The following excerpt from the book "Law Miscellanies" by Hugh Henry Backenridge was edited and published on this site by Richard R Gideon

In 1814, two years before his death, Pennsylvania Supreme Court Justice Hugh Henry Brackenridge published a book that he intended as an introduction to the study of law. It had the ponderous title, "LAW MISCELLANIES: AN INTRODUCTION TO THE STUDY OF THE LAW, NOTES ON BLACKSTONE'S COMMENTARIES, SHEWING THE VARIATIONS OF THE LAW OF PENNSYLVANIA FROM THE LAW OF ENGLAND, AND WHAT ACTS OF ASSEMBLY MIGHT REQUIRE TO BE REPEALED OR MODIFIED; OBSERVATIONS ON SMITH'S EDITION OF THE LAWS OF PENNSYLVANIA; STRICTURES ON DECISIONS OF THE SUPREME COURT OF THE UNITED STATES, AND ON CERTAIN ACTS OF CONGRESS, WITH SOME LAW CASES, AND A VARIETY OF OTHER MATTERS, CHIEFLY ORIGINAL." Although meant for law students, and rather dry in most places, Brackenridge nonetheless opens up new perspectives on the early Federal period in America.

Hugh Henry Barckenridge was born in Scotland and emigrated to America with his parents when only five years of age. He was possessed of a superior intellect and took degrees from Princeton University, then know as the College of New Jersey. Admitted to the practice of law in 1781, and deciding there were too many lawyers in his Philadelphia hometown, Brackenridge removed to the Western country and the village of Pittsburgh. He quickly established himself in practice and local politics. Over time Brackenridge's career took many twists and turns; he was at times very popular with the locals, but often exercised his talent for rubbing people the wrong way.

I believe that Brackenridge is an "unsung" American founding father. He taught and advised such American luminaries as James Madison, Philippe Freneau, and William Bradford. Along with Freneau, Brackenridge coauthored the first novel written in America. Another book, "Modern Chivalry," would remain a classic through the end of the 19th century. But most important, Brackenridge almost single-handedly prevented civil war. During the "Whiskey Rebellion" his moderating influence kept the western portion of America from detaching itself from the United States to possibly form alliances with America's former enemy, or with the Spanish.

"Westsylvania" had its genesis in the year 1777 when the inhabitants of territory claimed by both Virginia and Pennsylvania first raised the issue of local autonomy. In January of 1783 a petition was circulated to press for the new state, an interesting coincidence when one considers the date of the Commonwealth's Acts of Assembly shown below, which in essence quashed any idea of carving out a new state from what would become Pennsylvania territory in fact. Brackenridge took Pennsylvania's side in the matter, but later came to regret it. In the following excerpt Brackenridge describes the circumstances surrounding the proposed formation of a new state, carved from land claimed by both Pennsylvania and Virginia. The original syntax and spelling conventions have been retained. Hyperlinks to appropriate footnotes have been added. Except where noted, the footnotes are mine.

Richard R. Gideon

OBSERVATIONS

on

ACTS OF ASSEMBLY THAT MAY BE REPEALED OR MODIFIED.

Act of 3d December, 1782

THE act entitled an act to prevent the erecting any new and independent state within the limits of this commonwealth, 3d December, 1782, might be repealed; the occasion that gave rise to it having ceased to exit. It was a consequence of the cession made by Virginia to Pennsylvania of some part of the territory claimed, with a view to a compromise. The inhabitants of the territory ceded did not see the reason of such cession; nor were they willing to see the reason of such cession; nor were they willing to acknowledge the justice of it. The truth is, it involved a great question; viz. how far a state could cede territory, and another state acquire jurisdiction, with a view to a settlement of boundary. Nothing but what comes under the head of the *transcendental* right, as Burlamaqui stiles it, could excuse it, or justify; the salus populi suprema lex. I have no doubt now but that the people in the part of the state, at the time, had the right to have objected; and refuse submission to the Pennsylvania government. But I thought otherwise at the time, and took a decided part in support of the Pennsylvania jurisdiction. It was shortly after the cession in the spring of 1781, that I went to the country, entering on the practice of the law, having been before admitted in the court of common pleas of Philadelphia. The Pennsylvania courts were shortly afterwards established in that part of the country, the county of Washington, which comprehended the principal part of it, having been before laid out. Conventions in the mean time were holden, and the sense of the people taken as to submission or resistance. The idea was to declare themselves independent of Virginia or Pennsylvania, in the same manner as Vermont had done of the states of Massachusetts and New York. It was suggested that a new state might be formed with a seat of government at Pittsburgh, having the Kanhaway on the one side for a boundary, with Miskingum and Lake Erie on the other, and to the eastward the Allegheny mountain. I will not say that but for me this would have taken place; but I certainly contributed very much to obstruct the proposition. Could I have foreseen the want of support in the Indian war from the state of Pennsylvania, or Virginia, or from the United States, the people being left to defend themselves in a great measure, I might have been disposed to think that an independent government would have been most advisable for their support and preservation. But be that as it may, so it is that a contrary policy was advocated and prevailed. It was at my instance, and on my representation through the Pennsylvania representatives to the legislature, that the act in question passed; and I believe it is the only act in the code which contains a clause of *changing the venue.*[*]

This act may be repealed, as now unnecessary under the general government. See the constitution of the United States, art. 4. sec. 3.

I have said, that I did not think but that it might have been justifiable in the people of the territory ceded, to have considered themselves as thrown into a state of nature, and to have formed *a new and independent government;* because what authority has states to cede, when in pursuance of the 9th article of the confederation then existing, a judicial tribunal was established, by which the controversy might have been determined, the principle settled, and the actual boundary ascertained? The principle which governed me chiefly was the consideration suggested in the act; vis. that the commonwealth of Pennsylvania had succeeded to the proprietary ownership of soil, and was pledged to pay a considerable sum in compensation to the charter proprietaries; and the ungranted lands in that quarter was a fund for raising the compensation to be made; and of which I though it would be unjust to deprive the rest of the community. But if I had known the little account to which this turned afterwards by the mismanagement of the legislature, and the land office, and speculators intending a great deal, but making little for themselves; and all these things obstructing the improvement and population of the country, I might have though less of the value of my efforts on this occasion. Whatever they were, certain it is, that I encountered some danger in opposition to the popular current, on the Virginia side of the state. But it is not consistent with my object in the present book to go farther into what might be called a *matter of history rather than of jurisprudence.*

Hugh Henry Brackenridge

Editor's Notes:

Burlamaqui, Jean Jacques , 1694–1748, Swiss jurist. His chief works are *Principes du droit naturel* [principles of natural law] (1747) and *Principes du droit politique* [principles of political law] (1751). He attempted to demonstrate the reality of natural law by tracing its origin in God's rule and in human reason and moral instinct. He believed that both international and domestic law were based on natural law. (*From the Columbia Electronic Encyclopedia...Ed)*

"With regard to the effects of private subjects, the sovereign, as such, has a transcendental or super eminent right over the goods and fortunes of private men; consequently he may give them up, as often as the public advantage or necessity requires it; but with this consideration, that the state ought to indemnify the subject for the loss he has sustained beyond his own proportion." *(From The Principles of Politic Law, Part IV, Chapter XIV, by Jean Jacques Burlamaqui..Ed)*

---

salus populi suprema lex: The well being of the people is supreme in law

---

*By a subsequent act, 31st August, 1785, the clause changing the venue is repealed as contrary to the constitution, that trials shall be by a jury of the vicinage. This would seem affirmatory of the principle that the venue cannot be changed in a criminal case. - *Original footnote by Brackenridge..Ed*

United States Constitution of 1787

Article. IV.

Section. 3.

Clause 1: New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

Clause 2: The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

THE ARTICLES OF CONFEDERATION

Agreed to by Congress 15 November 1777

In force after ratification by Maryland, 1 March 1781

(Note: The following article was edited to show only the portions relevant to Brackenridge's argument...Ed)

Article IX

The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction or any other causes whatever; which authority shall always be exercised in the manner following. Whenever the legislative or executive authority or lawful agent of any State in controversy with another shall present a petition to Congress stating the matter in question and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question: but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names as Congress shall direct, shall in the presence of Congress be drawn out by lot, and the persons whose names shall be so drawn or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination: and if either party shall neglect to attend at the day appointed, without showing reasons, which Congress shall judge sufficient, or being present shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the secretary of Congress shall strike in behalf of such party absent or refusing; and the judgement and sentence of the court to be appointed,

in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence, or judgement, which shall in like manner be final and decisive, the judgement or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned: provided that every commissioner, before he sits in judgement, shall take an oath to be administered by one of the judges of the supreme or superior court of the State, where the cause shall be tried, 'well and truly to hear and determine the matter in question, according to the best of his judgement, without favor, affection or hope of reward': provided also, that no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil claimed under different grants of two or more States, whose jurisdictions as they may respect such lands, and the States which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall on the petition of either party to the Congress of the United States, be finally determined as near as may be in the same manner as is before presecribed for deciding disputes respecting territorial jurisdiction between different States.

Unconsolidated Pennsylvania Statutes

PUBLIC LANDS (TITLE 64)

§ 8. Compensation to proprietaries.

The sum of one hundred and thirty thousand pounds, sterling money of Great Britain, be paid out of the treasury of this state, to the devisees and legatees of Thomas Penn and Richard Penn, late proprietaries of Pennsylvania, respectively, and to the widow and relict of the said Thomas Penn, in such proportions as shall hereafter by the legislature be deemed equitable and just, upon a full investigation of their respective claims.

(The Commonwealth of Pennsylvania decided to pay the estate of William Penn, the original owner of Pennsylvania, for the proprietary claims of his estate made prior to 4 July 1776...Ed)

(back)