dispersion.”); *id.* at 269-72 (generally discussing reasons for the decline of American cities); DAVID A. KARP, GREGORY P. STONE, & WILLIAM C. YOELS, *BEING URBAN: A SOCIOLOGY OF CITY LIFE* 220 (2d ed. 1991) (“[T]he movement of population from city to suburb was followed by an out-migration of industry, retail business, and recreational and cultural facilities. In short, the continuous movement of populations to the suburbs has been a precursor of the ‘suburbanization of everything.’”); *id.* at 222 (“The suburbanization of both wealthy populations and industry has robbed the city of its tax base. At the same time that revenues are declining, the city is still obliged to provide services to those suburbanites who continue to find employment within the city. The paradox here is that suburbanites who benefit from city services pay relatively little to support them.”); Margaret L. Usdansky, *Workers Are Taking Trendy Turn to Suburbia*, *USA TODAY*, Dec. 22, 1992, at 3A.

Advances in communications could lead to even greater dispersal of federal and other workplaces. *See, e.g.,* H. Jane Lehman, *Office Telecommuting Goes Long-Distance*, *WASH. POST*, Mar. 26, 1994, at E1 (discussing growth of telecommuting); Calvin Sims, *Quake Provides Glimpse of Future of Commuting*, *N.Y. TIMES*, Jan. 26, 1994, at A12; Stephen C. Fehr, *Moving the Job Closer to the Commuter: GSA Experimenting with Computer-Equipped Satellite Offices*, *WASH. POST*, Sept. 20, 1993, at B1; Mike Causey, *Going to Work at Home*, *WASH. POST*, Feb. 7, 1993, at B2.

other parts of the country. At the same time, the growing population and political power of the Washington suburbs have created a new phenomenon: Suburban representatives have vigorously sought to relocate federal agencies into their districts. In this way, the capital compact has been turned on its head. Once designed to protect the capital by giving Congress exclusive jurisdiction and by creating a supportive regional alliance, the capital compact is now broken. The only aspects of the compact still in force -- those giving Congress exclusive jurisdiction and disenfranchising District residents -- work against the capital by empowering those who have interests largely opposed to those of the capital city.

1. *Efforts to Craft a Comprehensive Relocation Policy.*—The deterioration of the capital compact can be seen in repeated efforts over the last several decades to create a national policy in favor of relocating federal activities, which are arguably the “consideration” due from the national government to the District in fulfillment of the compact.

In the early 1960’s, Rep. Henry Reuss of Wisconsin sponsored an attempt to encourage decentralization and to eliminate the statutory requirement that all federal agencies be located in the District of Columbia unless specifically authorized.³⁴² This measure was primarily advocated as improving the quality of life in the Washington area by decreasing congestion.³⁴³ Reuss’ bill did not make it through committee; the committee report concluded that any legislation should await a pending executive branch review of decentralization policy.³⁴⁴

In part to preempt Reuss’ drive for decentralization, President Kennedy issued Executive Order 11035, which directed federal agencies to “review continuously their needs for space in and near the District of Columbia, taking into account the feasibility of decentralizing services or activities which can be carried on elsewhere without excessive costs or

342. See *Criteria for Decentralizing Federal Activities from the Nation’s Capital*, H. REP. No. 2481, 87th Cong., 2d Sess. (Sept. 26, 1962) (reporting on H.R. 8248, “A bill to amend the Federal Property and Administrative Services Act of 1949 to provide an orderly program of decentralization and relocation of facilities and employees in the Washington, D.C., metropolitan area”); *Hearings on H.R. 8248*, *supra* note 276.

343. See *Criteria for Decentralizing Federal Activities from the Nation’s Capital*, *supra* note 342, *Hearings on H.R. 8248*, *supra* note 276, at 1-2.

344. See *Criteria for Decentralizing Federal Activities from the Nation’s Capital*, *supra* note 342, at 15. For a concise discussion of the legal issues surrounding decentralization, see *id.* at 12-14. The legal analysis concluded, “This extensive legislative history emphasizes that any Executive effort to decentralize a governmental agency to a place outside the District of Columbia should seek the consent of Congress unless specific statutory authority already exists for decentralization of the particular agency.” *Id.* at 14.

significant loss of efficiency.”³⁴⁵ This executive order gave a green light for federal agencies, particularly the Department of Defense, to move a substantial number of their employees to other locations.³⁴⁶ The order also led to detailed implementation instructions that, by favoring among other things decentralization of “large-scale supporting services of a relatively routine or repetitive nature,”³⁴⁷ practically guaranteed that few federal jobs would be available in Washington for workers with non-professional skills.

President Carter issued an executive order in 1978 that reversed previous policies³⁴⁸ by encouraging federal agencies to locate in distressed urban areas, including Washington, D.C.³⁴⁹ However,

345. Exec. Order No. 11,035, 27 Fed. Reg. 6519, § 3(d) (July 9, 1962). This order was revised by President Nixon in 1970. Exec. Order No. 11,512, 35 Fed. Reg. 3979 (1970). *See infra* note 348.

346. *See, e.g.*, DoD Dir. 5305.2, ¶ IV.C. (Sept. 24, 1963) (mandating continuous decentralization review for defense agencies located within the National Capital region and ordering that “[n]o new organizational units will be located in the National Capital region until every possibility of establishing them elsewhere has been exhausted”); *Federal Space Management Policies, Hearings Before the Subcommittee on Governmental Efficiency and the District of Columbia of the Committee on Governmental Affairs, United States Senate*, 96th Cong., 1st Sess. 63 (May 16, 1979) (testimony of David O. Cooke, Deputy Assistant Secretary of Defense for Administration) (“During the ensuing years [following the issuance of Executive Order 11,035], there have been numerous relocations of DOD elements from the [National Capital region]. A major effort in this regard occurred in 1972 when the Secretary of Defense established a 5-year program for the Military Departments to vacate a total of 2 million square feet of administrative space in the National Capital region.”); *id.* at 67 (Cooke testifying further that many relocations were made at the urging of Congress: “I can only observe that since 1971 there have been 23 references in congressional hearings, conference reports, and the like, indicating the need for DOD to take actions to reduce its activities in the National Capital region.”).

Recently, Congress has required the Defense Department to review and reduce the amount of space it leases in the National Capital region. *See, e.g.*, National Defense Authorization Act for Fiscal Year 1991, Pub. L. No. 101-510, § 2803, 104 Stat. 1485, 1783 (1990); H.R. REP. NO. 665, 101st Cong., 2d Sess. 377 (1990).

347. *See* Bureau of the Budget Circular No. A-60, ¶ 3.a.(4) (July 18, 1963). Other decentralization criteria included whether an agency performed functions relating largely to a region of the country other than Washington, whether an agency took actions that required limited supervision by its headquarters, whether an agency required interaction with agencies located in other parts of the country or required little interaction with other federal agencies in Washington, whether small liaison offices could handle the agency’s requirements in Washington, and whether increased administrative efficiencies would result from decentralization. *See id.* at ¶ 3.a.

348. Executive Order 11,035 was revoked by an executive order issued by President Nixon in 1970. *See* Exec. Order No. 11,512, 35 Fed. Reg. 3979 (Feb. 27, 1970). The Nixon executive order did not differ in pertinent part from the Kennedy executive order. *See id.* at § 3(d) (“The heads of executive agencies shall . . . review continuously their needs for space in and near the District of Columbia, taking into account the feasibility of decentralizing services or activities which can be carried on elsewhere without excessive costs or significant loss of efficiency.”).

349. *See* Exec. Order No. 12,072, 43 Fed. Reg. 36869 (Aug. 16, 1978), *reprinted* in 40 U.S.C.A. § 490 note at 165-67 (1986); *see also* Neal R. Peirce, *Making the Feds Good Neighbors*, WASH. POST, Apr. 14, 1979, at A11 (“President Carter’s urban-policy directive [gave] ’first

subsequent congressional hearings illuminated the fact that conflicting federal policies were in effect that tended to obviate the impact of the Carter executive order.³⁵⁰

In 1988, Congress tried again to loosen the statutory requirement that the principal offices of federal agencies should be located within the District of Columbia.³⁵¹ Complaining that agencies used the statutory restriction to avoid being relocated to the suburbs and that rents in the District were higher than suburban rents, the House Committee on Public Works and Transportation reported legislation that would have permitted all non-Cabinet level agencies to locate their headquarters anywhere within the National Capital region.³⁵² Unlike the Reuss legislation of the 1960's,³⁵³ the sponsors of this measure did not bother to contend that it would be advantageous for the District of Columbia but simply argued in terms of creating economies for the federal government.³⁵⁴ Although the legislation only managed to pass the House,³⁵⁵ the fact that it was adopted by one chamber of Congress indicates that a significant number of representatives have become largely indifferent to the city's fate, even those from other parts of the country who would have little to gain from moving federal agencies to the suburbs.³⁵⁶

consideration' to cities' central business areas in locating federal offices. . . . The president's order . . . had good reasons: to provide accessible jobs for poor people and minorities, to bolster fiscally imperiled inner cities, to place offices convenient to public transportation.").

350. See, e.g., *Federal Space Management Policies*, *supra* note 346, at 64-65.

351. See H.R. 2524, 100th Cong., 2d Sess., *reprinted in* 134 CONG. REC. H7778-01 (Sept. 20, 1988).

Arguably, agencies not specifically established by statute at the seat of government are not subject to the requirement that they be located at the seat of government. See *supra* note 292. The compact, however, was intended to cover all federal "offices" or activities that could be performed centrally. Thus, for example, there were frequent battles over whether the Mint should be removed from Philadelphia to Washington. See *supra* notes 66 & 93.

352. See *Location of Principal Offices of Executive Agencies in the National Capital Region*, H.R. REP. NO. 853, 100th Cong., 2d Sess. 2-3 (Aug. 9, 1988) (report accompanying H.R. 2524, "To Amend the Public Buildings Act of 1959 to Permit Certain Executive Agencies to Have Their Headquarters Located Anywhere in the National Capital Region").

353. See *supra* notes 342-44 and accompanying text.

354. Although leasing costs in certain parts of the District may be higher than elsewhere, it seems unlikely that the same would hold true for the city's less prestigious neighborhoods. See Elizabeth Wiener, *City to Wants to Expand U.S. Employment Zone: Plan Aims to Lure Agencies to Neglected Areas*, WASH. POST, District Weekly, Mar. 18, 1993, at 1 ("[District planning officials] argue that locating federal offices in neglected neighborhoods could be a big money saver for the U.S. government even as it creates jobs for D.C. residents and revitalizes areas outside the traditional downtown.").

355. See 134 CONG. REC. H10518-01 (Oct. 19, 1988) (indicating that the Senate refused to adopt H.R. 2524).

356. Were this or similar legislation to be passed, it would arguably raise questions whether the compact had been formally broken and whether a right of action had been created in District

RELOCATING THE NATIONAL CAPITAL

In 1993, the chairman of the House Committee on the District of Columbia, Representative Pete Stark of California, introduced anti-relocation legislation designed to prevent federal agencies from transferring more than fifty employees out of the District without specific congressional authorization. Stark's legislation also required the submission of a "District of Columbia economic impact statement" one year prior to such a move.³⁵⁷ Given recent political trends, the prospects for such legislation are not promising.

Drawing on the agrarian/utopian vein of federal relocation proposals, several politicians and commentators have recently suggested that a policy of decentralizing federal agencies would decrease governmental waste and help to make the federal government more responsive.³⁵⁸ As Kevin Phillips has written,

One approach [to reducing Washington's influence] would be to relocate enough functions to force power and interest groups to migrate along with the portion of the federal establishment detached. The Interior Department could be moved to Denver or Salt Lake City, Agriculture to Des Moines or Kansas City, Housing and Urban Development to Philadelphia or Chicago. Uprooted lobbies would mean broken lines of influence.³⁵⁹

residents to regain their federal voting rights.

357. See *District of Columbia Economic Impact Notification Act*, H.R. 3010, 103d Cong., 1st Sess. (introduced Aug. 6, 1993); 139 CONG. REC. E2003 (Aug. 5, 1993) ("My bill . . . proposes to keep most federal agencies right where they belong, in the District of Columbia. . . . The impact of the planned transfer of federal jobs from the District of Columbia is no less threatening to the economy and employment of this city than the relocation of an auto manufacturing plant out of any community in America."); Kent Jenkins Jr., *House Plan Would Boost D.C.'s Federal Payment by 25 Percent*, WASH. POST, Aug. 5, 1993, at B3 ("Any movement of federal jobs away from the city 'is just worsening the economic problems of the District,' Stark said. 'We're shooting ourselves in the foot. If the District has problems, they ask Congress for more money. That doesn't make any sense.'").

358. See, e.g., Bill Lambrecht, *Should Washington Move Closer to Home?*, ST. LOUIS POST-DISPATCH, Nov. 20, 1994, at 4B (providing an overview of recent federal relocation proposals); Greg Pierce, *'Bring Government to the People'*, WASH. TIMES, Nov. 15, 1994, at A9 (discussing proposal by the president of the Western Governors' Policy Office to relocate federal agencies); Bob Minzesheimer, *Phone Home*, USA TODAY, Nov. 11, 1994, at 3A (Republican presidential candidate Lamar Alexander suggests relocation of federal agencies from Washington); see also, e.g., Hackworth, *supra* note 316, at 13 (proposing to move the Pentagon to Nebraska).

An even more radical approach to decentralization would be to administer federal programs via block grants to states, thereby reducing or eliminating various federal agencies. However, such decentralization (which has been proposed by Republicans in the House of Representatives) would not necessarily violate the capital compact, because the compact establishes only the location, not the scope, of federal headquarters activities.

359. Kevin Phillips, *Fat City*, TIME, Sept. 26, 1994, at 48.

These latter-day decentralization proposals are phrased in terms of reducing the influence of lobbyists and special-interest groups on the federal government. But if history is any guide, political considerations will greatly influence any relocation decisions. And once the process of relocation is complete, it seems likely that the lobbyists and special-interest groups will simply follow the relocated agencies and perhaps exercise greater influence over them than is possible in the national capital.

Whether motivated by congestion, economy, or governmental responsiveness, the adoption of proposals to establish a federal decentralization program clearly would abrogate the seat of government compact. As discussed in the next section, federal relocations have increased to such an extent even without such a policy that the compact has arguably been broken.

2. *Pork Raids.*—Despite the failure of Congress to enact a comprehensive relocation policy, enterprising members have nevertheless recently managed to transfer many federal agencies from the national capital to their congressional districts in violation of the capital compact. One well-established species of transfer involves efforts by representatives to move agencies far from Washington. For example, Sen. Robert Byrd of West Virginia, a former chairman of the Senate Appropriations Committee, has been notably successful in his efforts to bring federal agencies to his home state.³⁶⁰

A second species of transfer is potentially even more threatening to the District. Although Congress continues to apply pressure to decentralize federal activities to other parts of the country, the political

360. See, e.g., Laura Howard, *Westward Ho!*, GOV'T EXECUTIVE, Nov. 1991, at 20-21; Kent Jenkins Jr., *Federal Job Drain Shakes D.C.: Economy, Politics Figure in Relocations*, WASH. POST, Mar. 24, 1991, at B1 ("[Byrd's] biggest plum has come from the FBI, which is moving its fingerprint processing center from the District to Clarksburg. . . . The Treasury Department's Bureau of the Public Debt announced last week that it is moving 700 workers from Washington to Parkersburg. And Byrd is urging the CIA to consolidate offices scattered throughout the Washington area and move them to West Virginia."); *CIA Consolidation: Hearing Before the Permanent Select Committee on Intelligence, House of Representatives*, 102d Cong., 1st Sess. (July 30, 1991).

See also, e.g., Michael deCourcy Hinds, *Center for Drug Intelligence Opens, But Some Ask If It Is Really Needed*, N.Y. TIMES, Nov. 17, 1993, at A16 ("[Counterdrug experts] say that the [new National Drug Intelligence Center] duplicates the work of 19 other drug intelligence centers around the country and that it cannot function effectively in [Johnstown, a] western Pennsylvania mill town, 182 miles from Washington. For these critics, the center is a wasteful display of political patronage that primarily benefits the constituents of one Democratic Congressman, Representative John P. Murtha."); Jacqueline Trescott, *Air & Space Annex Cleared*, WASH. POST, June 30, 1993, at D4 (reporting a political struggle between representatives of Northern Virginia, Baltimore, and Denver over the location of an annex to the National Air and Space Museum).

calculus has shifted to make dispersal of federal agencies to Washington's suburbs an increasingly popular congressional activity. Suburban Washington's representatives in Congress have frequently intervened to strongly encourage or even force federal agencies to leave the District or to prevent them from relocating back into the District.

In one incident, the Department of the Navy in 1981 sought to economize by transferring 18,000 employees occupying rented space in suburban Virginia to vacant and underutilized government-owned buildings at the Washington Navy Yard, just south of Capitol Hill in the District. However, both of Virginia's senators and all of its suburban representatives intervened, and the plan was scuttled.³⁶¹

Another recent example of suburban appropriation of federal agencies involves the struggle over the location of new offices for the National Science Foundation (NSF). In 1987, the NSF requested to be moved from scattered and outmoded facilities in the District to a newer, consolidated location also in the District. NSF officials stated that they "need[ed] to be near the White House to carry out their mission: to provide support for science and engineering research and education."³⁶² Several battles ensued between members of Congress from suburban Maryland and Virginia over which jurisdiction would receive the prize, despite the NSF's stated desire not to leave the District.³⁶³ Virginian influence appeared to prevail, as the GSA supported a lease on facilities in suburban Arlington, Virginia. When a House-Senate conference failed to appropriate money to move the NSF to Arlington, representatives from Virginia immediately sought to use their clout to snare the NSF conclusively.³⁶⁴ After various congressional threats, NSF officials

361. See *Proposed Washington Naval Yard Construction: Hearing Before the Military Installations and Facilities Subcommittee of the Committee on Armed Services, House of Representatives*, 97th Cong., 1st Sess. (Oct. 5, 1981); *id.* at 14 (statement of Delegate Antonio Won Pat (Guam)) ("In the long run I feel it is a matter of politics that will determine the outcome of this."); *Navy's Plan to Move from Leased Space to the Washington Navy Yard: Hearing Before the Subcommittee on Military Construction of the Committee on Armed Services, United States Senate*, 97th Cong., 1st Sess. (Sept. 30, 1981); *id.* at 4 (statement of Rep. Stanford E. Parris (Va.)) ("For several years, the Navy has been moving personnel to various locations outside the downtown area. . . . Now the Navy is proposing a costly renovation and expansion project at the Navy Yard which will force about 18,000 additional people to fight Washington's rush hour traffic. I believe it would be more advantageous for the Navy to continue disbursing [sic] personnel throughout the Washington area.")

362. Charles W. Hall & Santiago O'Donnel, *Congress Says Yea to Metro, Nay to NSF*, WASH. POST, Sept. 24, 1992, at B4; see also Charles W. Hall, *Agencies Won't Budge for Budget*, WASH. POST, Nov. 30, 1992, at A1.

363. See, e.g., *NSF Should Relocate to Va., Report Says*, WASH. POST, Sept. 19, 1992, at A9.

364. See Charles W. Hall, *Science Foundation Pressure Renewed*, WASH. POST, Oct. 3, 1992, at B7 ("Members of Congress put new pressure on the National Science Foundation yesterday to

finally yielded to congressional pressure and moved the agency to the Virginia suburbs.³⁶⁵

Activities like those just described,³⁶⁶ in addition to other factors favoring suburbia, have led to the location of a large number of federal agencies outside of the District.³⁶⁷ Although the federal government

proceed with a disputed plan to move the agency to new headquarters in Arlington, and Sen. Charles S. Robb (D-Va.) predicted that opposition to the move will soon crumble. . . . Likening obstacles to the move to 'a few wrinkles,' Robb said, 'We're prepared to take a steamroller and flatten out those wrinkles.'"); 138 CONG. REC. H10058, H10064 (Oct. 1, 1992) (statement of Rep. Frank Wolf (Va.)) ("Members on both sides believe that, in the best interest of saving money for the taxpayer, the National Science Foundation should move and, therefore, will move. I personally want to say that if they do not move, I will follow this personally to see what can be done about it."); Charles W. Hall, *Rep. Wolf Attacks Agency*, WASH. POST, Jan. 4, 1993, at B5 ("Wolf, who represents the district where the new offices [for the NSF] are located, has twice asked President Bush to fire Walter Massey, the foundation's director, for 'insubordination' because of the agency's reluctance to move.").

365. See Charles W. Hall, *National Science Foundation Agrees to Move to Arlington*, WASH. POST, Jan. 9, 1993, at A1; Charles W. Hall, *Reinventing Ballston*, WASH. POST, Washington Business, July 5, 1993, at 11 (describing successful lobbying efforts to ensure NSF relocation to Virginia); see also Paul R. Webber IV, *Moving Jobs Out of Washington*, WASH. POST, Jan. 27, 1993, at A18 (letter to the editor) ("The congressional delegations from Maryland and Virginia have shown themselves to be willing to sacrifice statesmanship when it comes to delivering pork for their suburban constituents. The economic loss to the District that results from this uneven playing field is one of the most compelling arguments in support of the District's receiving full voting representation in Congress.").

366. See, e.g., Kent Jenkins Jr., *Maryland Snares Two Huge FDA Projects*, WASH. POST, Mar. 16, 1994, at A1; Liz Spayd and Kent Jenkins, *Suburban Md. Expects a Boom from FDA Consolidation*, WASH. POST, Mar. 17, 1994, at C5 ("Although the number of lost District jobs is small, it stands as one more sign of the gradual but steady shift of jobs into outlying areas that has helped give the city an unemployment rate nearly three times that in the suburbs."); Robert O'Harrow Jr., *Army's Proposal for Huge Project Marches Ahead*, WASH. POST., Feb. 4, 1994, at D1 (detailing Army plans to construct a large office complex in Virginia); *Eyes on the Spies*, WASH. POST., Washington Business, Nov. 15, 1993, at 3 (reporting that when suburban Maryland Representative Steny Hoyer learned that the National Maritime Intelligence Center planned to move from his district to Bolling Air Force Base in the District, he prevented the move by arranging for the transfer of land to the Navy and for the funding of a new building); Charles W. Hall, *Northern Virginia Isn't About to Let Navy Go Quietly*, WASH. POST., July 4, 1993, at B3 (Virginia members of Congress propose to relocate federal agencies from D.C. to replace 11,000 Navy jobs lost during the Base Realignment and Closure process); Chris Harvey, *Mikulski Kicks Off Bid for Re-election with Familiar Din*, WASH. POST., Oct. 26, 1991, at A9 (U.S. Senator from Maryland is credited during campaign with steering thousands of federal jobs from the District to Maryland); Jenkins, *supra* note 360 (discussing other congressionally directed relocations of federal agencies out of the District).

367. Federal headquarters activities located outside of the District of Columbia include: 1. Department of Commerce: Patent and Trademark Office (Va.); National Weather Service (Md.); National Marine Fisheries Service (Md.); Oceanic and Atmospheric Research (Md.). 2. Department of Defense: The department and nearly all significant subordinate activities are headquartered outside of the District of Columbia. 3. Department of Energy: Office of the Deputy Assistant Secretary for Health (Office of Assistant Secretary for Environment, Safety, and Health) (Md.); Office of the Deputy Assistant Secretary for Management, Fundamental Research, and Cooperative Development (Md.); all assistant secretaries under the Assistant Secretary for Nuclear Energy (Md.). 4. Department of Health and Human Services: Public Health Service (Ga. & Md.); Social Security

continues to build and lease in the District of Columbia,³⁶⁸ and although relocations are sometimes opposed by members of Congress,³⁶⁹ a basic political fact seems likely to continue to draw existing agencies out of the District and to cause newly formed agencies to be located elsewhere. Because the District is not represented in Congress, legislators get little if any political credit for money spent on the capital. Legislators with well-defined interests who seek federal agencies for their districts are likely to prevail over legislators who have more general goals, such as maintaining the national capital as a livable city and a viable economic entity, or getting maximum value out of the investment the federal government has made in the District.³⁷⁰ The likelihood is that federal

Administration (Md.); Health Care Financing Agency (Md.). 5. Department of the Interior: U.S. Geological Survey (Va.); various advisory councils (Va.). 6. Department of Justice: U.S. Parole Commission (Md.); Executive Office for Immigration Review (Va.). 7. Department of Labor: Office of the Assistant Sec'y for Mine Safety and Health (Va.). 8. Independent Agencies: Committee for Purchase from the Blind (Va.); Consumer Product Safety Commission (Md.); Farm Credit Administration (Va.); Farm Credit Systems Insurance Corp. (Va.); Inter-American Foundation (Va.); National Science Foundation (Va.); Nuclear Regulatory Commission (Md.); Nuclear Waste Technical Review Board (Va.); Trade and Development Program (Va.). See 1994 FEDERAL STAFF DIRECTORY *passim* (Ann L. Brownson ed., 1994).

Of course, some of the same factors leading to the dispersal of federal agencies from the capital are also drawing lobbyists and other private activities attendant to the government away from the seat of government. See, e.g., *Moving Target*, WALL ST. J., Mar. 4, 1994, at A1 ("The National Rifle Association, long a fixture in its posh, but cramped, downtown Washington headquarters, has decamped -- lock, stock and barrel -- to a faceless new building in suburban Virginia."); Martha M. Hamilton, *Associations Packing Up, Moving Out*, WASH. POST, Sept. 13, 1993, Washington Business, at 1 ("The District of Columbia, once the prestige address for nonprofit organizations and trade associations, is steadily losing ground to the suburbs as a location for this key local industry.")

368. See, e.g., Tom Shoop, *The New Federal Edifice Complex*, GOV'T EXECUTIVE, Nov. 1991, at 10 (detailing ambitious plans for new government construction in the District of Columbia but noting that this development is "something of a surprise, inasmuch as projects in the District of Columbia have no pork-barrel value for Members of Congress"); Maryann Haggerty, *SEC Might Stay in D.C. After All*, WASH. POST, Mar. 19, 1994, at C1. While new construction in the District is presently planned for the International Cultural and Trade Center and the Southeast Federal Center, see Shoop, *supra*, it seems unlikely, due to Congressional influence, that agencies not presently located in the District will relocate to the District. The new federal buildings will probably result in other federal buildings in the District being vacated. See generally Maryann Haggerty, *Envisioning a New Southeast: GSA Picks Developer for Long-Planned Federal Center Complex*, WASH. POST, Dec. 8, 1993, at F1 ("GSA has a goal of not adding to the amount of space it now occupies.")

369. See, e.g., *Proposed Relocation of Federal Communications Commission from Washington, D.C. to Arlington, Va.: Oversight Hearing Before the Committee on the District of Columbia, House of Representatives*, 97th Cong., 1st Sess. (Mar. 5, 1981) (various members of Congress argue that the FCC should be prevented from moving out of the District into a high-rise office building across the Potomac in Virginia that marred the District's skyline) [hereinafter *FCC Hearing*].

370. On this point, Representative Stewart McKinney of Connecticut remarked:

Satellite cities are growing up on the fringes of the District, geographically fueled by proximity to the Nation's capital and economically fueled by developers eager to cash in on the Federal Government's need for more and more space. . . .

agencies, in the words of one Representative, will continue "sneaking out bit by bit."³⁷¹

Clearly, then, the implicit aspects of the capital compact, particularly the trade of federal patronage for the voting rights of the capital's residents, have been forgotten or ignored by the federal government in modern times. Localities far from the national capital have continued their efforts to gain the capital's benefits. What has changed is that the District's erstwhile regional protectors have become cannibalistic. The capital compact is no more.

VI. Conclusion: Renewing the Compact

The history of efforts to move the capital and its components is in large part a story about utopia and how to get there. Time and again, democracy's capacity to change the governmental locus has encouraged both dreamers and speculators to argue about ideal conditions for the seat of government.

This debate was very important to the young country, as the location and nature of the national capital helped to define the United States to its citizens and to the rest of the world. Were Americans merchants or farmers, urbanites or agrarians? Did Americans see the future to the East, allied with the Old World, or to the West, with its untold dangers and opportunities? Although vigorously and repeatedly contested, the first series of decisions about the capital represented the triumph of an agrarian, Western utopian vision. This vision was preserved by the post-Civil War determination to keep the capital on the banks of the Potomac, at non-commercial Washington.

As the country has become more sure of its identity, the removal debate has shifted significantly. Reinterpreting the agrarian tradition in light of technological developments, Americans have envisioned utopia in the suburbs. Contemporary capital movers have thus sought to relocate

The Federal Government pays more and more each year to compensate for the Federal presence [in the District of Columbia]. The Federal presence diminishes more and more each year as agencies move out of town. . . . [The Federal payment to the District] keeps getting bigger and more unmanageable. The cost of the Federal payment does not diminish based on the total number of individuals the Government employs here.

In essence what I am saying is that the people of the United States are paying for a Nation's Capital to house their Government. What is the sense of all of this if the Government is sneaking out bit by bit?

FCC Hearing, supra note 369, at 6 (emphasis added). For example, President Clinton proposed in his budget for fiscal year 1995 that the District's annual federal payment should increase by \$22 million to approximately \$670 million. See Kent Jenkins Jr., *D.C. Area Counts Its Blessings, Prepares for Battles*, WASH. POST, Feb. 8, 1994, at A1.

371. *FCC Hearing, supra* note 369, at 6 (remarks of Rep. McKinney).

parts of their government to places outside the moil of the capital city. Indeed, recent history has seen numerous activities moved from the seat of government at the encouragement or insistence of Congress.

This trend, however, is forgetful of the Constitution's original wisdom. As we have seen, the founding generation relied on a compact among the federal government, the states, and the citizens of the capital district to produce a stable political regime governing the capital. This compact dictated that, to preserve the federal government's independence and dignity, Congress would exercise exclusive jurisdiction over the capital in exchange for providing the capital's residents with economic benefits and proximity to power. The agreement placed the capital outside of the boundaries of all of the states in order to prevent disputes and jealousies between the states over capital largesse. In addition, the first Congress enacted measures designed to preserve the compact, by declaring the national capital "permanent[ly]" fixed on the Potomac and by requiring all offices "attached" to the seat of government to be located in Washington.

Because nineteenth century technology required the agencies of the federal government to be in close proximity to each other, it was relatively easy for Congress to honor its compact with the citizens of the District and the states. The compact made sense in terms of public policy; placing the tremendous political plum of the seat of government out of the bounds of any particular state meant that decisions about the capital's development could be made with greater reference to the national, as opposed to the local, good. Conversely, it was not as necessary for the District's citizens to have control of the District and its economy, given the guarantee of federal patronage. Thus, through the start of World War II, the federal government was fairly securely planted in the District of Columbia. Its permanence there was threatened only by sporadic attempts to move the government lock, stock, and barrel to some other locale.

Today, freed from earlier technological restraints, Congress has been moving the capital gradually by encouraging the emigration of federal agencies from the District. The capital compact has thus been broken. Indeed, some of the precise ills sought to be avoided by the compact have arisen. Members of Congress are not physically secure at the seat of government because of high rates of crime, a symptom of urban abandonment. Representatives engage in vigorous efforts to secure federal agencies, causing the losing locales to become jealous, which in turn provides further impetus for relocations to assuage the losers. And the residents of the District of Columbia, unrepresented in Congress, are

harmed economically and otherwise as federal activities slip away to the suburbs or to other parts of the country.

A few statistics amply illustrate the severe toll these relocations, in combination with other urban ills, are taking on the economy and population of the District of Columbia.³⁷² Although still substantial, federal spending in the District has decreased significantly in recent years in comparison to spending in suburban areas.³⁷³ The District's population, which has been on a downward trend for years, has declined by more than ten percent over the last decade.³⁷⁴ Moreover, seventy percent of the people who work in the District do not live there and, protected from a commuter tax by their representatives in Congress, pay no taxes to support the District's government.³⁷⁵ Crime, homelessness, and poverty are widespread, and the District does not appear to have the financial resources or political clout to combat its problems effectively.³⁷⁶

372. See Jenkins, *supra* note 360 (quoting D.C. Delegate Eleanor Holmes Norton: "[The District] has been hemorrhaging federal jobs. I don't want to be alarmist, but we cannot withstand the loss of jobs at the rate we have been losing them. If they continue to move out at this pace, the D.C. economy will collapse. . . . [The loss of the FBI fingerprinting center to West Virginia] is devastating, because those are the kind of jobs we need. . . . We need jobs for people with middle-level skills, and we are not producing enough of them."); *FCC Hearing, supra* note 369, at 2 (statement of Del. Walter Fauntroy (D.C.)) ("This same Government that restricts our taxing capability and tells us how high we can build our buildings is now abandoning our city because the economy they have controlled for decades no longer suits their purpose."); Rudolph A. Pyatt Jr., *Business and D.C. Can Help Each Other*, WASH. POST, Washington Business, June 28, 1993, at 3 (discussing causes of the exodus of residents and businesses from D.C. over the last 25 years); Stephen C. Fehr, *N.Va. Replaces D.C. as Area Job Center*, WASH. POST, Dec. 22, 1992, at A1.

373. See Martha M. Hamilton, *Uncle Sam's Deep Pockets*, WASH. POST, Washington Business, June 6, 1994, at 15 ("Over the [last] 10 years the District's share of federal spending in all categories has declined, while the faster-growing suburbs have increased their shares. The District gets far and away the largest amount -- \$20.7 billion. Montgomery County [Maryland] comes in a distant second at \$7.7 billion. But in 1984, 44.9 percent of the federal funds spent in the region were spent in the District; by 1993, that portion had fallen to 39.9 percent.").

374. See Pamela Constable, *8,000 Residents Quit the District in '94, Census Bureau Says*, WASH. POST, Dec. 28, 1994, at B1; *Public Figures*, WASH. POST, Magazine, Jan. 30, 1994, at 5; D'Vera Cohn, *District's Population Sinks as Md., Va. Gain*, WASH. POST, Dec. 30, 1992, at B1.

375. See Fehr, *supra* note 372. In fact, one of the many obstacles to statehood for the District of Columbia has been the fear of suburban lawmakers that the State of New Columbia would impose a commuter tax. See also Kent Jenkins Jr., *House Turns Down Statehood for D.C.*, WASH. POST, Nov. 22, 1993, at A1 ("All but one House member from the Virginia and Maryland suburbs voted against statehood yesterday, in large part because statehood would enable the District to levy a commuter tax on suburban residents who work in the city.").

376. See, e.g., David A. Vise & Howard Schneider, *Clinton Signs D.C. Control Board Bill*, WASH. POST, Apr. 18, 1995, at A1 (creating Federal board to oversee the District's nearly bankrupt finances); *It's Not About Makeup*, WASH. POST, Mar. 8, 1994, at A18 ("Despite the vibrant town seen by tourists when they visit the nation's capital, the city away from the Mall has the woes and responsibilities of a state and the purse of a hamlet.").

Of course, the problems of the District of Columbia certainly are not unique among older urban centers. The "suburbanization of everything"³⁷⁷ affects cities across the country. Although some commentators have heralded the great migration of people and activity to the suburbs,³⁷⁸ others have written of the tremendous material, environmental, and psychological costs of this dispersal.³⁷⁹ If for none other than financial reasons, one might well question the wisdom of abandoning any of our cities.³⁸⁰

Even so, the capital is special. The nation gathers there to act in unison in so many varied ways -- to determine the national course, to greet the world, to rejoice or heal in ceremony -- that it could not be otherwise. The problems of the capital thus affect and reflect on the entire country. The Constitution's drafters recognized this uniqueness by giving the capital district its own constitutional clause; the legislators of the young nation recognized this by repeatedly wrangling over the proper setting for the seat of government.

377. KARP, STONE & YOELS, *supra* note 341, at 220. For a perceptive history of the growth of American suburbs, see KENNETH T. JACKSON, *CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES* (1985).

378. See, e.g., JOEL GARREAU, *EDGE CITY: LIFE ON THE NEW FRONTIER* 14 (1991) (celebrating the growth of dispersed, automobile-dependent retail-commercial-housing centers on the edges of older U.S. cities; "Edge City may be the result of Americans striving once again for a new, restorative synthesis. Perhaps Edge City represents Americans taking the functions of the city (the machine) and bringing them out to the physical edge of the landscape (the frontier). There, we try once again to merge the two in a newfound union of nature and art (the garden), albeit one in which the treeline is punctuated incongruously by office towers.").

379. See, e.g., JOHN A. JAKLE & DAVID WILSON, *DERELICT LANDSCAPES: THE WASTING OF AMERICA'S BUILT ENVIRONMENT* (1992) (explaining the wholesale abandonment of American central cities as the result of deliberate policy choices and describing the economic and social costs attendant to this abandonment); see also Richard Sclove & Jeffrey Scheuer, *The Ghost in the Modern: For Architects of the Info-Highway, Some Lessons from the Concrete Interstate*, WASH. POST, May 29, 1994, at C3 (describing the deleterious political and social effects of the federal highway construction program). For a heartfelt critique of the car culture and the communities it has spawned, see JAMES HOWARD KUNSTLER, *THE GEOGRAPHY OF NOWHERE: THE RISE AND DECLINE OF AMERICA'S MAN-MADE LANDSCAPE* (1993):

The road is now like television, violent and tawdry. The landscape it runs through is littered with cartoon buildings and commercial messages. We whiz by them at fifty-five miles an hour and forget them, because one convenience store looks like the next. They do not celebrate anything beyond their mechanistic ability to sell merchandise. We don't want to remember them. We did not savor the approach and we were not rewarded upon reaching the destination, and it will be the same next time, and every time. There is little sense of having arrived anywhere, because everyplace looks like noplac in particular.

Id. at 131.

380. See generally JAKLE & WILSON, *supra* note 379, at 232 ("Cities contain extensive infrastructures of buildings, pipes, reservoirs, conduits, streets, and parks whose reproduction elsewhere would be formidably expensive. Can the nation afford to treat its cities as expendable resources? Can America afford to rebuild itself every generation?").

Unfortunately, the compromises reached in the nation's early years have made the District of Columbia a fundamentally paradoxical place -- the undemocratic seat of a democracy, a grand city with an agrarian pedigree, an incongruous utopia. While these contradictions may have been reconcilable in the early years of the Republic, experience has shown them to be increasingly untenable.

Whither, then, the relationship between the United States and its capital? It is clear that the agrarian ideal still has its hold on the United States, that American society continues to head out of the cities, toward greater spatial dispersion. But dispersion is antithetical to the idea of a capital, which signifies a coming together, a concentration of national leaders and activities. Some sort of a capital needs to be held someplace. And given the country's investment in the District of Columbia, it seems unlikely that the capital will be removed completely from Washington any time soon. We might as well make the best of the uniquely beautiful, expensively built capital that we already have.

Reviving the District will require, at a minimum, a reworking of the abrogated constitutional compact. Because federal patronage is no longer guaranteed to District citizens, federal representation should be returned to them. The District's representatives could then compete on an equal basis with those of other jurisdictions seeking federal activities. A modified compact could possibly preserve Congress' ultimate control while granting District citizens congressional representation through statehood, retrocession to Maryland, or some other arrangement.³⁸¹ In this way, some political balance might be restored to the capital compact. At the same time, the District's representatives would protect the entire nation's interest in having an attractive, thriving capital.

The dispersive trend in American society contradicts the need of the nation to have at least a modest location to come together for the

381. See, e.g., *District of Columbia Representation in Congress: Hearings on S.J. Res. 65 Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary*, 95th Cong., 2d Sess. (1978) (discussing different schemes to provide federal representation to District of Columbia residents); Michael Janofsky, *Capital's Political Status to Be Aired by Committee*, N.Y. Times, Aug. 4, 1994, at A14 (same); *Hearings on D.C. Voter Representation Before the Senate Comm. on Governmental Affairs*, *supra* note 4.

Given the political complications of providing representation for the capital's citizens, some have suggested instead that the revitalization of the capital could be aided by eliminating or reducing federal taxes on District residents. See, e.g., Stephen Joel Trachtenberg, *Tax-Free D.C.? Become a Commonwealth!*, WASH. POST, Dec. 4, 1994, at C1. Such measures might succeed in increasing the District's population and improving its commerce; however, they would do little to prevent the gradual relocation of the federal government from the national capital. Altering the federal taxation of the District's residents would not affect the representational imbalance that is at the heart of the relocation issue.

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purposes of government. In constantly seeking utopia, a good place, for our national capital, we may quite literally end up with utopia, no place. Updating the terms of the capital compact would do much to help sustain the very real place where we make laws, implement policies, adjudicate disputes, receive ambassadors, celebrate victories, mourn defeats, and remember history.

