

---

## The Northwest Ordinance of 1787: Bulwark of the Republic

Robert V. Remini\*

---

I have been teaching the survey course of American history for forty years; and from the beginning of that long career I have always tried to underscore the importance and value of the Articles of Confederation by pointing out that it was the Congress under the Articles that passed the Northwest Ordinance, one of the most important, progressive, and far-reaching legislative acts in our history. It is, in fact, difficult to come up with a piece of legislation passed by Congress under the Constitution that is as significant. What is ironic is that the record of the vote on the Northwest Ordinance shows only eighteen delegates present in Congress on July 13, 1787, when it was passed, and most of the eighteen were supposedly second-rate in ability and relatively unknown. The important men in the country at the time were attending the Constitutional Convention in Philadelphia—or, like Thomas Jefferson and John Adams, were out of the country. A number of years later, in 1830, Daniel Webster had occasion to invoke the Ordinance on the floor of the Senate during his celebrated reply to Robert Y. Hayne. Said he: “we are accustomed, sir, to praise the lawgivers of antiquity . . . but I doubt whether one single law of any lawgiver, ancient or modern, has produced effects of more distinct, marked, and lasting character than the ordinance of '87. . . . We see its consequences at this moment, and we shall never cease to see them, perhaps, while the Ohio shall flow.”<sup>1</sup> A handsome salute, and one well taken.

There is always the danger of indulging in hyperbole when speaking of the consequences of the Ordinance; what was achieved, what was provided, things like “Free Schools, Free Churches, Free Soil, Free Men,” etc. What I should like to attempt here, however, is a discussion of some of the more political ramifications of this extraordinary document, ramifications that profoundly altered con-

---

\* Robert V. Remini is professor of history and research professor of humanities, University of Illinois at Chicago.

<sup>1</sup> *Congressional Debates*, 21 Cong., 1 sess., 1830, pp. 39-40.

ceptions about the nature of the Union and served as a bulwark for the preservation of the Republic.

I must confess that my conclusions are personal and based on subjective evidence. Also, they are based on research not of the Northwest Territory itself but of the Southwest Territory, specifically the early history of Tennessee and to a much lesser extent the early history of Kentucky. Lest this focus appear unrelated, I would remind you that although Tennessee and Kentucky were not territorially connected to the area of what became Ohio, Indiana, Illinois, Michigan, and Wisconsin, they fell under the Ordinance's principal provisions as they moved from frontier to statehood, just as many other states thereafter. And they entered the Union before any of those from the Northwest: Kentucky in 1792, Tennessee in 1796. Except for the provisions concerning slavery, and perhaps those dealing with the Indians, the remaining articles of the Ordinance had a tremendous impact on both Tennessee and Kentucky, and perhaps the experience in these two states suggests some important conclusions about what happened in the Northwest. I might also point out that between 1781 and 1802 the United States received over 400,000 square miles from states with western land claims, of which only 265,000 square miles fell within the Northwest Territory; yet, the Ordinance affected all of that area.

As is obvious, the Ordinance, in a number of specific and important ways, established a governmental policy not only for the Northwest but for the entire public domain in the future.<sup>2</sup>

What is possibly unique and most important in the Ordinance, I believe, is that it successfully prevented the republic from collapsing immediately into an empire, and this it did by providing (or, rather, anticipating) a new concept of Union. I am not sure "collapsing" is the appropriate operative word here, but I cannot think of a better one offhand. It has been my experience in reading and studying history that all republics become empires sooner or later before their ultimate decline and fall. Once they acquire territory beyond the original limits, of necessity they evolve into empires. Note the Roman Republic; note the Venetian Republic; note the French Republic. And there are many other examples.

Certainly in the United States in the 1780s there was a great deal of talk about empire, then and later. On the frontier westerners worried about empire, about the imperial or colonial intentions of the East, and they talked about it quite freely. Back east at the seat of government they also talked about empire—sometimes indirectly, such as how the West could best be exploited and controlled. Later, Jefferson himself spoke of an "empire for liberty" when re-

---

<sup>2</sup> R. Carlyle Buley, *The Old Northwest: Pioneer Period, 1815-1840* (2 vols., Indianapolis, 1950), I, 17.

ferring to Louisiana, and it was not uncommon for others to think in imperial terms when discussing the future of the West. Andrew Jackson, for example, had a dream of empire that included all Spanish North America.

What spared Americans from moving immediately and directly into a structure of imperialism was the Northwest Ordinance, in that it decreed the stages and means by which territories would become states equal to all other states in the Union. Colonial status, or exploitation by the older ("original") states, could not and did not happen. What is ironic, of course, is that the Northwest Ordinance did, in fact, impose colonial rule on the territory in its initial stage. A governor, secretary, and judges were appointed by the central government in the east to administer the territory. Even so, statehood was inevitable once the territory reached the prescribed population; and that inevitability had a profound impact on the West—the entire West, as it turned out—both within and without the Northwest Territory.

I regard the Ordinance as the great bulwark of the republic because I believe a real threat existed at the end of the eighteenth century that this country might so easily have taken the wrong turn toward an imperialistic approach to the West and thereby have created for itself insuperable problems that would have spelled its immediate doom. What exacerbated the situation was the constant danger of treason against the United States by westerners. The presence of Spain and Great Britain always constituted a threat to the Union, and the presence of the Indians added to the threat because they were the pawns in the international political game. It seemed obvious that if the West were to remain in the hands of the United States following the Revolution then something had to be done about the British and Spanish, for they continued to retain considerable portions of land within the United States, north and south.

This external threat to the nation was matched by the internal threat to its safety; namely, the anger and frustration westerners felt toward the central government in failing to rid them of the Indian problem or dealing effectively with foreign interference with their trade, such as the Spanish interference from New Orleans. Moreover, they were convinced that a conspiracy existed in the East to keep them out of the confederacy except as dependent colonists.

I can explain better what I mean by using the history of Tennessee as a case in point. During the Revolution Scotch-Irish from Pennsylvania, Virginia, and North Carolina moved steadily westward and squatted on land both north and south of the Ohio River. Years later, during the debate on preemption in 1841, Senator Willie P. Mangum was accused of implying that squatters in the west were "a sort of North Carolina blue beards, who are rugged, dirty, brawling, browbeating monsters, six feet high, whose vocation is

robbing, drinking, fighting, and terrifying every peaceable man in the community.”<sup>3</sup> Since such an opinion was prevalent during the post-Revolutionary years as well, it is small wonder that the Congress felt these ruffians needed a strong and stable government in the West. No doubt, these brawling, browbeating monsters had two main concerns in migrating west: their economic livelihood and the presence and danger of the Indian. To address these concerns they turned to all manner of deception, intrigue, and conspiracy.

The Scotch-Irish who came to Tennessee were always described as “greedy after land.” They were outside the bounds of any organized government and so in 1772 took it upon themselves to establish the Watauga Association, which provided for a sheriff, clerk, and a court with legislative and judicial powers. They assumed that the Treaty of Fort Stanwix in 1768 had settled the problem of land ownership because the Iroquois (who had only a shadowy claim to the region) relinquished all the land south of the Ohio to the mouth of the Tennessee. Of course the Indians in the immediate area did not see it quite that way, especially the Cherokees who carried out a fierce war against the Tennessee settlers in 1776. There was the real danger at this time that a British army would march from West Florida with Creeks, Chickasaws, and Cherokees to attack the entire frontier of Virginia and North Carolina. Fortunately, it did not happen, but the presence of the British and the Spanish increasingly influenced the politics of the southwestern frontier. Eventually the Cherokees were defeated and forced to sign treaties relinquishing their rights, but that did not end the raids, especially from the Chickamauga towns.

When the Revolution ended, England ceded the Floridas back to Spain, and Spain claimed that the northern boundary of her territory was the mouth of the Yazoo to the Appalachicola, not the 31st parallel. She established forts in West Florida, exercised control of the Mississippi on both sides of the river as far north as the mouth of the Ohio (and beyond that point on the west side), and concluded important treaties with the Indians. Thus, at the conclusion of the Revolution the United States was no more able to drive the Spanish from the southwest than it was to expel the British from the northwest.

When the Congress asked the states to cede their western land claims to the general government, North Carolina chose to cede only its unappropriated lands. Prior to the session William Blount, in 1783, got the North Carolina legislature to pass the so-called Land Grab Act, which offered unappropriated lands in what was to become Tennessee for a price of \$5.00 per one hundred acres, a handsome bit of legislative skullduggery that created huge for-

---

<sup>3</sup> *Congressional Globe*, 26 Cong., 2 sess., Appendix, p. 65.

tunes for several future Tennesseans. Many of these entrepreneurs were immediately ready for home rule; thus, when they heard of Jefferson's Ordinance of 1784, they quickly formed the new state of Franklin, believing that statehood would be an immediate process. But nothing happened. The Congress sat on its collective hands, and it did so, in part, because, as Robert F. Berkhofer has pointed out, Jefferson's Ordinance of 1784 merely provided a framework of general rules for establishing government in the West and was not intended to take effect immediately.<sup>4</sup> Naturally, North Carolina took exception to the presumption of the Franklin settlers in declaring their separation and ordered the arrest of John Sevier, the governor of Franklin, for daring to initiate this treason against the state. Sevier responded by contacting an agent of the Spanish envoy to the United States and initiating the so-called Spanish Intrigue. What is unusual and very interesting is that this plunge into treasonable conspiracy does not occur in the Northwest as it does in the Southwest.

According to some contemporaries the aim of the Franklin movement from the beginning was not only the separation from North Carolina but from the United States as well. Certainly by 1786 the danger of secession was real, and it was accompanied by several other intrigues with the Spanish who by this time sprawled along the entire Gulf of Mexico and up the Mississippi River. (I must say that I was staggered when I researched the *Archivo des Indias* in Seville, Spain, and discovered so many documents that proved the treachery, fickleness, and untrustworthiness of the Americans.)

Spain's American policy after the war, a policy that continued for decades, was based on her recognition of the need to protect her colonial possessions from the greed and cunning of scheming American frontiersmen. To safeguard her North American empire Spain did several things: she claimed the territory northward from the gulf to the Tennessee and Ohio rivers, rejecting the American contention that the 31st parallel separated the United States from her possessions; she closed the Mississippi to stifle the growth of the American settlements; she negotiated alliances with the Creek, Choctaw, and Chickasaw Indians; and she encouraged the American secession movements as they steadily emerged in the West.

The intrigues with Spain by Americans and the secession movement were intensified because of the conciliatory policy of Congress toward the southern Indians (e.g., the Treaty of Hopewell of 1785 and 1786) and the effort by John Jay, the secretary of for-

---

<sup>4</sup> Robert F. Berkhofer, Jr., "Jefferson, the Ordinance of 1784, and the Origins of the American Territorial System," *William and Mary Quarterly*, 3rd ser., XXIX (April, 1972), 260.

eign affairs, to negotiate a treaty with the Spanish in 1786 by which the United States would abandon the right to navigate the Mississippi River for twenty-five or thirty years in exchange for commercial concessions. The treaty never materialized, but the West exploded in anger that such an idea had even been contemplated.

The Spanish were also accused of inciting and arming the Indians to attack Tennessee settlements, and they did in fact provide supplies to the Creeks under the Spanish treaty of 1784. The Creeks launched a general war upon Georgia and Tennessee settlers in 1786, and it was widely believed that the only way these attacks could be stopped was for the West to secede from the Union and ally itself with Spain. Alexander McGillivray, the Creek chieftain who had important trade relations with a Scotch trading company in Pensacola, told the Spanish that the Tennessee settlers had been so devastated by Indian raids that they were willing to submit to any conditions for peace and would even become subjects of the king of Spain. According to McGillivray the settlers said they were determined "to free themselves from a dependence on Congress."<sup>5</sup>

Dr. James White, a North Carolina congressman who in the words of one recent historian had a dream of empire for "Greater Franklin,"<sup>6</sup> told Don Diego de Gardoqui, the Spanish minister to the United States, that the western settlements would separate from the United States if Spain would reopen the Mississippi River, provide a military alliance and commercial concessions, and permit them to expand their territory down the Tennessee River past the Muscle Shoals to the headwaters of the Alabama and Yazoo rivers. These settlers were empire builders—born expansionists—and I do not think they ever changed. Gardoqui sent White to Franklin to act as a Spanish agent to deny charges that Spain incited the Indians, and Gardoqui added that Spain was "much disposed" to provide Franklin with "all the protection they ask." White later told the Spanish governor at Havana that the Franklinites "wished to place themselves under the protection of the King" of Spain.<sup>7</sup> Again the archives in Seville provide many documents that attest to the fact that the Franklinites were "very ardent" about the "future probability of an alliance and a concession of commerce" with Spain. The people of Franklin, claimed the Spanish, had "come to realize upon what part of the world and upon which nation depend their future happiness and security."<sup>8</sup> And it was not the United States.

---

<sup>5</sup> Quoted in J. W. Caughey, *McGillivray of the Creeks* (Norman, Okla., 1938), 178-79.

<sup>6</sup> Stanley J. Folmsbee, Robert E. Calew, and Enoch L. Mitchell, *Tennessee: A Short History* (Knoxville, 1969), 92.

<sup>7</sup> D. C. and Roberta Corbitt, eds. and trans., "Papers from the Spanish Archives Relating to Tennessee and the Old Southwest" (*East Tennessee Historical Society Publications*, No. 18; Knoxville, 1946), 144.

<sup>8</sup> Quoted in Archibald Henderson, "The Spanish Conspiracy in Tennessee," *Tennessee Historical Magazine*, III (December, 1917), 234.

When Congressman White reached New Orleans, he found that not only were the Franklinites in communication with the Spanish but that an even newer settlement in Tennessee along the banks of the Cumberland River was also conspiring with them. The Cumberland settlement, where Andrew Jackson settled when he left North Carolina, had already begun correspondence with Don Estevan Miró, governor of Louisiana, in the hope of winning free navigation of the Mississippi. They realized that a small community, such as theirs, would be wiped out by the Indians if they (the Indians) had the help and protection of the Spanish. Since the United States government could do nothing, the Cumberland settlement offered to secede and take an oath of allegiance to the king of Spain. In return the residents would be left alone to manage their local affairs and would have free access down the Mississippi. They even went so far as to name their district after the governor, calling it the Mero district in the hope that this flattery would conciliate him. Jackson got involved in this affair, and Thomas P. Abernethy in his excellent book *From Frontier to Plantation* wondered aloud how a rank outsider like Jackson could inject himself into the secret councils of high politics unless the Spanish conspiracy was common knowledge.<sup>9</sup> Indeed, it was.

In Kentucky there was a similar situation. There was also present one of the arch conspirators of all time, James Wilkinson. He came to Kentucky from Maryland around 1783 and quickly established himself as a leader of the movement to separate Kentucky from Virginia. Wilkinson demanded radical action, and there was plenty of talk about establishing an independent nation. There were, of course, problems with the Indians, and the British still remained holed up in their forts along the Canadian border, which posts they were supposed to vacate according to the terms of the peace treaty that ended the Revolution. Wilkinson went to New Orleans and arranged a deal with the Spanish by which he personally would be granted monopoly rights to New Orleans if he would in return work for Kentucky's separation from the United States and eventual union with Spain. At a convention held in Kentucky shortly thereafter, Wilkinson and his friends called for a declaration of independence from Virginia and from the United States. It was decided to take the issue to the people and not by very much was the question of separation rejected.

The demand for home rule in Kentucky and Tennessee became more and more intense at the same time that the central government repeatedly stalled over addressing this problem. Consequently, Spanish agents constantly traveled on various errands

---

<sup>9</sup> Thomas P. Abernethy, *From Frontier to Plantation in Tennessee: A Study in Frontier Democracy* (Chapel Hill, N.C., 1932), 126-27.

throughout the American West and across the Ohio valley during this period; and American speculators, entrepreneurs, informers, and opportunists regularly visited New Orleans in the hope of concluding advantageous deals.

Perhaps it is stretching credulity to suppose that these Americans could seriously consider a permanent union with Spain, but an awful lot of people at the time thought it could and would happen. And the evidence in the Spanish archives is staggering. Of course, some westerners were always loyal to the United States; and others no doubt deliberately intrigued with the Spanish in order to frighten an older state, such as North Carolina, into ceding her western lands to the United States.

But it should be remembered that the Mississippi was a burning question in American politics from 1784 onward. Westerners, cut off by the mountains from the East and lacking the means to reach markets of the world except through the Mississippi, discovered they had few or no ties to the "original" states. The constant squabbling between individual eastern states during this so-called Critical Period further discouraged westerners. Easterners did not understand western problems, according to Tennesseans and Kentuckians, and were too caught up with their own seemingly petty concerns to address western problems—problems that involved westerners' very existence. Then the failure of Congress to do anything about creating new states after Virginia's cession in 1784, particularly with regard to Kentucky; the abortive attempts at state making by the Tennesseans in establishing Franklin, coupled with the inability of the government to expel the British and Spanish from American territory; and John Jay's negotiations with the Spanish to yield the Mississippi—all of these developments seriously threatened the future territorial integrity of the United States. It seemed as though the future allowed only two possible courses of action: either the East impose colonial rule on the West and suffer the consequences or watch as a British and/or Spanish absorption of the West take shape. George Washington spoke of this danger in a letter to Benjamin Harrison, governor of Virginia, on October 10, 1784:

I need not remark to you Sir, that the flanks and rear of the United States are possessed by other powers, and formidable ones too; nor how necessary it is to apply the cement of interest, to bind all parts of the Union together by indissoluble bonds, especially that part of it, which lies immediately west of us, with the middle states. For, what ties, let me ask, shou'd we have upon those people? How entirely unconnected with them shall we be, and what troubles may we not apprehend, if the Spaniards on their right, and Gt. Britain on their left, instead of throwing stumbling blocks in their way as they now do, should hold out lures for their trade and alliance. What, when they get strength, which will be sooner than most people conceive . . . will be the consequence of their having formed close connexions with both, or either of those powers in a commercial way? It needs not, in my opinion, the gift of prophecy to foretell.



The Western settlers, (I speak now from my own observation) stand as it were upon a pivot; the touch of a feather, would turn them any way.<sup>10</sup>

What made the difference, what completely turned the situation around, was the passage of the Northwest Ordinance. Now the West knew that Congress had a policy with respect to the territories and that that policy meant colonial rule until such time as the settlers were prepared to take their place as co-equals with the other states in the Union. The United States would expand, not as an empire with subject peoples and territory but by the addition of new, sovereign states; and these states, in the words of the Ordinance, would be “on an equal footing with the original States in all respects whatsoever.”

It was a new concept of Union. No longer was the United States a static collection of independent states quarreling among themselves over vested rights. This new concept was a dynamic expression of an expanding country controlled by a central government in which new states would be added to the Union by its authority and action. Control remained at the center and thereby strengthened the national government; and all the states were absolutely equal, no matter when—how early or late—they entered the Union.

Not that the Ordinance ended conspiracy and intrigue or the dreams of empire these “robbing, drinking, brawling, browbeating monsters” constantly harbored. The peculiar conditions of western life invited reckless and desperate schemers, and their wild plans continued into the nineteenth century: for example, Citizen Edmund Charles Genêt fomented western hatred of the Spanish; George Rogers Clark organized an expedition to seize the entire length of the Mississippi; Senator William Blount was expelled from the United States Senate because he tried to induce England to send an army from Canada to Louisiana and the Floridas by way of Lake Michigan and the Mississippi; and, of course, there was James Wilkinson and Aaron Burr. Burr not only involved Wilkinson in his schemes but Jackson as well. And Henry Clay of Kentucky acted as Burr’s counsel when Burr was hauled before a grand jury on charges of raising troops for illegal purposes. What daring empire builders these “browbeating monsters” were!

In Tennessee they trifled with treason and used the threat of secession to force North Carolina first into ceding her western lands and then into ratifying the Constitution. Even so, when the Southwest Territory was finally established, these Tennesseans were still not satisfied because the Northwest Ordinance (which was applied

---

<sup>10</sup> John C. Fitzpatrick, ed., *The Writings of George Washington from the Original Manuscript Sources, 1745–1799* (39 vols., Washington, D.C., 1933–1944), XXVII, 475.

to them with some modification) denied them home rule. They wanted their own territorial legislature and then statehood as quickly as possible. What attracted them, of course, as it did most other westerners, was the new concept of Union as advanced by the Northwest Ordinance, which granted them equality and full status as a sovereign state once they had completed the three stages. The inevitability of statehood was clear to them, and that made all the difference in the world. The Northwest Ordinance also provided (necessarily) a strengthened central government that would soon win them, first, access to, and then, ownership of, the Mississippi valley and its mouth at New Orleans. This was not a concept of a Union indifferent to the needs of its newest partners; this Union, in the words of Peter S. Onuf, became the "guarantor of collective interests."<sup>11</sup> As such, it strengthened the Republic and provided the surest bulwark against those who would betray it or plunge it disastrously into empire building.

The moment this new concept of Union occurred—that is, the moment the United States moved from a static American state system to a dynamic form that allowed for national expansion by the deliberate process of adding new states under the guidance of the central authority—in that moment the states having entered this Union no longer retained the right of secession. Or so Jackson argued. He strongly advocated states rights, and he always believed that this new and dynamic concept of Union in no way eliminated states rights; still, he maintained that secession as the right of any state to redress its grievances was forfeited even before the Constitution went into effect. Perhaps under the old static system secession was a legal instrument to protect state rights. Not so under the new system. And I think Jackson was right. Not that I care particularly about fixing an exact time when secession was lost to the states, but I frankly cannot think of a better moment.

It has generally been supposed that secession vanished as a right when this country became a Union of people, rather than a confederation of states. Perhaps. I am more inclined to accept the position that secession was lost when the *concept* of Union changed. And it visibly and perceptibly changed when eighteen relatively unknown and unaccomplished men enacted the Northwest Ordinance of 1787.

---

<sup>11</sup> Peter S. Onuf, *The Origins of the Federal Republic: Jurisdictional Controversies in the United States, 1775–1787* (Philadelphia, 1983), 153.