HUGH HENRY BRACKENRIDGE
AND THE MISSISSIPPI QUESTION, 1786-1787
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Spain's decision to close the Mississippi River to foreign navigation at the end of the American Revolution caused a great deal of ill-feeling in Western Pennsylvania and aroused a distinct type of American back-country internationalism. Hugh Henry Brackenridge, better known at the end of his career as an associate judge of the Supreme Court of Pennsylvania and today as the sponsor of the Pittsburgh Academy, predecessor of the University of Pittsburgh, was just beginning his political and legal career at the time. He used as his first and principal object for obtaining a seat in the Pennsylvania House of Representatives in 1786 the promise "to bring forward something on the subject of the navigation of the Mississippi River." 1

The western country, as a whole, and especially Pennsylvania's most western counties experienced during the Revolutionary War extensive economic advantages from an increasingly uninterrupted trade on the Mississippi River. Besides the usual free navigation under the Treaty of 1763, Spain granted special navigational rights to the Americans to help them defeat the British after 1779. At the end of the war the frontiersmen expected to enrich considerably their area in the Confederation by continuing and extending their trade on the western rivers undisturbed by savages or Spaniards. "After some twenty years of usage, Americans had come to regard free navigation of the Mississippi as one of their inalienable rights." 2 In his home area of Pittsburgh, Brackenridge calculated "that a farm in the neighbourhood of three rivers, was nearer the market of any part of the world, than a farm within twenty miles of Philadelphia." 3

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1 The Pittsburgh Gazette, April 28, 1787.
3 Gazette, April 28, 1787.
The prospect of a growing prosperity in the West influenced many Pennsylvanians to sell their property in the eastern part of the state and buy lands in Westmoreland, Fayette, and Washington, the counties west of the Alleghenies. The closure of the Mississippi halted their hopes for economic advancement. Besides his interest in the Mississippi, Brackenridge promised to protect their land titles and encourage Pittsburgh to the extent that "it be made a borough, that it have a seat of justice, that it have a school endowed in it." Even though his domestic views were generally conservative and usually not acceptable to the frontier spirit of radicalism, Brackenridge easily split the radical slate and became one of Westmoreland's three representatives in Philadelphia during the Assembly's sessions of 1786-1787.

Rumors circulated throughout the western counties of Pennsylvania after 1784, when Spain closed the Mississippi to American navigation, that a treaty of commerce was imminent between the United States and Spain. In fact, Spain's closure was designed to force a settlement of certain questions at issue arising from the Anglo-American treaty of 1783, ending the Revolutionary War, and the subsequent treaty between Great Britain and Spain. John Jay, the Secretary for Foreign Affairs, told the Continental Congress on February 28, 1786, that "the United States will not have that navigation open to their citizens, unless by Arms, or by Treaty." Only the latter course was feasible, for during the summer of 1785 Congress had authorized Jay to discuss the entire affair with the encargado de negocios of Spain in the United States, Diego de Gardoqui. The western settlers believed that this projected treaty would recognize their right of navigating the Mississippi as unquestionable and make New Orleans a free port to this country. During the summer of 1786, however, they learned that the United States had entertained instead the idea of conceding by treaty with Spain the navigation of the Mississippi for a period of twenty-five years. Many westerners in

4 Ibid., September 9, 1786.
5 Russell J. Ferguson, Early Western Pennsylvania Politics (Pittsburgh, 1938), 64-65. Pittsburgh was then in Westmoreland County. Allegheny County was not created until September 24, 1788.
6 Journals of the Continental Congress, 1774-1789 (Washington, 1904-37), XXX, 86. Jay made only a short report to Congress at this time on his negotiations with Spain in order to answer A. Fowler's protest of October 1, 1785, "complaining that a boat which he had sent down the Mississippi was stopped at Natches by the Spaniards."
7 Gazette, September 9, 1786; April 28, 1787. The sense of Congress was twenty or thirty years. See Arthur Preston Whitaker, The Spanish-American Frontier: 1783-1795 (Boston, 1927; Gloucester: Peter Smith, 1962), 77.
North Carolina believed that a private separative “agreement with Spain was the only way in which the river could be opened to trade and the Indians called off from their war upon the settlements.” The conversation of their delegate in Congress, Dr. James White, with Gardoqui in August 1786 made Spain more adamant in its dealings with Jay.8

This was the state of affairs that aroused Brackenridge to leave his practice of the law for several terms and stand for election to the General Assembly of Pennsylvania. Unless the trade on the Mississippi could be opened shortly, he felt that the property which he had acquired and laid out in lands would remain for a considerable length of time “a miserable out-spot of the creation.” When he was elected to the legislature and arrived in Philadelphia on November 13, 1786, late for the first session, he went immediately to see his conservative allies in the Assembly from that city but received “no satisfaction from them.” Brackenridge realized then that “the Mississippi was an affair wrapt in mystery.” 9 He could not learn quickly from them the details of the proposed treaty or their feeling on the subject.

From the debates in Congress he determined that the issues of the treaty divided the states and that Pennsylvania’s delegation was formally “in favor of giving up the navigation of the western waters.” 10 Jay had told Congress in New York on August 13, 1786, that in order to get a good commercial treaty with peninsular Spain, the United States would have to forbear the navigation of the Mississippi for a number of years.11 On August 29, 1786, Congress revised his instructions and repealed by a vote of seven to five the resolution of August 25, 1785, which had required Jay in his negotiations with Spain “to stipulate the right of the United States to their territorial boundaries, and the free navigation of the Mississippi, from the source to the Ocean.” 12 James Madison, as late as April 25, 1787, insisted that the assent of nine states was required to pass this motion

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9 *Gazette*, April 28, 1787.
10 *Ibid*.
12 *Journals of the Continental Congress*, XXXI, 595-596. John Bayard, one of the leading merchants in Philadelphia, and Arthur St. Clair, a former prothonotary of Westmoreland County, unanimously cast Pennsylvania’s vote in the affirmative along with New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, and New Jersey. Maryland, Virginia, North Carolina, South Carolina, and Georgia opposed the motion.
because of the treaty requirement in the ninth section of the Articles of Confederation. While the amendment of Jay's original instructions was sustained on several occasions during 1786-1787 by the same seven states, the requirement of "nine" precluded the ratification of any treaty along the same lines.

Brackenridge wanted to bring the entire issue before the General Assembly and to procure a resolution of the House which would bind Pennsylvania's delegates, at least, to a contrary sentiment. He feared, however, to bring about a pointed debate or a vote on the issue by introducing a simple motion. Petitions were being circulated in the western counties, and he waited for one of these finally to arrive in Philadelphia from Fayette County before broaching the subject. Brackenridge presented this petition to the House on December 29, 1786, and "it was ordered to lie on the table" with the following report of its contents:

A petition from a number of the inhabitants of the western parts of this commonwealth was read, setting forth, that they have been informed that a vote had lately passed in the Congress of the United States, for giving up the trade of the Mississippi, in lieu of other privileges of trade to be granted by the court of Spain, &c. and that the Delegates representing this state in Congress have joined in the said vote; that conceiving no people can long continue in mutual policy where their interests become separate, which will prove detrimental to the welfare of Pennsylvania, and perhaps to the United States in general, they therefore pray this House to take the premises into consideration, and give such instructions to their Delegates in Congress, as may be favorable to the interests of this country.

The report of this petition suggested the political realities of the day in the General Assembly. The conservatives, controlling the eastern part of the state, were in the majority and supported interests almost completely separate from those of the radicals who dominated the western part of the state. Under this set of circumstances, Brackenridge was unique — a conservative in the west championing a western demand without any visible eastern conservative or radical support. Neither side could ignore public opinion, however, and Brackenridge's petition was rescued overnight. It was read a second time on December 30, 1786, and turned over to a committee of three, consisting of two western members, William Findley and Alexander Wright, and George Clymer of Philadelphia. Wright, a radical from Washington County, was serving his first term in the Assembly, and Findley of

13 Ibid., XXXIII, 736-739.
14 Gazette, April 28, 1787; Minutes of the First Session of the Eleventh General Assembly of the Commonwealth of Pennsylvania (Philadelphia, 1786), 105.
15 Ibid., 108.
Westmoreland County was the radical "whip" in the House; Clymer was a conservative.

The first session of the Eleventh General Assembly closed on that same day with the second session due to begin in less than two months, and it was expected generally that the western members of the committee would then encourage discussion of the Mississippi question. Some thought, however, that a deal had been made between the radicals and conservatives to save face for the former on a western matter without enhancing Brackenridge's position as a western conservative or taking any action as required by his eastern allies on the petition. Brackenridge could not chance the committee's report. He drew up a favorable report and presented it to Findley, the chairman of the committee, upon their return to Philadelphia for the opening of the second session on February 20, 1787.16 Meanwhile in New York, Jay was making no headway with Spain on the matter. According to Gardoqui over a year later, no conferences at all were held after April 1787.17

Before the second session opened, Clymer had already informed Brackenridge that he could not support or even encourage the intent of the petition, because the eastern mercantile interests did not want to jeopardize their trade with Spain for the sake of the radicals on the frontier. During this second session on March 1, 1787, the committee made its report. The two western radicals did not heed Brackenridge's unsolicited report and joined Clymer in reporting "that being strangers to the proposition said to be made, or to the measures taken in Congress relative to the navigation of the Mississippi to which the petition alludes, and on which it is founded, no information of any such being transmitted to this state, the committee have no sentiments to offer, or advice to give the house on the subject." 18

Brackenridge and Findley were bitter rivals in politics, and the former felt that Findley, as chairman of the committee, had purposely put an end to the affair of the Mississippi question with the hope that it would also put an end to Brackenridge's consequence in Westmoreland County. Brackenridge knew, however, that he had the support of the West behind him on the Mississippi question and would not let the affair drop. He introduced a series of amendments to the report and

16 Gazette, April 28, 1787; May 5, 1787.
18 Minutes of the Second Session of the Eleventh General Assembly of the Commonwealth of Pennsylvania (Philadelphia, 1787), 128; Gazette, April 28, 1787.
defended his position at length on March 8, 1787. Findley insisted that he could have done nothing else in the report, since the eastern conservatives were dead set against arousing public opinion in opposition to Spain’s closure of the Mississippi River. He did not want to bring the issue to a vote which the radicals would necessarily lose to the eastern conservative majority in the House led by Clymer on this issue. Instead, he wanted to keep the question “before the house ready for further discussion any day that information could be obtained.”

Brackenridge, on the other hand, wanted to pursue the issue immediately. With his amending resolutions before the House, he took the floor and prefaced his introductory address on the Mississippi business with the remark that “it must be well known that the navigation of this river is actually impeded, nay wholly prohibited by Spain.” Brackenridge knew that Jay had yielded to the Spanish minister, in lieu of certain commercial advantages, the navigation of the river and felt that Bernardo de Gálvez, formerly un ministro de las Indias and viceroy of Mexico from 1785 until October 15, 1786, was responsible for “the policy of Spain to exclude foreigners from the commerce of the American colonies — a ruthless and disconsolate policy, which preserves a few mines, but a barren and desolate country to herself.” Brackenridge then pointed out that Virginia had direct intelligence on the subject from Congress and had already instructed her delegates to resist the continued closure of the Mississippi River. He questioned the responsibility of Pennsylvania’s delegates and said that they had insisted to him “that the business was a secret.”

If the General Assembly was against the closure of the Mississippi, Brackenridge announced that it was necessary to bind Pennsylvania’s delegates to that sentiment. This opened another topic of consideration, because many members of the House insisted that any instructions to the state’s representatives in Congress would have a doubtful validity. Brackenridge defended the legality of such instructions from Montesquieu, in his chapter on the English constitution, where he wrote that “there can be no doubt where the body represented is an independent power and has complete government within itself.”

Brackenridge then considered the right of discovery upon which principle the delegates defended their vote of August 29, 1786. He said that they were wrong and summed up his argument on this point with the following reasoning: “We will now use this language and say to

19 Ibid., September 22, 1787.
Spain, you are unjust, and may as well deprive us of the great elements of light and air, as of this river. Shall I not taste because another has drunk? Shall I not breathe because another has breathed before me? Shall I not see because a ray of light has first touched your eye?"

He insisted that, "we have a right to use this river even against the first occupants . . . . The right is ours on the principle of treaty and convention." Brackenridge explained that when France ceded the Floridas to Great Britain on February 10, 1763, the free navigation of the Mississippi River was stipulated. He felt that the American colonies did not lose this right when they signed the Declaration of Independence. In fact, the treaty between the United States and Great Britain of September 3, 1783, recognized the right of American citizens in the free navigation of the Mississippi River before the cession of the Floridas to Spain. "On every principle, therefore, the law of reason, the law of nations, the usage and custom of nations, by treaty and convention the right is ours."

With regard to the commercial advantages advanced by Jay, Brackenridge pointed out that the merchants of Philadelphia feared New Orleans only as a rival. He said that the western country will be the officina gentium, "the birth place of nations, where millions yet unborn shall exist." The real potential wealth of Philadelphia and the seaboard area was in the interior and not overseas. Brackenridge typified the world isolation and self-sufficiency which the West was to feel so dominantly in the nineteenth century. He said that "not until the population of the western country is extended will even Philadelphia become a great city." He told the House, however, that in his important area "the whole country languishes, the wheat of last year lies in the barn, there is no object to prompt industry, and we are sinking to the pastoral and bordering on the barbaric state."

Brackenridge then exhorted the Confederation to union, and his words rang through the State House in Philadelphia:

It is my voice that we instruct our delegates, that with firmness they expostulate with Spain on this point, and obtain an instant opening of this river to our trade. It is my voice, and there are two hundred thousand people on the west of the mountains (more inhabitants than there are in some of our states) who, were they present, would shout the same language.

But I conclude that it is the good policy of Spain to desist from this claim. Zimenes, her great minister, were he alive, would tell her so, and that it would be as easy to bid the floods of the Mississippi fall back to the source whence they spring, as to check or prevent our trade with the ocean.

It will be wise in this court to withdraw the proposition, compose the spirit of America, and give quiet to our minds.20

20 Ibid., May 5, 1787. A complete copy of his speech is also included in Brackenridge's Gazette Publications (Carlisle, 1806), 41-52.
After Brackenridge had finished speaking, Clymer jumped to his feet and moved that the amending resolutions be postponed. He observed, "that we were not in a situation to bring the resentment of the smallest power in Europe on us, much less that of so formidable a power as Spain; but if we were to run risks to serve one part of the community, on what grounds could the people of the western country expect this of the other part of the state; they who uniformly send men to that house, who oppose the commercial interest of Philadelphia and the lower parts of the state."  

Robert Whitehill of Cumberland County, the leader of the western radical opposition, then spoke to the House. He took more than a friendly attitude towards Clymer's remarks and suggested that the resolutions should be defeated rather than simply tabled for fear of resentment by Spain. Brackenridge was greatly flustered at this turn of events, because Whitehill had been instrumental in bringing the petition from Fayette County before the House a second time during the previous session of the Assembly. Clymer immediately withdrew his motion in favor of Whitehill's desire for a conclusive vote on the Mississippi question, and Brackenridge then hastened to argue for a postponement. At this point, Findley pleaded for a postponement in order to save the intent of the petition as he had originally planned. He asked to see the petition once more and held it up in the House in an attempt to reconcile himself with the East and the West — the conservatives and the radicals. Findley proclaimed dramatically: "It may have come from there, but I do not know any of the people."  

The motion to postpone carried the House, and the business rested. Brackenridge was still able to conclude, however, that his argument "had a good effect, on the Spanish agent; but if the resolutions had been carried, it would have put an end to the hope of Spain on this head; for it now lies with the delegates of Pennsylvania to give the casting voice."  

The vote did not come during the remainder of the period of the Confederation. On May 9, 1787, Jay asked a nearly defunct Congress in vain for express instructions on further negotiation of the Mississippi question. Although Gardoqui remained in the United States for two  

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21 Ibid.
22 Ibid.
23 Ibid.; Minutes of the Second Session of the Eleventh General Assembly, 140.

Editorial comment reported that Brackenridge's speech "on the Mississippi, shew him to be an enlightened and sensible legislator. It was admired by good judges, and thought to be equal to any of the speeches of Pitt and Fox in the house of commons in England." See Gazette, April 14, 1787.
more years to deal mainly with Whitehill, neither they, Jay, nor the Pennsylvania delegates had much effect on the outcome.24

The drafting and ratification of the Federal Constitution of 1787 forced Jay to recommend on September 16, 1788, that the "negotiations pass over in their present state to the new government." He said that American rights were "clear and absolute" but argued against the use of the term "inalienable." The Continental Congress agreed and resolved "that the free navigation of the River Mississippi is a clear and essential right of the United States, and that the same ought to be considered and supported as such." 25 Anticipating the adoption of the new constitution by all of the states, especially North Carolina, and the transfer of western problems from state or back-country internationalism to purely national interest, Spain relented in late 1788 and allowed the United States to navigate the Mississippi River upon the payment of a fifteen per cent duty. The free navigation of the river which Brackenridge demanded in 1786-1787 was finally achieved in 1795 by the Treaty of San Lorenzo el Real, which was ratified unanimously in the Senate of the United States.

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24 Bemis, 102 ff.
IN COMMEMORATION

GIFT

FROM

ROBERT D. CHRISTIE

IN MEMORY OF

THOMAS RUSH ALEXANDER, B.A., M.A., Ph.D.
Professor of Chemistry, Carnegie-Mellon University (retired)
who died at his home in Pittsburgh
Tuesday, September 7, 1971

GIFT

FROM

MRS. C. W. W. ELKIN

IN MEMORY OF

DR. C. W. W. ELKIN