

THE NORTHWEST ORDINANCE

The United States is the only country in modern history that began its independent history as an empire. The treaty ending the War for Independence transferred about 510,000 square miles of land west of the Appalachian Mountains and east of the Mississippi River to the new United States. Land policy relating to this vast territory therefore became one of the most pressing problems of the early republic. States that had western land claims under colonial charters ceded their lands to the national government by 1784. This cleared the way for a national land policy, which was effected by the passing of the Land Ordinance of 1785 and the Northwest Ordinance in July 1787, at the same time that delegates in Philadelphia were debating a new Constitution for the United States.

The Northwest Ordinance, which Congress later gave the force and status of constitutional law, was essentially a conserving law. It guaranteed the rule of law and all the “rights of Americans” to settlers in the colonies, or territories as they were called. It provided a process for achieving representative government and equal statehood. And it insisted that the original states be clones in the wilderness—the basic condition for statehood was that they had to submit acceptable republican constitutions to the Congress.

The Ordinance was also innovative in a way that made it perhaps the most complete statement of liberty authored by the Founding generation. It banned slavery from the territory and so set the precedent for the nation to complete its promise that liberty applied equally to all men.

13 JULY 1787

An Ordinance for the Government of the Territory of the United States North West of the river Ohio

Be it ordained by the United States in Congress assembled that the said territory for the purposes of temporary government be one district, subject, however,

Roscoe R. Hill, ed., *Journals of the Continental Congress, 1774–1789* (Washington DC: Government Printing Office, 1936), XXXII: 334–43.

to be divided into two districts as future circumstances may in the opinion of Congress make it expedient.

5 Be it ordained by the authority aforesaid that the estates both of resident and non-resident proprietors in the said territory dying intestate shall descend to and be distributed among their children and the descendants of a deceased child in equal parts; the descendants of a deceased child or grand-child to take the share of their deceased parent in equal parts among them; and where there shall be no children or descendants, then in equal parts to the next of kin in equal degree, and among collaterals the children of a deceased brother or sister of the
10 intestate shall have in equal parts among them their deceased parent's share, and there shall in no case be a distinction between kindred of the whole and half blood; saving in all cases to the widow of the intestate her third part of the real estate for life, and one third part of the personal estate; and this law relative to descents and dower shall remain in full force until altered by the legislature of the district. And until the governor and judges shall adopt laws as hereinafter
15 mentioned estates in the said territory may be devised or bequeathed by wills in writing signed and sealed by him or her in whom the estate may be, being of full age, and attested by three witnesses, and real estates may be conveyed by lease and release or bargain and sale signed, sealed, and delivered by the person
20 being of full age in whom the estate may be and attested by two witnesses provided such wills be duly proved and such conveyances be acknowledged or the execution thereof duly proved and be recorded within one year after proper magistrates, courts, and registers shall be appointed for that purpose and personal property may be transferred by delivery saving, however, to the French
25 and Canadian inhabitants and other settlers of the Kaskaskies, Saint Vincent's, and the neighboring villages who have heretofore professed themselves citizens of Virginia, their laws and customs now in force among them relative to the descent and conveyance of property.

30 Be it ordained by the authority aforesaid that there shall be appointed from time to time by Congress a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress; he shall reside in the district and have a freehold estate therein in one thousand acres of land while in the exercise of his office. There shall be appointed from time to time by Congress a secretary, whose commission shall continue in force for four years,
35 unless sooner revoked; he shall reside in the district and have a freehold estate therein in five hundred acres of land while in the exercise of his office. It shall be his duty to keep and preserve the acts and laws passed by the legislature and the public records of the district and the proceedings of the governor in his executive department and transmit authentic copies of such acts and proceedings every

six months to the Secretary of Congress. There shall also be appointed a court, to consist of three judges, any two of whom to form a court, who shall have a common law jurisdiction and reside in the district and have each therein a freehold estate in five hundred acres of land while in the exercise of their offices, and their commissions shall continue in force during good behavior. 5

The governor and judges, or a majority of them, shall adopt and publish in the district such laws of the original states criminal and civil as may be necessary and best suited to the circumstances of the district and report them to Congress from time to time, which laws shall be in force in the district until the organization of the general assembly therein, unless disapproved of by Congress; but afterwards the legislature shall have authority to alter them as they shall think fit. 10

The governor for the time being shall be commander-in-chief of the militia, appoint and commission all officers in the same below the rank of general officers; all general officers shall be appointed and commissioned by Congress.

Previous to the organization of the general assembly, the governor shall appoint such magistrates and other civil officers in each county or township, as he shall find necessary for the preservation of the peace and good order in the same. After the general assembly shall be organized, the powers and duties of magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers, not herein otherwise directed shall during the continuance of this temporary government be appointed by the governor. 15 20

For the prevention of crimes and injuries, the laws to be adopted or made shall have force in all parts of the district and for the execution of process criminal and civil, the governor shall make proper divisions thereof, and he shall proceed from time to time as circumstances may require to lay out the parts of the district in which the Indian titles shall have been extinguished into counties and townships subject, however, to such alterations as may thereafter be made by the legislature. 25

So soon as there shall be five thousand free male inhabitants of full age in the district upon giving proof thereof to the governor, they shall receive authority with time and place to elect representatives from their counties or townships to represent them in the general assembly, provided that for every five hundred free male inhabitants there shall be one representative and so on progressively with the number of free male inhabitants shall the right of representation increase until the number of representatives shall amount to twenty-five, after which the number and proportion of representatives shall be regulated by the legislature; provided that no person be eligible or qualified to act as a representative unless 30 35

he shall have been a citizen of one of the United States three years and be a resident in the district or unless he shall have resided in the district three years and in either case shall likewise hold in his own right in fee simple two hundred acres of land within the same; provided also that a freehold in fifty acres of land
5 in the district having been a citizen of one of the states and being resident in the district; or the like freehold and two years residence in the district shall be necessary to qualify a man as an elector of a representative.

The representatives thus elected shall serve for the term of two years, and in case
10 of the death of a representative or removal from office, the governor shall issue a writ to the county or township for which he was a member, to elect another in his stead to serve for the residue of the term.

The general assembly or legislature shall consist of the governor, legislative council, and a house of representatives. The legislative council shall consist
15 of five members to continue in office five years, unless sooner removed by Congress, any three of whom to be a quorum and the members of the council shall be nominated and appointed in the following manner, to wit: As soon as representatives shall be elected, the governor shall appoint a time and place for them to meet together, and when met they shall nominate ten persons, resi-
20 dents in the district, and each possessed of a freehold in five hundred acres of land and return their names to Congress; five of whom Congress shall appoint and commission to serve as aforesaid; and whenever a vacancy shall happen in the council by death or removal from office, the house of representatives shall nominate two persons, qualified as aforesaid, for each vacancy and return their
25 names to Congress, one of whom Congress shall appoint and commission for the residue of the term, and every five years, four months, at least, before the expiration of the time of service of the members of council, the said house shall nominate ten persons qualified as aforesaid, and return their names to Congress,
30 five of whom Congress shall appoint and commission to serve as members of the council five years, unless sooner removed. And the governor, legislative council, and house of representatives shall have authority to make laws in all cases for the good government of the district not repugnant to the principles and articles in this ordinance established and declared. And all bills having passed by a majority in the house, and by a majority in the council, shall be referred to the governor
35 for his assent; but no bill or legislative act whatever shall be of any force without his assent. The governor shall have power to convene, prorogue, and dissolve the general assembly, when in his opinion it shall be expedient.

The governor, judges, legislative council, secretary, and such other officers as Congress shall appoint in the district shall take an oath or affirmation of fidelity

and of office, the governor before the President of Congress, and all other officers before the governor. As soon as a legislature shall be formed in the district, the council and house, assembled in one room, shall have authority by joint ballot to elect a delegate to Congress, who shall have a seat in Congress, with a right of debating, but not of voting, during this temporary government. 5

And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws, and constitutions are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments which forever hereafter shall be formed in the said territory; to provide also for the establishment of states and permanent government 10 therein, and for their admission to a share in the federal councils on an equal footing with the original states, at as early periods as may be consistent with the general interest,

It is hereby ordained and declared by the authority aforesaid that the following articles shall be considered as articles of compact between the original states 15 and the people and states in the said territory, and forever remain unalterable, unless by common consent, to wit,

Article the First. No person demeaning himself in a peaceable and orderly manner shall ever be molested on account of his mode of worship or religious sentiments in the said territory. 20

Article the Second. The inhabitants of the said territory shall always be entitled to the benefits of the writ of *habeas corpus* and of the trial by jury; of a proportionate representation of the people in the legislature, and of judicial proceedings according to the course of the common law; all persons shall be bailable 25 unless for capital offences, where the proof shall be evident, or the presumption great; all fines shall be moderate, and no cruel or unusual punishments shall be inflicted; no man shall be deprived of his liberty or property but by the judgment of his peers, or the law of the land; and should the public exigencies make it necessary for the common preservation to take any person's property, or to demand his particular services, full compensation shall be made for the 30 same; and in the just preservation of rights and property it is understood and declared; that no law ought ever to be made, or have force in the said territory, that shall in any manner whatever interfere with, or affect private contracts or engagements, bona fide and without fraud previously formed.

Article the Third. Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education 35 shall forever be encouraged. The utmost good faith shall always be observed

towards the Indians; their lands and property shall never be taken from them without their consent, and in their property, rights, and liberty, they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall from time to time
5 be made for preventing wrongs being done to them, and for preserving peace and friendship with them.

Article the Fourth. The said territory, and the states which may be formed therein shall forever remain a part of this Confederacy of the United States of America, subject to the Articles of Confederation, and to such alterations
10 therein as shall be constitutionally made; and to all the acts and ordinances of the United States in Congress assembled, conformable thereto. The inhabitants and settlers in the said territory shall be subject to pay a part of the federal debts contracted or to be contracted, and a proportional part of the expenses of government, to be apportioned on them by Congress, according to the same
15 common rule and measure by which apportionments thereof shall be made on the other states; and the taxes for paying their proportion shall be laid and levied by the authority and direction of the legislatures of the district or districts or new states, as in the original states, within the time agreed upon by the United States in Congress assembled. The legislatures of those districts, or new states,
20 shall never interfere with the primary disposal of the soil by the United States in Congress assembled, nor with any regulations Congress may find necessary for securing the title in such soil to the *bona fide* purchasers. No tax shall be imposed on lands the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents. The navigable waters leading
25 into the Mississippi and Saint Lawrence, and the carrying places between the same, shall be common highways and forever free, as well to the inhabitants of the said territory as to the citizens of the United States, and those of any other states that may be admitted into the Confederacy, without any tax, impost, or duty therefor.

30 Article the Fifth. There shall be formed in the said territory not less than three nor more than five states, and the boundaries of the states, as soon as Virginia shall alter her act of cession and consent to the same, shall become fixed and established as follows, to wit: The western state in the said territory shall be bounded by the Mississippi, the Ohio, and Wabash rivers; a direct line drawn
35 from the Wabash and post Vincents due north to the territorial line between the United States and Canada, and by the said territorial line to the lake of the Woods and Mississippi. The middle state shall be bounded by the said direct line, the Wabash from post Vincents to the Ohio; by the Ohio, by direct line drawn due north from the mouth of the Great Miami to the said territorial

line, and by the said territorial line. The eastern state shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania, and the said territorial line; provided however, and it is further understood and declared that the boundaries of these three states shall be subject so far to be altered, that if Congress shall hereafter find it expedient, they shall have authority to form one or two states in that part of the said territory which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan; and whenever any of the said states shall have sixty thousand free inhabitants therein, such state shall be admitted by its delegates into the Congress of the United States, on an equal footing with the original states in all respects whatever; and shall be at liberty to form a permanent constitution and state government, provided the constitution and government so to be formed shall be republican, and in conformity to the principles contained in these articles; and so far as it can be consistent with the general interest of the Confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the state than sixty thousand.

Article the Sixth. There shall be neither slavery nor involuntary servitude in the said territory otherwise than in the punishment of crimes, whereof the party shall have been duly convicted; provided always that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original states, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid.

Be it ordained by the authority aforesaid that the resolutions of the 23^d of April 1784 relative to the subject of this ordinance be, and the same are hereby, repealed and declared null and void.