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H. Michael Shultz
michaelshultz214@gmail.com

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Recommended Citation

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The Lost Cause:
The State of Franklin and the Constitution

Horace Michael Shultz Jr.

History 302A. Research Topics in History: Digital Early America

Dr. Brad Wood

10 December 2018

Just a few years prior to the composition of the United States Constitution, many of the contributing founders hoped that they had established a governmental system in which each state could function equally in relation to one another. However, conflicts arose under these “Articles of Confederation” regarding what was the proper role of a state in relation to supporting a fellow state during an inward strife. In North Carolina, for example, a rebellion broke out in which the rebels declared themselves a sovereign entity and applied to Congress for confirmation of statehood under the title “The State of Franklin.”¹ Though this rebellion was relatively small in the shadow of the Revolutionary War that had recently concluded, its impact reached to the highest rung of diplomatic debates. In fact, the failed State of Franklin aroused such fear of a strong Federal Government that would support various independence movements that state representatives saw to a clause being included in the Constitution that would prohibit the Federal Government from doing so without the consent of the established states.

When the North Carolina legislature brought their state constitution into effect on 18 December 1776, they carefully worded Article 25 to allot for the establishment of new governments within their western boundaries. Article 25 also took care to designate under what conditions such a new government could be established, which was essentially only with the consent of North Carolina’s legislature.² This seemingly clear mandate was greatly complicated when on 2 June 1784, North Carolina voted to cede the portion of their western territory expanding from the Appalachian Mountains to the Mississippi River over to Congress in an attempt to settle Revolutionary War debts. This cession gave the United States a right to “at any

¹ “Letter from Richard Dobbs Spaight to Richard Caswell,” 5 June 1785, in *Documenting the American South*, “Colonial and State Records of North Carolina,” ed. Walter Clark, Vol. 17 (Raleigh, NC: Printer to the State, 1899), 464, <https://docsouth.unc.edu>, accessed September 26, 2018.

² “Constitution of North Carolina,” 18 December 1776, *The Avalon Project*, “18th Century,” <https://avalon.law.yale.edu>, accessed 12 October 2018.

time within one year” accept this cession and take complete authority over the region at hand.³ The North Carolinians no longer took authority of that region, but Congress had not yet accepted the cession of authority to itself. Thus, the citizens in this western region had no governing body to make an appeal to in the event of a legal dispute, as well as having no one to appeal to for protection from Native Americans. Many of those on the western half of the state were Revolutionary War veterans that had been promised lands by North Carolina during the war, and had impatiently gone across the mountains afterwards to claim their bounty even without legal precedent.⁴ These subjects felt as though the Cession Act that North Carolina had passed served as sufficient consent towards their sovereign action, and set about to establish an independent government around which they would form a state. By 23 August 1784, over forty men gathered in Jonesboro to establish an association under which they would uniformly act. After electing John Sevier as President and Landon Clark as clerk of the convention, they went on to prepare a constitution of their own. Under these men’s leadership, Franklinite legislators plotted out the process of gaining congressional consent, which North Carolina’s Cession Act had mandated they do in order to organize themselves into a new state.⁵ William Cocke was selected as a delegate to go to Philadelphia as a representative of the new “State of Franklin,” and on 15 May 1785 he gave his presentation to Congress.⁶

Having heard the complicated proposition that William Cocke made to Congress in favor of submitting Franklin to the United States, there was a system that the Articles of Confederation

³ John C. Fitzpatrick, ed., *Journals of the Continental Congress, 1774-1789*, Vol. XXVII (Washington, DC: United States Government Printing Office, 1933), 382.

⁴ “Letter from Benjamin Hawkins and High Williamson to Alexander Martin,” 26 September 1783, *Documenting the American South*, “Colonial and State Records of North Carolina,” ed. Walter Clark, Vol. 16 (Raleigh, NC: Printer to the State, 1899), 888, <https://docsouth.unc.edu>, accessed 26 September 2018.

⁵ Kevin Barksdale, *The Lost State of Franklin: America’s First Secession* (Lexington, KY: University of Kentucky Press, 2010), 22-25.

⁶ “Letter from Richard Dobbs Spaight to Richard Caswell,” 464.

required Congress to follow in order to determine whether or not the state would be admitted. Of the thirteen states then included in the Confederation, at least nine of them had to vote in favor of admission in order for the motion to pass. However, before the vote to admit or decline Franklin could be taken, Congress would have to accept the cession that North Carolina had made to them of their land to the west of the Appalachian Mountains. To further complicate matters, North Carolina had since repealed the Cession Act. Consequently, Congress was able only to vote on whether to take the lands west of the mountains without North Carolina's permission. By all indications, voting for the Federal Government to take the land of a state without the consent of the respective state was far more disdained than voting on whether to admit an independent state into the union. The very thought that Congress could vote on whether to take land from a state without that state's consent came as shocking to Richard Dobbs Spaight, a Congressional delegate from North Carolina, who deemed it "contrary to the established rule." The vote did occur, however, and was narrowly voted down after receiving seven votes in favor out of the nine required to carry the motion.⁷ Left unable to admit Franklin without the permission of North Carolina, the application for statehood failed, but according to Patrick Henry, William Cocke was not discouraged at all by this decision due to the circumstances surrounding the vote.⁸ He may have believed that in the future North Carolina would conclude to allow Franklin its independence, swaying the vote in the opposite way. Whatever the case, this event marked a turning point in the perspective of inter-state relations. The idea of Congress recognizing and legitimizing factions in rebellion, even when those factions were rebelling against a recognized state, became a major concern for the contributors to the Constitution. If not checked, Congress

⁷ "Letter from Richard Dobbs Spaight to Richard Caswell," 465.; Fitzpatrick, *Journals of the Continental Congress*, 383.

⁸ "To Thomas Jefferson From Patrick Henry," 10 September 1785, *Founders Online*, <https://founders.archives.gov>, accessed 15 September 2018.

could deliberately break pieces of states off and form new states with equal voting rights. This could destroy the American governing system, which depended upon very few state representatives to make important decisions. Just two months later, Thomas Jefferson wrote Richard Henry Lee from Paris, France, referring to this occurrence and its implications directly. Jefferson expressed anxiety over what was going on in Franklin and Vermont, and indicated that he believed Vermont alone would receive admission into the union. He went on to state that the current states of the union would “crumble to atoms” if Congress would not firmly denounce the establishment of new states without the consent of their parent state.⁹ By this it is made clear that news of the vote on Franklin was immediately spread abroad with haste. If such a small portion could divide itself off, and Congress could recognize it as a state with equal representation within the Union despite the established states’ protests, then Congress had the power to effectively tip the scales of governance in any way it chose.

The prospect of new western states taking the governing power away from the established states in the east quickly gained attention and notoriety from the founders. Yet, some prospective states had been admonished for their attempts at statehood. Kentucky had begun to seek out the path of statehood around the same time as the Franklin movement.¹⁰ In contrast, Kentucky received much support towards distinction from Congress due to the fact that Virginia was willing to consent to its departure. Patrick Henry wrote to Thomas Jefferson accounting of the details which separated Kentucky’s plight as compared with Franklin’s. Henry indicates that support for Kentucky came from the fact that a resolution had been passed by the state of

⁹ “From Thomas Jefferson to Richard Henry,” 12 July 1785, *Founders Online*, <https://founders.archives.gov>, accessed 13 October 2018.

¹⁰ Vasan Kesavan and Michael Stokes Paulsen, “Is West Virginia Unconstitutional,” in *California Law Review*, Vol. 90, No. 2 (March 2002): 364.

Virginia that would be “injurious to neither and honorable to both.” He then sets out contrasting this with the state of affairs in Franklin, commenting only on the fact that it could “turn out to be very interesting” because “they have about 5000 men able to bear arms.”¹¹ Obviously, importance was placed on having consent from one’s parent-state in order to form an independent state. Yet, this was not a stipulation of the Articles of Confederation. This requirement of consent was one that came during the period of time in which North Carolina refused to allow Franklin to form its own government. Henry’s comments also illuminate the emphasis that Franklin-opposers placed on the likelihood that unapproved states would become violent against their parent state. Many believed that new states were more likely to declare war against established states, and the United States as a whole by implication, than to join them in the union at all. This belief was most ardently endorsed by Evan Shelby, acting Governor of Virginia, who wrote to Brigadier General William Russell in April 1787 requesting that he bring a number of his troops to Virginia to defend them from what he implies is an impending attack by the Franklinites. He speaks repeatedly of “an intestine war” that he is convinced is going to take place in the near future, saying that he has applied to the Federal Government for soldiers to be brought, but that he fears they will not arrive in time to protect the people of his state from the Franklinites.¹² Though no movements like the State of Franklin had been experienced by anyone in colonial America to this point, other than the American Independence movement in a much broader sense perhaps, Shelby makes the statement that “these unprovoked insurrections seem to have a tendency... to dissolve even the very bands of the Federal Union.”¹³ This letter shows the

¹¹ “To Thomas Jefferson From Patrick Henry,” 10 September 1785, *Founders Online*, <https://founders.archives.gov>, accessed 15 September 2018.

¹² “Evan Shelby to Brig. Gen’L Russell,” 27 April 1787, *Calendar of Virginia State Papers and Other Manuscripts*, ed. William P. Palmer, Vol. 4 (Richmond, VA: Virginia State Public Printing, 1884), 274-275.

¹³ *Ibid.*

increasing popularity behind the belief that Franklin not only threatened North Carolina, but was also a threat to the entire United States as an implication. This fear was only amplified by the fact that members of the initial Franklinite assembly that had voted towards independence from North Carolina had done so claiming to be under many of the same motivations as those men who had written the Declaration of Independence from England.¹⁴

Anti-Franklin sentiments were often spread by basing arguments on circumstantial or fabricated evidence. For example, Governor Shelby claims in his letter to Brigadier General Russell that the Franklinites were engaged in such fierce antagonism with the Cherokee that they would undoubtedly start a war that would erupt over into an American-Indian war.¹⁵ However, the Franklinites had been working for years at living peaceably with the local Cherokee, and had achieved several peace treaties with them, most notably including the “Treaty of Amity and Friendship” signed in 1785.¹⁶ Shelby also lends credence to the idea that the Franklinites were renegades unwilling to communicate with established states, leaving them in a constant state of ignorance as to when or where they might be attacked. To the contrary, only a month prior Shelby had met with John Sevier to make an agreement on the “propriety and legality of the State of Franklin.” This agreement had been specifically regarding desires for “peace, tranquility, and good decorum” on the part of both signatories.¹⁷ Nevertheless, this sort of panic appears to have been the normal reaction of those members of American government authority to the Franklin movement. William Grayson, a senator from Virginia, relayed Shelby’s call for military

¹⁴ James G.M. Ramsey, *The Annals of Tennessee to the End of the Eighteenth Century* (Charleston, NC: John Russell, 1853), 287.

¹⁵ “Evan Shelby to Brig. Gen’L Russell,” 27 April 1787, *Calendar of Virginia State Papers and Other Manuscripts*, ed. William P. Palmer, Vol. 4 (Richmond, VA: Virginia State Public Printing, 1884), 274-275.

¹⁶ George H. Alden, “The State of Franklin”, *The American Historical Review*, Vol. VIII, No. 2 (January 1903): 284.

¹⁷ “Articles of Agreement between North Carolina and Franklin [state],” 20 March 1787, *Documenting the American South*, “Colonial and State Records of North Carolina,” ed. Walter Clark, Vol. 22 (Raleigh, NC: Printer to the State, 1899), 674-675, <https://docsouth.unc.edu>, accessed 26 September 2018.

protection to Congress on 12 June 1787. He went on to claim that if such dismemberments of states were permitted, then the entire nation was endangered because whole states would be reduced “to the size of a county or parish.”¹⁸ The point that Grayson and Shelby were making was clear. If Congress legitimized the way in which Franklin had established itself, it would prove dangerous and threatening to the entire Union. However, if North Carolina had ever endorsed the Franklin movement and consented to their departure, there would have been no practical difference between the members of that quasi-state and its Kentucky neighbor. This lone difference was recognized even by those in the State of Franklin during its short existence. David Campbell, a respected judge in North Carolina, wrote to Governor Richard Caswell on behalf of the Franklinites, saying, “We really thought you in earnest when you ceded us to Congress; If you then thought we ought to be separate [sic], or you now think we ever ought, Permit us to compleat [sic] the work that is more than half done.”¹⁹ These comments echo the sentiment that William Coker is shown to have held after the initial statehood rejection of the state of Franklin by the Confederation government. The Franklinites appear to have not had any doubt that the North Carolina legislature would eventually consent to their departure, as they felt was evidenced by the Cession Act. What many Franklinites did not understand, or possibly did not know, was the cause of the repeal of the Cession Act. In 1783, many of the wealthiest and most prominent members of North Carolina’s legislature took part in what has come to be known as the “Great Land Grab,” in which they privately purchased over four million acres of land west of the Appalachian Mountains. They had also conveniently stipulated in the Cession Act that all

¹⁸ “William Grayson to Beverly Randolph,” 12 June 1787, in *Letters of Delegates to Congress*, ed. Paul H. Smith, Vol. 24 (Washington D.C.: Library of Congress, 1976), 327.

¹⁹ “Letter from David Campbell to Richard Caswell,” 30 November 1786, *Documenting the American South*, “Colonial and State Records of North Carolina,” ed. Walter Clark, Vol. 22 (Raleigh, NC: Printer to the State, 1899), 651, <https://docsouth.unc.edu>, accessed 26 September 2018.

land titles currently held in those regions would remain valid after the Confederation government accepted the cession.²⁰ This plan went awry when the citizens on the west side of the mountains began to assemble themselves into a new state, voiding North Carolinian claims to those lands and issuing land titles to inhabitants applying to the new state government. Hence, the Cession Act was repealed during the very next legislative cycle. Franklin's pleas for consent were then left unheeded, and Campbell's letter serves as confirmation that even those who advocated for Franklin's separation recognized the national trend that legislators would only recognize new states that had received consent to form from their parent state.

The legal repercussions of the Franklin movement are noticeable despite the fact that the entity was never recognized by any state as a legal union. The very prospect of its inclusion in the Union provoked a conversation that resulted in several of these legal changes directly. For example, Nathaniel Gorham, who had recently served as President of the Confederation Congress, was debating Luther Martin, a delegate from Maryland, over the equality of voting rights between states. Martin argued that having two representatives from each state would invest decision making abilities in too few men to be rightly representing the nation. Gorham countered by stating, "The number of states will also increase. Kentucky, Vermont, the Province of Mayne [sic] and Franklin will probably soon be added to the present number." He further asserts that the larger states will be divided.²¹ Coupling Franklin with the prospect of dividing up the current states indicates the mindset that the founders had regarding the movement as a whole. This was

²⁰ Michael Toomey, "State of Franklin," *Tennessee Encyclopedia*, <https://www.tennesseeencyclopedia.net>, accessed 5 December 2018.

²¹ "Madison Debates," 23 July 1787, *The Avalon Project*, "18th Century," <https://avalon.law.yale.edu>, accessed 13 October 2018.

not a new state. Rather, this was a portion of an established state dividing itself off. Martin supported such an idea, but the remainder of the founders did not.

The prospect of portions dividing themselves and being equally represented concerned the men of large and powerful states, such as Gouverneur Morris from New York. These concerns prompted Morris to make motion after motion concerning an Article of the new Constitution regarding the admission of new states. On 29 August 1787, Morris moved to strike any verbiage that would imply that new states would be admitted with equal rights as the original states. The minutes from this meeting record that “Mr. Govr Morris did not mean to discourage the growth of the Western Country. He knew that to be impossible. He did not wish however to throw the power into their hands.” Morris’ motion was approved with nine votes in favor and only two votes opposed. He immediately also moved to strike the requirement to have a two-third majority vote to admit a state, and replace it with the following as a substitute:

New States may be admitted by the Legislature into this Union: but no new State shall be erected within the limits of any of the present States, without the consent of the Legislature of such State, as well as of the General Legislature.²²

This proposition followed naturally only if the State of Franklin was in mind. No other conflict had so greatly grasped the minds of legislators over consent from the parent-state as the Franklin movement. Luther Martin objected to this proposition, claiming that nothing would so staunch the growth of the western lands as requiring the consent of the current states. He went on to ask whether it would be right if “Vermont be reduced by force in favor of the States claiming it? Frankland and [Kentucky] in a like situation.” He raised the concern that the Union would one day be forced to either defend new states from overpowered established states, or defend its

²² Max Farrand, ed., *The Records of the Federal Convention of 1787*, Vol. 2 (New Haven: Yale University Press, 1911), 454-455.

original states from power-hungry new states. Thus, it becomes very important that the narrative surrounding Franklin and its inhabitants, as relayed by Evan Shelby and William Grayson, is one of savagery and readiness to attack the Union itself. Consequently, Mr. Morris' motion passed with six in favor and five opposing.²³ New states were now legally required to obtain the consent of their parent-state in order to form.

This left Kentucky in the best position to be admitted to the Union, as they had already brought a resolution from Virginia towards their separation to Congress. However, concerns over the division of states still persisted, and they were told to wait until the new Constitution was formed to apply for statehood so that they could rest more certain on their being admitted on agreeable terms.²⁴ The fear of current states losing power to factions like Franklin had now taken such precedent in the minds of the founders that they were now unable to agree on even the admission of a state that they had all seemed content with admitting one year previous. Luther Martin appears to be the lone founder that had no hesitation in admitting new states. He continued to advocate for new states being able to present themselves for statehood without the consent of the original states until the ratification of the Constitution. In one such example, Martin gave a rousing speech in his home state of Maryland on 27 January 1788, in defense of these small western states. He argued that the Revolutionary War had not been fought in order that some states might exist freely while others served them without representation under a republican government. He further advocated the right of smaller and "independent states" to separate and demand their rights of representation when being treated with an "inequality of suffrage" within a larger state. In closing, he made reference to the fact that if new states were

²³ Ibid.

²⁴ "Edward Carrington to Thomas Jefferson," 10 November 1787, in *Letters of Delegates to Congress*, Vol. 24, 549-550.

subject to the consent of previous states, then established states would begin to be called upon to shed the blood of certain parts of other established states in order to maintain the cohesion of those regions to their parent-state.²⁵ Killing Americans because they sought governance that represented them more directly than their current government would be blatant hypocrisy in scarcely post-Revolutionary America. This position might have swung some away from their hesitance to admit new states if Gouverneur Morris had not returned to debate the issue. James Madison writes that Morris' return was a critical moment, as he revived doubts of new states deserving suffrage equality with the larger states.²⁶ Because of Morris' fervency in opposition of new states' equality, the pleas of Luther Martin failed to gain footing, and were ultimately silenced.

Despite having been assured of their admission, advocates from Kentucky began to show concern that the repercussions of the Franklin movement would result in the condemnation of all state divisions. John Brown, a harsh skeptic of Franklin and advocate for Kentucky, wrote to James Breckinridge, a delegate from Virginia, on 17 March 1788, saying, "I fear I shall meet with no small difficulty [sic] in obtaining the independence of [Kentucky]... it would throw another vote into the western or rather southern scale."²⁷ The latter portion of his comment indicates his awareness of opposition that was undoubtedly to come from Morris and others that feared a loss of voting power in established states. Brown's concerns are noticeably eased when a battle occurs between the militia of North Carolina and John Sevier in Franklin, resulting in the capture of Sevier's sons. Believing the Franklin movement to be nearing an end, Brown shows

²⁵ Jonathan Elliot, ed., *The Debates in the Several State Conventions of the Adoption of the Federal Constitution*, Vol. 1 (Washington, D.C.: Jonathan Elliot Publishing, 1836), 383-385, *Online Library of Liberty*, <https://www.oll.libertyfund.org>, accessed 26 September 2018.

²⁶ *Ibid.*, 508.

²⁷ "John Brown to James Breckinridge," 17 March 1788, in *Letters of Delegates to Congress*, Vol. 25, 16.

his desire to see Franklin dissolved by saying that all of those therein “deserve a more ignominious death.” He goes on to say that he intends to wait to propose Kentucky statehood again until “that business so important to our Western Country shall be finally settled,” referring to the Franklin movement as a whole.²⁸

The business was not completely settled though. As late as 17 June 1788, Alexander Hamilton spoke saying that Congress would continue to grow because “Vermont, Kentucky, and Franklin will probably become independent.”²⁹ The continuance of these breakaway states as a matter of concern contributed to the inclusion of Article IV: Section III of the Constitution, which reads almost identically with the proposition that Gouverneur Morris had made a year before:

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 Legislature of the States concerned as well as of the Congress.³⁰

Without the occurrence of the Franklin movement, fears over suffrage equality regarding the new states to be erected in the western frontier would never have been so tense. The presence of Franklin on the tips of the pens of founders like Thomas Jefferson, Alexander Hamilton, and Patrick Henry shows that there was undoubtedly an influential, albeit complex and multi-faceted, connection between the Franklin movement and the “New States Clause” that became Article IV: Section III of the United States Constitution. Even though the separation of Vermont was more directly related to the New York legislature with which Gouverneur Morris was related, it

²⁸ “John Brown to James Breckinridge,” 11 April 1788, in *Letters of Delegates to Congress*, Vol. 25, 45.

²⁹ Elliot, *The Debates in the Several State Conventions*, Vol. 2, 239, *Online Library of Liberty*, <https://www.oll.libertyfund.org>, accessed 26 September 2018.

³⁰ Elliot, *The Debates in the Several State Conventions*, Vol. 1, 14, *Online Library of Liberty*, <https://www.oll.libertyfund.org>, accessed 12 September 2018.

was the alleged potency for violence and bloodshed exhibited in Franklin that moved him to so fervently strive for the inclusion of a clause that would mandate parent-state consent for new states. His proposed clause would go on to serve as the predecessor for the final “New States Clause” included in the Constitution, which was signed off on by the same men that were so concerned with Franklin fracturing the integrity of the Union. Without the State of Franklin, and the subsequent rumors that circulated regarding it by its skeptics, Article IV: Section III of the Constitution would simply never have had a reason to be endorsed.

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