

# ABUNDANCE CONSTITUTIONALISM: HERALDING AN AGE OF LIBERTY BY LEARNING FROM THE NATION'S FOUNDATIONAL LEGAL DOCUMENTS

KEVIN FRAZIER\*

## ABSTRACT

This Article advocates for a shift from an age of law to an age of liberty, drawing lessons from foundational legal documents to champion an “Abundance Agenda” for modern governance. It critiques the proliferation of laws that constrain liberty and highlights how zoning regulations, occupational licensing, and permitting barriers perpetuate scarcity, stifling opportunities for Americans to move, work, and prosper. By revisiting the Northwest Ordinance of 1787, this Article explores how its principles of anticipatory governance, emphasis on supply-side interventions, and commitment to individual and collective flourishing exemplify a blueprint for fostering liberty.

The Ordinance’s structured yet scalable approach to territorial development, protection of property rights, and investment in public education underscores a historical commitment to enabling human potential. These efforts align with the Abundance Agenda’s goals of dismantling scarcity, leveraging government and private sector partnerships, and diffusing opportunity broadly.

Among other contributions to ongoing legal and policy debates, this Article introduces legal scholars to the Abundance Agenda, grounding it in the nation’s constitutional tradition, and calls for renewed engagement with the Northwest Ordinance as an underappreciated legal text. By embracing principles of liberty and abundance, modern policymakers can unlock pathways to individual flourishing and collective prosperity, addressing the persistent challenges of scarcity with foresight and purpose.

---

\*Kevin Frazier is the AI Innovation and Law Fellow at the UT Austin School of Law, a Contributing Editor at the Lawfare Institute, and author of *Appleseed AI*. He previously served as an Assistant Professor at St. Thomas University College of Law.

I. INTRODUCTION .....	198
II. ABUNDANCE AND THE NORTHWEST ORDINANCE .....	203
A. HISTORY OF THE NORTHWEST ORDINANCE.....	206
B. PRINCIPLES OF ABUNDANCE IN THE NORTHWEST ORDINANCE .....	211
1. <i>Effective, Future-oriented Governance</i> .....	211
2. <i>Emphasis on Supply</i> .....	216
3. <i>Incentivizing Productive Citizens</i> .....	222
III. CONCLUSION.....	231

## I. INTRODUCTION

“We are living in an age of law.”<sup>1</sup> We have been for some time. We should aspire to instead live in an age of liberty. The two are generally not compatible. “Law limits liberty.”<sup>2</sup> To the extent any law is warranted, it ought to protect or further liberty.<sup>3</sup> However, that is commonly not the case.<sup>4</sup> Laws, regulations, and rules today seem to entrench a status quo in which only a fraction of Americans feel free to take risks, move to opportunity, and provide for themselves, their loved ones, and their communities.<sup>5</sup> A few examples confirm how overreliance on law has diminished liberty. Zoning regulations have pinched the supply of housing, *forcing* low-income Americans to

---

1. Josiah W. Bailey, *On Law and Liberty*, 4 N.C. L. REV. 104, 109 (1926); cf. KARL LLEWELLYN, *THE BRAMBLE BUSH* 119 (1951) (quipping that students at many law schools learn that “for too much law, more law will be the cure”).

2. Bailey, *supra* note 1, at 108.

3. *Id.*

4. *Id.*; see Richard V. Reeves & Dimitrios Halikias, *How Land Use Regulations Are Zoning Out Low-Income Families*, BROOKINGS (Aug. 16, 2016), <https://www.brookings.edu/articles/zoning-as-opportunity-hoarding/> [<https://perma.cc/M29R-P8X2>]; Daniel A. Farber, *Inequality and Regulation: Designing Rules to Address Race, Poverty, and Environmental Justice*, AM. J. L. & EQUAL., Sept. 15, 2023, at 2 *passim*.

5. See Casey B. Mulligan, *Special Interests Hide Behind Regulatory Myths*, PROMARKET (Aug. 11, 2020), <https://www.promarket.org/2020/08/11/special-interests-hide-behind-regulatory-myths/> [<https://perma.cc/MS5U-7UK2>] (“More common are non-environmental regulations protecting special interests . . . such as trial lawyers, large health insurance companies, online advertisers, car companies, labor unions, and manufacturers of generic drugs.”); Diana Thomas, *Regressive Effects of Regulation*, MERCATUS CTR. (Nov. 27, 2012), <https://www.mercatus.org/students/research/working-papers/regressive-effects-regulation> [<https://perma.cc/9RUR-CJJS>] (“Regulation focused on small risks delivers benefits to a limited group but spreads the costs across everyone. As a result, regulation effectively transfers money from low-income households, who need to prevent larger risks, to high income households, who are concerned about small risks.”).

uproot themselves.<sup>6</sup> Occupational licensing regimes have created artificial, unnecessary barriers to certain jobs, *limiting* the ability of Americans to pursue meaningful work.<sup>7</sup> Permitting hurdles hinder the development of new energy sources, *compelling* Americans to needlessly pay more on their utility bills.<sup>8</sup> In each of these cases the public would experience greater liberty from fewer laws—the liberty to move to an affordable home in a new area, to seek out a career of their choice, to spend more of their hard-earned dollars as they see fit.

Since at least 1926,<sup>9</sup> observers of our constitutional order have warned that “we have come into an [sic] universal habit of invoking” the law without taking sufficient care to ensure the net effect is the promotion and extension of liberty.<sup>10</sup> This century-long proliferation of law has constrained, rather than facilitated individual liberty. Too few Americans today experience real liberty. Though susceptible to many definitions, liberty is defined narrowly here to refer to the right to acquire, possess, and protect property, which was explicitly set out in several state constitutions at the time of the Founding and was and is implicitly provided for by the U.S. Constitution.<sup>11</sup> In particular,

---

6. Vittorio Nastasi, *Land-Use Regulations Drive Up the Cost of Housing and Hamper Economic Mobility*, REASON FOUND. (May 18, 2022), <https://reason.org/commentary/land-use-regulations-drive-up-the-cost-of-housing-and-hamper-economic-mobility/> [https://perma.cc/RL3E-M4LX].

7. See Edward Rodrigue & Richard V. Reeves, *Four Ways Occupational Licensing Damages Social Mobility*, BROOKINGS (Feb. 24, 2016), <https://www.brookings.edu/articles/four-ways-occupational-licensing-damages-social-mobility/> [https://perma.cc/YQC2-SU4B].

8. See Lauren Bauer et al., *Eight Facts About Permitting and the Clean Energy Transition*, HAMILTON PROJECT (May 22, 2024), <https://www.hamiltonproject.org/publication/economic-fact/eight-facts-permitting-clean-energy-transition/> [https://perma.cc/W9CR-P6T2].

9. Concerns about an excess of laws predate 1926. The Constitution, though, was intended to curtail such excesses. Consider, for instance, Madison’s celebration of the Constitution’s prohibition on bills of attainder and ex-post-facto laws in THE FEDERALIST NO. 44 (James Madison) (“The sober people of America are weary of the fluctuating policy which has directed the public councils. They have seen with regret and indignation that sudden changes and legislative interferences, in cases affecting personal rights, become jobs in the hands of enterprising and influential speculators, and snares to the more-industrious and less-informed part of the community. They have seen, too, that one legislative interference is but the first link of a long chain of repetitions, every subsequent interference being naturally produced by the effects of the preceding. They very rightly infer, therefore, that some thorough reform is wanting, which will banish speculations on public measures, inspire a general prudence and industry, and give a regular course to the business of society.”). Madison and others who prevailed in the Revolution knew all too well the oppressive effects of excess law and the tendency for legislators to solve problems induced by laws by penning even more laws. They sought to stem that tendency by marking as off limits some of the most abused types of legislation. See *id.*

10. Bailey, *supra* note 1, at 109; cf. Robert S. Hill, *Federalism, Republicanism, and the Northwest Ordinance*, PUBLIUS, Autumn 1988, at 41, 45 (sharing Thomas Jefferson’s observation that government is the opposite of energetic, which is to say “inergetic”).

11. Bailey, *supra* note 1, at 104 (pointing out that “our word ‘[l]iberty’ is susceptible of a variety of aspects”). Though life, liberty, and property have often been identified as distinct values, it has been acknowledged since the days of Locke and Blackstone that liberty and property are intertwined. See Matthew J. Festa, *Property and Republicanism in the Northwest Ordinance*, 45 ARIZ. ST. L.J. 409, 424 (2013); Thomas West, *The Economic Principles of America’s Founders*:

law has quashed the ability of Americans to *acquire* property. This seemingly trivial right has an expansive meaning. It covers the ability of all to apply their mind, body, and talents to meaningful, productive ends.<sup>12</sup>

Modern conceptions of property rights have omitted the attention paid by the Founders to this variant of liberty.<sup>13</sup> Members of the Founding Generation did not aim to safeguard the accumulation of much by a few but instead wanted to provide everyone with a chance to tap into their “faculties,” earn property, and deploy that property toward individually and societally beneficial ends.<sup>14</sup> “It was quite out of the question that we should suffer ourselves to be overwhelmed with laws and our liberties to be impaired.”<sup>15</sup> What may have been true at the founding, though, has been forgotten.

At some point “we forgot that legislating is just the chief temptation, the besetting sin, of self-government.”<sup>16</sup> And, sin we have. In addition to the liberty-reducing legal regimes discussed above, current laws thwart many Americans from exercising rights to their own ideas,<sup>17</sup> accessing modern public transit,<sup>18</sup> and attending quality schools.<sup>19</sup> “In short we have been lulled into sleep by the false assurance that the form of a government is in itself a guarantee of liberty.”<sup>20</sup> Both form *and character* of government warrant the attention of those who seek to promote liberty.

---

*Property Rights, Free Markets, and Sound Money*, HERITAGE FOUND. (Aug. 30, 2010), <https://www.heritage.org/political-process/report/the-economic-principles-americas-founders-property-rights-free-markets-and> [<https://perma.cc/EJK9-3ABD>].

12. West, *supra* note 11.

13. See, e.g., ARI BERMAN, *MINORITY RULE* (2024).

14. West, *supra* note 11.

15. Bailey, *supra* note 1, at 109.

16. *Id.*

17. See, e.g., Ann Bartow, *Inventors of the World, Unite! A Call for Collective Action by Employee-Inventors*, 37 SANTA CLARA L. REV. 673 (1997); *Why Are We Screwing Over Researchers Who Make Innovative Discoveries?*, GOOD SCI. PROJECT (Mar. 4, 2024), <https://goodscienceproject.org/articles/why-are-we-screwing-over-researchers-who-make-innovative-discoveries/> [<https://perma.cc/T2KW-QFAP>].

18. Ralph Vartabedian, *How California’s Bullet Train Went Off the Rails*, N.Y. TIMES (Oct. 9, 2022), <https://www.nytimes.com/2022/10/09/us/california-high-speed-rail-politics.html>.

19. Hannah Schmid, *Chicago Teachers Union Killing Charter School Access for Many Families*, ILL. POL’Y (June 19, 2024), <https://www.illinoispolicy.org/chicago-teachers-union-killing-charter-school-access-for-many-families/> [<https://perma.cc/HC6P-UBRL>]; Sol Stern, . . . *and Why Unions Are Death on Charter Schools*, MANHATTAN INST. (Dec. 6, 1998), <https://manhattan.institute/article/and-why-unions-are-death-on-charter-schools> [<https://perma.cc/G7AU-KWXT>].

20. Bailey, *supra* note 1, at 109.

The Abundance Agenda, if embraced, would challenge the flawed character of the government that presided in the age of law. As originally outlined by Derek Thompson, this Agenda is built around the fact scarcity has come to define much of American life.<sup>21</sup> Writing in the middle of the pandemic, Thompson observed that “scarcity is . . . the story of the U.S. economy.”<sup>22</sup> He pointed to broken supply chains, insufficient labor supply, and a shortage of chips as immediately available evidence.<sup>23</sup> More generally, per Thompson, “America has too much venting and not enough inventing.”<sup>24</sup> His recommended solution was and is an agenda that would

harness the left’s emphasis on human welfare, . . . tap into libertarians’ obsession with regulation to identify places where bad rules are getting in the way of the common good, . . . [and] channel the right’s fixation with national greatness to grow the things that actually make a nation great.<sup>25</sup>

Others have picked up on the Agenda and framed it in less political terms.<sup>26</sup> A quick review of the Agenda’s broad tenets shows substantial overlap with the liberty embraced by the founders and worked into the constitutional order via the Northwest Ordinance. What the Abundance Agenda aims to correct is a government prone to inaction or, worse, to frustrate or delay societally-beneficial action.<sup>27</sup> As explained by Robert Saldin and Steven Teles, “[t]he state that America built in the 1960s and 1970s was, at its heart, regulative”; they continue, “its animating obsessions were things that it wanted to prevent from happening, such as racial and gender discrimination, nuclear disasters, highways through central cities, industrial accidents, dangerous toys, and environmental pollution.”<sup>28</sup> The Abundance Agenda corrects that status quo bias by “unleashing both the private sector and

21. Thomas Hochman, *Will Anyone Vote for Abundance?*, FOUND. FOR AM. INNOVATION (Oct. 11, 2024), <https://www.thefai.org/posts/will-anyone-vote-for-abundance> [<https://perma.cc/6KEY-W5U7>] (pinpointing Thompson’s article as the launch point for the Agenda). Some may contest that Thompson first introduced the concepts behind the Agenda. Whether that’s true does not have any bearing on the point of this essay. See Derek Thompson, *A Simple Plan to Solve All of America’s Problems*, ATLANTIC (Jan. 12, 2022), <https://archive.ph/X5n2E> [<https://perma.cc/AWN4-5BMM>].

22. Thompson, *supra* note 21.

23. *Id.*

24. *Id.*

25. *Id.*

26. See *What Is the ‘Abundance Agenda’ and What Does it Mean For You?*, STAND TOGETHER, <https://standtogether.org/stories/economy/abundance-agenda-how-more-housing-businesses-innovation-can-transform-america> [<https://perma.cc/8FGN-SU3N>] (last visited Feb. 15, 2025).

27. Robert Saldin & Steven Teles, *The Rise of the Abundance Faction*, NISKANEN CTR. (June 4, 2024), <https://www.niskanencenter.org/the-rise-of-the-abundance-faction/> [<https://perma.cc/AC9X-MNMT>].

28. *Id.* (emphasis omitted).

government[] to targeted ends.”<sup>29</sup> The Agenda’s plan is to “liberate government to creatively act on well-established public goals rather than tying it down with multiple procedural checks.”<sup>30</sup>

A focused, limited government that leaves as much power as possible to the people (and states) to solve shared problems is exactly what the Founders had in mind when they took on one of the era’s biggest challenges: creating a scalable, enforceable system of government in new territories.<sup>31</sup> This Article turns first to the Northwest Ordinance of 1787, one of the nation’s foundational legal texts,<sup>32</sup> as the best expression of how leading members of the Founding Generation echoed many of the principles of the Abundance Agenda.<sup>33</sup> This neglected legal charter—one of constitutional significance<sup>34</sup>—is an especially valuable window into what the Founders thought would serve as the ideal governance system.<sup>35</sup> The Ordinance “gave Congress the opportunity to create the conditions for its ideal republican society on an essentially blank political slate.”<sup>36</sup> They used that opportunity to spell out the principles and norms they thought formed the foundation of republican governance.<sup>37</sup>

---

29. *Id.* (emphasis omitted).

30. *Id.*

31. See George W. Geib, *The Land Ordinance of 1785: A Bicentennial Review*, IND. MAG. HIST., Mar. 1985, at 1, 1.

32. See Denis P. Duffey, *The Northwest Ordinance as a Constitutional Document*, 95 COLUM. L. REV. 929, 929 (1995) (pointing out that the Northwest Ordinance is included in the first volume of the United States Code alongside the Declaration of Independence, the Articles of Confederation, and the Constitution); see also James H. Madison, *Extending Liberty Westward: The Northwest Ordinance of 1787*, DEP’T OF EDUC. 3 (1987) (arguing that the Northwest Ordinance “belongs to the near-holy trinity of founding-era documents”); see also HOWARD W. PRESTON, DOCUMENTS ILLUSTRATIVE OF AMERICAN HISTORY, 1606-1863 240 (1886) (suggesting that the Ordinance “deserves to rank among immortal parchments both for what it accomplished and what it inspired”).

33. See Robert V. Remini, *The Northwest Ordinance of 1787: Bulwark of the Republic*, IND. MAG. HIST., Mar. 1988, at 15, 15 (“It is . . . difficult to come up with a piece of legislation passed by Congress under the Constitution that is as significant [as the Northwest Ordinance passed by the Confederation Congress].”).

34. See Bernard W. Sheehan, *Land and Liberty: The Ordinances of the 1780s*, OAH MAG. HIST., Fall 1987, at 8, 12 (“The Constitution established the broad legal frame for the American political order; the Ordinances provided for the indispensable means for the expansion of that order across the continent.”).

35. *Contra* James H. Madison, *Introduction: Special Section on the Land and Liberty*, OAH MAG. HIST., Fall 1987, at 8 (flagging that not all Americans of the time regarded the Ordinance as even close to an ideal document).

36. Festa, *supra* note 11, at 435.

37. See Matthew J. Hegreness, *An Organic Law Theory of the Fourteenth Amendment: The Northwest Ordinance as the Source of Rights, Privileges, and Immunities*, 120 YALE L. J. 1820, 1841-42 (2011) (listing principles in the Ordinance that do not appear in the Constitution); *cf.* Festa, *supra* note 11, at 415 (arguing that the Ordinance amounted to a “framework of order, security, and economic development for the expanding nation”). The so-called preamble of the Ordinance, Section thirteen, identifies the purpose of the document as “extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions, are erected.” NW. ORDINANCE § 13 (1787); see also John C. Eastman, *Reevaluating the Privileges or Immunities Clause*, 6 CHAP. L. REV. 123, 131 (2011).

This Article’s primary contribution is to introduce other legal scholars to the Abundance Agenda. The diverse set of bedfellows backing this Agenda in a major way suggests that it is going to be an increasingly important part of political discourse in the years to come.<sup>38</sup> Its second contribution is to ground that Agenda in the nation’s core legal tradition. Regardless of whether the author adheres to the Agenda, this effort serves a valuable civic purpose by reinforcing the merits of this emerging political movement and, as a result, prompting a richer, more diverse political discourse at a time of acrimony. Its final contribution is to push legal scholars to engage with the Northwest Ordinance. An “untapped resource” among legal scholars, the Ordinance has a wealth of information that may inform ongoing debates.<sup>39</sup>

## II. ABUNDANCE AND THE NORTHWEST ORDINANCE

Three things about the Northwest Ordinance warrant particular examination as evidence of an Abundance mentality. First, the Ordinance set forth an insistence on effective, popular governance. The Ordinance established simple, albeit imperfect governance templates to ensure order and liberty would characterize America’s frontier. The grid system for surveying and conveying land hastened the development and maturation of the majority of America’s states.<sup>40</sup> A more nuanced approach that, for example, took topography into effect may have been more tailored to local contexts but may have slowed progress on higher-level goals.<sup>41</sup> Likewise, a staged, explicit process of devolving more authority to residents of a territory (soon-to-be state) evidenced a desire among Congress to exercise no more oversight than necessary.<sup>42</sup> In Abundance parlance, the federal government avoided any sort of

---

38. See *Abundance 2024*, ABUNDANCE CONF., <https://www.abundanceconference.org> [<https://perma.cc/9W9H-8P3A>] (listing a slew of funders from across the ideological spectrum for an Abundance conference) (last visited Feb. 15, 2025).

39. Duffey, *supra* note 32, at 931; cf. Hegreness, *supra* note 37, at 1823 (introducing the Ordinance as “[l]argely forgotten”), 1827 (describing how scholars commonly bypass the Ordinance as a source of important evidence in constitutional interpretation); Festa, *supra* note 11, at 415 (noting that the Ordinance “has not been discussed at length”); but see Eli Nachmany, *The Irrelevance of the Northwest Ordinance Example to the Debate About Originalism and the Nondelegation Doctrine*, 2022 U. ILL. L. REV. ONLINE 17, 17-18 (2022) (contesting the idea that the Northwest Ordinance informs contemporary debates around the nondelegation doctrine).

40. Duffey, *supra* note 32, at 930 (noting that the Northwest Ordinance “set the pattern for territorial governance and statemaking that was ultimately applied to thirty-one of the fifty states”).

41. Cf. Geib, *supra* note 31, at 12 (explaining issues with land sales as a result of inadequate surveying technologies).

42. Cf. Duffey, *supra* note 32, at 939 (observing that the Ordinance of 1787 reduced the potential for congressional meddling by establishing a more definite pathway to statehood in comparison to the “shifting, uncertain standard” initially set forth in the Ordinance of 1784); Gregory Ablavsky, *Administrative Constitutionalism and the Northwest Ordinance*, 167 U. PA. L. REV. 1631, 1654 (2019) (explaining the founders’ desire to facilitate statehood).

vetocracy in which a small set of stakeholders could undermine the realization of a broader goal and need.<sup>43</sup>

Second, the Ordinance afforded residents multiple and novel means of *acquiring* property. The same grid system facilitated the alienability of land such that individuals of modest means could acquire a plot and put it to productive use.<sup>44</sup> Additionally, the Ordinance explicitly forbade territorial legislatures from unduly interfering with the pursuit and retention of property—thereby further incentivizing a productive, industrious citizenry.<sup>45</sup> The cumulative effect was to unleash a population keen to test new ideas, build new markets, and create new institutions.<sup>46</sup> From an Abundance mentality, an emphasis on acquisition spoke to a desire by the government to further human flourishing by allowing more people to experiment and invest in their individual and collective well-being.

Third, the Ordinance aimed to equip residents with the tools necessary to realize the full fruits of their faculties. The provision of public education aligned with that goal. Each township was to set a substantial amount of land aside for public education.<sup>47</sup> Additionally, the Ordinance mandated that the “means of education shall forever be encouraged.”<sup>48</sup> This clear direction and use of substantial public resources to invest in the future capacity of residents speaks to the desire of the founders to diffuse the latest knowledge and tools across the population. Guarantees of access to navigable waterways similarly

---

43. See, e.g., William Rinehart, *Vetocracy, the Costs of Vetoes and Inaction*, CTR. FOR GROWTH & OPPORTUNITY (Apr. 12, 2023), <https://www.thecgo.org/benchmark/vetocracy-the-costs-of-vetos-and-inaction/> [<https://perma.cc/6BDP-EYKE>].

44. Festa, *supra* note 11, at 441-42; see Gregory S. Alexander, *Time and Property in the American Republican Legal Culture*, 66 N.Y.U. L. REV. 273, 313 (1991) (emphasis omitted) (contending that the Northwest Ordinance furthered a Jeffersonian understanding of land policy, which centered on “autonomous land ownership”); see generally John G. Rice, *The Effect of Land Alienation on Settlement*, 68 ANNALS ASS’N AM. GEOGRAPHERS 61 (1978) (reviewing how inalienability altered the speed and nature of settlement, with a focus on Minnesota).

45. NW. ORDINANCE art. II (1787).

46. See Doug West, *The Northwest Ordinance of 1787: A Defining Moment in American History*, OWLCATION, <https://owlcation.com/humanities/the-northwest-ordinance-of-1787-a-defining-moment-in-american-history> (Dec. 24, 2024, 7:27 AM) (detailing how agriculture and infrastructure developed under the Northwest Ordinance); Michael Witgen, *Unthinkable History: Encounters in Native North America*, ORG. AM. HISTORIANS, <https://www.oah.org/tah/rethinking-encounters/unthinkable-history-encounters-in-native-north-america/> [<https://perma.cc/8LN6-RFLD>] (last visited Mar. 5, 2025) (analyzing how the Ordinance facilitated economic development); see, e.g., THE FEDERALIST NO. 44 (James Madison) (asserting that great protection of contractual and property rights would “inspire a general prudence and industry, and give a regular course to the business of society”).

47. *Land Ordinance of 1785*, IND. HIST. BUREAU, <https://www.in.gov/history/about-indiana-history-and-trivia/explore-indiana-history-by-topic/indiana-documents-leading-to-statehood/land-ordinance-of-1785/> [<https://perma.cc/V5WS-BTT9>] (last visited Mar. 5, 2025). This provision was originally delineated in the Land Ordinance of 1785 which became the “baseline of ideas” for the Northwest Ordinance. See Festa, *supra* note 11, at 430.

48. NW. ORDINANCE art. III (1787).



opened economic opportunities to a broad range of individuals and commercial ventures.<sup>49</sup>

More generally, the Ordinance embraced a focus on collective well-being. The aforementioned three attributes of the Ordinance aligned with a clear intention to foster the common good.<sup>50</sup> As summarized by Matthew Festa, “[t]he purpose of politics was to deliberate over, and ultimately achieve, the common good.”<sup>51</sup> It is important to recall this aspiration when interpreting the Ordinance’s provisions and its relevance to contemporary Abundance efforts. Individuals living under the principles of the Ordinance were expected to develop and apply their skills and property with the rest of the public in mind.<sup>52</sup> Early Americans aspired to embody and expand “public virtue,” or the “willingness of the individual to sacrifice his private interests for the good of the community.”<sup>53</sup> Abundance relatedly aspires to free individuals from a scarcity mindset that often induces self-centered thinking.<sup>54</sup>

Not all aspects of this review of the Northwest Ordinance perfectly align with modern conceptions of Abundance. I encourage and welcome feedback on which attributes of this critical period in American history best express the goals and strategies of Abundance. These are the early days of the Abundance Agenda, which guarantees that some readers will contest my conception of the movement and its applicability to the Ordinance. Before diving more thoroughly into each of those key areas of the Northwest Ordinance, it is worth outlining the history of the Ordinance to provide more context for these important policy decisions.<sup>55</sup>

49. Festa, *supra* note 11, at 461; see Dempster K. Holland, *National Growth Policy: Notes on the Federal Role*, 6 URB. L. ANN. 59, 63 (1973) (framing the Northwest Ordinance as an example of national economic growth policy).

50. See Festa, *supra* note 11, at 419.

51. *Id.*

52. *Id.* at 422-23 (“The Northwest Ordinance shows that protection of property was seen by eighteenth-century Americans as a key component in promoting the common good, by preserving economic order and by encouraging industrious, self-sufficient citizens to contribute to the common weal.”).

53. GORDON S. WOOD, *THE CREATION OF THE AMERICAN REPUBLIC, 1776-1787* 68-69 (2011).

54. See, e.g., Caroline Roux et al., *On the Psychology of Scarcity: When Reminders of Resource Scarcity Promote Selfish (and Generous) Behavior*, 42 J. CONS. RES. 615, 615 (2015); Will Rinehart, *We Need an Abundance Agenda*, DISCOURSE (Dec. 7, 2022), <https://www.discoursemagazine.com/p/we-need-an-abundance-agenda> [<https://perma.cc/QCP8-EU5X>]; Deven R. Desai & Mark A. Lemley, *Scarcity, Regulation, and the Abundance Society* 1 (Stan. L. Sch., Stan. L. & Econ. Olin Working Paper No. 572, 2023), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4150871](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4150871) [<https://perma.cc/WF9K-CPQB>]; cf. Dwight R. Lee, *Liberty and Individual Responsibility*, FOUND. FOR ECON. EDUC. (Apr. 1, 1987), <https://fee.org/articles/liberty-and-individual-responsibility/> (arguing that scarcity is the “most fundamental of economic problems” and that “[i]n a world without scarcity each of us could be entirely independent of others”).

55. *Northwest Ordinance of 1787*, FIVEABLE, <https://library.fiveable.me/key-terms/apush/northwest-ordinance-of-1787> [<https://perma.cc/46QU-2QSF>] (last visited Feb. 15, 2025); see Clarence E. Carter, *Colonialism in Continental United States*, 47 S. ATLANTIC Q. 17, 18 (1948) (discussing the likelihood that many Americans have little to no recollection of the

## A. HISTORY OF THE NORTHWEST ORDINANCE

All was not well in America immediately following the Revolution. Many farmers suffered from a collapse in farm prices and land values, for instance.<sup>56</sup> States and the central government found themselves in a financial hole after spending so much to win the Revolution.<sup>57</sup> Threats to national security loomed as the British, French, and Native Americans looked for weaknesses in the nascent nation's defenses.<sup>58</sup> Internal discord also posed a threat. Many Americans were actively conversing with foreign adversaries about forming new political communities outside of the authority of the United States.<sup>59</sup> A cash-poor Confederate Congress was keen to tap into the lands beyond the Appalachian Mountains ceded by states to at once stave off further financial decline<sup>60</sup> and stall encroachments by rival forces.<sup>61</sup> States, too, were amenable to ceding their claims to western lands if it meant improving their financial outlooks.<sup>62</sup> The Land Resolution of 1780 facilitated the cessation and made clear that the introduction of greater land supply was to serve specific ends: all ceded lands were to be used "for the common benefit of the United States," the lands were to form "distinct republican states," and all "unappropriated lands" were to be added to "ceded or relinquished."<sup>63</sup>

Thomas Jefferson attempted to act on those congressional aims with the Land Ordinance of 1784.<sup>64</sup> That ordinance, as summarized by Richard L.

---

Northwest Ordinance from their education); *see also* Festa, *supra* note 11, at 414 (observing that the historians and legal scholars have paid little attention to the Northwest Ordinance).

56. Tom Goldscheider, *Shays' Rebellion: Reclaiming the Revolution*, 43 HIST. J. MASS. 62, 69 (2015).

57. *Id.*

58. Remini, *supra* note 33, at 18; *see* Festa, *supra* note 11, at 433 (asserting that the early nation faced "military instability with British and French presences on the frontier, [and] hostile Native Americans"); ANDREW R.L. CAYTON, *The Northwest Ordinance from the Perspective of the Frontier*, in THE NORTHWEST ORDINANCE 1787: A BICENTENNIAL HANDBOOK 6 (Robert M. Taylor Jr. ed., 1987) (discussing the unsettled status of the frontier as a result of external forces and Native American tribes).

59. *See* Remini, *supra* note 33, at 18-23; William D. Adler & Andrew J. Polsky, *Building the New American Nation: Economic Development, Public Goods, and the Early U.S. Army*, 125 POL. SCI. Q. 87, 94 (2010).

60. Festa, *supra* note 11, at 427-29; *see* Carlton Basmajian, *Northwest Ordinance*, C-SPAN (Sept. 9, 2015), <https://www.c-span.org/program/american-history-tv/northwest-ordinance/413236> (emphasizing the cash-poor, land-rich status of the young nation).

61. *See* Remini, *supra* note 33, at 22 (observing that prior to passage of the Ordinance "[i]t 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").

62. *See* RICHARD L. PERRY, *SOURCES OF OUR LIBERTIES* 387-88 (1978) (explaining that "[e]xpenses incurred by the states in defending the western territory during the war were to be reimbursed by Congress when the lands were ceded").

63. 18 JOURNALS OF THE CONTINENTAL CONGRESS 1774-1789 915 (Gaillard Hunt ed., Washington Gov't Printing Off. 1910) (1780).

64. PERRY, *supra* note 62, at 388; *see* George H. Alden, *The Evolution of the American System of Forming and Admitting New States Into the Union*, 18 ANNALS AM. ACAD. POL. & SOC. SCI.

Perry, established some of the core ideas about how the early nation would treat residents in new territories. Rather than create a colonial relationship between western territories and eastern states, Jefferson “contemplated the eventual admission of new states into the Union on terms of equality with the older members.”<sup>65</sup> His plan outlined several principles (only some of which would later be replicated):

- (1) The new states should forever remain a part of the United States;
- (2) they should be subject to Congress and the Articles of Confederation;
- (3) they should pay their share of the revolutionary debts;
- (4) their governments should be republican in form; and (5) after 1800 slavery should be abolished.<sup>66</sup>

Three specific details of his plan also stand out. First, Jefferson would have allowed territories to craft their own constitution and constitute their own legislature as soon as they reached a population of 20,000.<sup>67</sup> Second, Jefferson envisioned creating as many as sixteen states from the territory.<sup>68</sup> Third, a territory could petition for statehood as soon as it achieved the population of the least populous original state.<sup>69</sup> When and *if* remote territories could reach that population level was an open question.<sup>70</sup> How to go about calculating and comparing populations was also left unanswered.<sup>71</sup> The petition would then need the approval by as many states “as may at the time be competent.”<sup>72</sup>

Those attributes sparked concerns among influential voices in early America. If adhered to, this plan would have allowed upwards of a dozen small states to have the same voice in the Senate as much larger states such as Virginia.<sup>73</sup> This possibility unsettled people like James Monroe who had

---

469, 475 (observing that though others served with Jefferson on the committee responsible for the Resolution it has been referred to as his plan because he was the chairman); *but see* Robert F. Berkhofer, *Jefferson, the Ordinance of 1784, and the Origins of the American Territorial System*, 29 WM. & MARY Q. 231, 231 (1972) (challenging the repeated presumption among historians that Jefferson authored the ordinance).

65. PERRY, *supra* note 62, at 388; *see* Festa, *supra* note 11, at 429 (“Americans chose to cast aside the colonial blueprint, and provide for the expansion of their union to new territories.”).

66. PERRY, *supra* note 62, at 388.

67. Hill, *supra* note 10, at 44.

68. *Id.*; *see* FREDERIC L. PAXSON, *HISTORY OF THE AMERICAN FRONTIER, 1763-1893* 62 (1924) (providing a map of some of Jefferson’s proposed states); *but see* Alden, *supra* note 64, at 476 (estimating fourteen states from his plan).

69. *See* Hill, *supra* note 10, at 44.

70. *Id.* at 45.

71. *Cf.* PAXSON, *supra* note 68, at 62-63 (summarizing Jefferson’s ordinance as proposing “loose and inadequate terms of admission”).

72. Alden, *supra* note 64, at 478.

73. *See id.* at 477.

thought long and hard about how to develop a sustainable federal system.<sup>74</sup> Others feared the plan would create a subset of small territories perpetually under the thumb of Congress, which did not include any representatives of that territory.<sup>75</sup> Nevertheless, the ordinance was passed.<sup>76</sup> However, it never went into effect.<sup>77</sup>

The issue of how best to populate, develop, and integrate the new lands was partially addressed the next year. In 1785, Congress agreed to a surveying system for how best to divide, survey, and sell the land.<sup>78</sup> Under this system, Congress outlined “uniform squares of property (sections and townships) in terms of a uniform set of coordinates,” and detailed the sales terms for the property therein.<sup>79</sup> The adopted grid system exemplified congressional practicality. The approach was far from nuanced. Topography, for instance, was not taken into consideration when outlining townships and sections within those townships.<sup>80</sup> Yet, it was easily implemental and well-suited to the task at hand. As described by Festa, “[e]verything was supposed to be uniform and described precisely on plats, in order to create the reliance and predictability in land titles that yeomen settlers would demand.”<sup>81</sup> Nevertheless, the Ordinance of 1785 did not unleash a wave of migration.<sup>82</sup> Few lands were surveyed and thus made available for purchase.<sup>83</sup> Moreover, attacks from Native Americans remained probable.<sup>84</sup>

---

74. Hill, *supra* note 10, at 44. Realization of this fear may have been the result of more close attention to the issue. As of the Land Resolution of 1780, the proposed sizes of ideal states may have resulted in as many as sixty new states east of the Mississippi. See Alden, *supra* note 64, at 471.

75. Hill, *supra* note 10, at 45; see Berkhofer, *supra* note 64, at 244 (enumerating some of the other goals and fears members of the Confederate Congress held with respect to new governments in western territories).

76. Festa, *supra* note 11, at 429.

77. PERRY, *supra* note 62, at 388; see Remini, *supra* note 33, at 19 (explaining that the 1784 ordinance “was not intended to take effect immediately”).

78. Festa, *supra* note 11, at 430.

79. *The Northwest and the Ordinances, 1783-1858*, LIBR. OF CONG., <https://www.loc.gov/collections/pioneering-the-upper-midwest/articles-and-essays/history-of-the-upper-midwest-over-view/northwest-and-ordinances/> [<https://perma.cc/EBD2-8JU3>] (last visited Feb. 17, 2025); PAXSON, *supra* note 68, at 63.

80. Basmajian, *supra* note 60; see also Kaushik Patowary, *The Jefferson Grid*, AMUSING PLANET (June 5, 2018), <https://www.amusingplanet.com/2018/06/the-jefferson-grid.html> [<https://perma.cc/XLA9-8FY9>] (providing a visual depiction of some of the flaws of the grid system brought on by diverse topographies); C. ALBERT WHITE, U.S. DEP'T OF THE INTERIOR BUREAU OF LAND MGMT., *A HISTORY OF THE RECTANGULAR SURVEY SYSTEM* 110 (1983), <https://www.blm.gov/sites/blm.gov/files/histrect.pdf> [<https://perma.cc/SRY5-AEY4>] (questioning the precision of elevation estimates in early surveying efforts given that the aneroid barometer was not invented until 1843); see Sheehan, *supra* note 34, at 10 (characterizing the land distribution system as being based on a “quite arbitrary rectilinear pattern”).

81. Festa, *supra* note 11, at 430.

82. See Geib, *supra* note 31, at 9.

83. See *id.*

84. See *id.* at 11.

This and other early efforts—characterized as “abstractions and skeletons” and “mere outlines” of ideas—were improved upon by the successful effort in 1787.<sup>85</sup> That iteration of the ordinance “aroused the zeal and stimulated the efforts of Congress in a more practical direction, and led to the adoption of acceptable lines of policy in organizing the ‘new state.’”<sup>86</sup> Congress was also quick to act for less lofty reasons: a financial windfall. The Ohio Company was eager to purchase millions of acres of land.<sup>87</sup> Congress was excited by the prospect of cashing that check.<sup>88</sup> In fact, Congress may have acted hastily in moving forward with the Ordinance.<sup>89</sup> Still, the net result was surely positive.

The Northwest Ordinance of 1787 incorporated the lessons learned from the 1784 ordinance and further expanded upon Congress’s conception of the ideal governance structure.<sup>90</sup> Again, it is worth noting that the empty territory addressed by the Ordinance gave Congress a chance to set forth its conception of an ideal governance structure.<sup>91</sup> Congress also had an incentive to provide that ideal—it is worth reiterating that the national coffers were counting on a wave of emigration to the frontier.<sup>92</sup>

One source of departure from Jefferson’s earlier model was the pathway to statehood. James H. Madison explains that under the updated ordinance

85. MABEL HILL, LIBERTY DOCUMENTS 242 (Albert Bushnell Hart ed., 1907) (quoting CUTLERS, LIFE OF REV. MANASSEH CUTLER 368-69 (1888)); see also PAXSON, *supra* note 68, at 63 (regarding Jefferson’s 1784 ordinance as providing for a “whimsical scheme for the partition of the Northwest.”).

86. HILL, *supra* note 85, at 242 (quoting CUTLERS, LIFE OF REV. MANASSEH CUTLER 368-69 (1888)); but see PERRY, *supra* note 62, at 388 (observing that Congress’s haste in 1787 reflected “the work of many years”).

87. See PERRY, *supra* note 62, at 388-89; PAXSON, *supra* note 68, at 65 (providing background information on the motives and members of the Ohio Company).

88. See Hill, *supra* note 10, at 47; Festa, *supra* note 11, at 431 (identifying the “twin goals” of the Ordinance as “establishing order and raising money off the new lands while promoting a republican expansion of the federal union”); Malcolm J. Rohrbough, “A Freehold Estate Therein”: *The Ordinance of 1787 and the Public Domain*, IND. MAG. HIST., Mar. 1988, at 46, 52 (“The economic condition of the new, independent nation was weak. The states were struggling under substantial debts and burdened in many places by the spreading disease of paper money.”). Individual members of the Confederate Congress were also keen to cash that check. Many of them had individual financial interests in western settlement. Geib, *supra* note 31, at 3.

89. Phillip R. Shriver, *Freedom’s Proving Ground: The Heritage of the Northwest Ordinance*, WIS. MAG. HIST., Winter 1988-89, at 126, 127 (“The principal reason for its passage on July 13, 1787, was the near bankruptcy of the federal treasury and the readiness of speculative land companies to take advantage of that distress by negotiating the purchase of great chunks of the public domain for pennies on the acre once government in the territories had been established.”).

90. See PAXSON, *supra* note 68, at 66 (characterizing the Ordinance as fulfilling the need for a “workable law”).

91. These lands were not empty in any regard. Native Americans developed robust economies, governments, and cultures throughout the frontier and beyond. See, e.g., Remini, *supra* note 33, at 18; Adler & Polsky, *supra* note 59, at 95; Sheehan, *supra* note 34, at 9.

92. Cf. Remini, *supra* note 33, at 22-23 (sharing concerns of George Washington that the “touch of a feather” might turn Western settlers away).

the transition to statehood “would occur in three stages, carefully delineated in the Ordinance.”<sup>93</sup> Per Madison:

In the least democratic, first stage a territorial governor and judges appointed by the national government would rule. When the population reached 5,000 free, adult males, the territorial government would move to the second stage in which those men who owned 50 acres of land could elect representatives to a territorial legislature. When the total free population reached 60,000 inhabitants the territory could claim statehood and enter the Union on an equal footing with the original states.<sup>94</sup>

This simplified and more easily administrable approach likely made settlement to and investment in the territories more attractive.<sup>95</sup> Monroe emphasized that under this approach, “admission into the union [was] guaranteed.”<sup>96</sup> Jefferson’s pathway to statehood was instead likely to induce some doubt and uncertainty as to how and when their state would receive congressional recognition.<sup>97</sup> The framework under the 1787 Ordinance afforded settlers yet another protection from undue federal oversight: it was also intended to enforce “free laws” that kept “lawless settlers in line” but otherwise allowed settlers to go on as they saw fit.<sup>98</sup>

The simple purpose of the Ordinance distracts from its significance: “provide for government in the largely unsettled lands west of the Appalachian Mountains and north of the Ohio River.”<sup>99</sup> Congress had “to find some way to regulate this national growth, in a way that would strengthen the union, keep peace with the Indians and other powers, pay the public debt, and still permit enterprising settlers to pursue their own goals.”<sup>100</sup> That monumental task helps put contemporary challenges in context. Study of the Ordinance confirms that such challenges can indeed be overcome by relying on certain key principles, as outlined below.

---

93. Madison, *supra* note 32, at 4.

94. *Id.* at 4-5.

95. See PAXSON, *supra* note 68, at 68 (speculating about the Ohio Company’s desire to improve the rights and assurances provided by the Ordinance to solicit more investment and settlement); *cf.* Hill, *supra* note 11 (remarking that the United States would not have allowed for the creation of new territories if it were expected that those political communities would become independent entities and, by extension, potential rivals); Alden, *supra* note 64, at 478 (outlining other proposed methods of admission).

96. Hill, *supra* note 10, at 48.

97. See Berkhofer, *supra* note 64, at 248.

98. Hill, *supra* note 10, at 48 (emphasis in original).

99. See Madison, *supra* note 32, at 3.

100. See Festa, *supra* note 11, at 428; see Rohrbough, *supra* note 88, at 47 (identifying the ordinances of 1785 and 1787 as setting a benchmark for the distribution of land in the young country).

## B. PRINCIPLES OF ABUNDANCE IN THE NORTHWEST ORDINANCE

Three principles of the Abundance Agenda undergirded the Northwest Ordinance: effective, future-oriented governance,<sup>101</sup> an emphasis on supply-side interventions,<sup>102</sup> and a focus on furthering human flourishing via opportunities to realize individual potential.<sup>103</sup> This section examines each of those principles. The brief overview of each principle reinforces the historical roots of the Agenda and shows how some of America's most transformative endeavors relied on an Abundance mentality.

Prior to that overview, it is important to detail the limits of this section. For one, it is not meant to be exhaustive. Other principles shape both the Abundance Agenda and the Northwest Ordinance. This section is also not meant to suggest that the drafters of the Ordinance explicitly recognized these principles as *Abundance* principles. Though the general contours of the Abundance Agenda likely predate 2022, the Agenda as it is popularly understood today was not demarcated until Derek Thompson's article that year. This section (nor this Article) should not be read as asserting that the founding generation knew of and embraced the Abundance Agenda. Instead, this section makes clear that application of the Agenda's principles helped initiate and sustain the nation's westward movement.

### 1. *Effective, Future-oriented Governance*

Specific characteristics of the federal government during the late eighteenth and early nineteenth centuries set the Ordinance in motion and facilitated its general success. The government operated under the assumption of successful, ongoing growth of the nation's borders, economy, and population.<sup>104</sup> Per James H. Madison, officials of the time were "remarkably optimistic in assuming that the nation would expand westward, and it encouraged that expansion by guaranteeing that liberty and representative government would move across the mountains with the pioneers."<sup>105</sup> This anticipatory

---

101. See, e.g., Daniel M. Rothschild, *Abundance Is a Choice About the Future*, HUM. PROGRESS (May 30, 2024), <https://humanprogress.org/abundance-is-a-choice-about-the-future/> [https://perma.cc/T3GT-H3ZM]; David Slifka, *The Abundance Agenda*, INNOVATION & MONEY IN POL. (Sept. 27, 2024), [https://seeds.bluem.ventures/p/the-abundance-agenda?utm\\_campaign=post&utm\\_medium=web](https://seeds.bluem.ventures/p/the-abundance-agenda?utm_campaign=post&utm_medium=web) [https://perma.cc/VW84-DZR6].

102. See, e.g., Gary Winslett, *Getting Serious About Supply Through an "Abundance & Affordability" Agenda*, MEDIUM (Apr. 30, 2024), <https://medium.com/chamber-of-progress/getting-serious-about-supply-through-an-abundance-affordability-agenda-dd23aab74641> [https://perma.cc/3F6T-J3DB].

103. Gonzalo Schwarz, *An Abundance Agenda Promotes Social Mobility*, ARCHBRIDGE INST. (Mar. 8, 2023), <https://www.archbridgeinstitute.org/an-abundance-agenda-promotes-social-mobility/> [https://perma.cc/NZD5-C79P].

104. Cf. Geib, *supra* note 31, at 9, 11 (explaining how the Ordinance of 1785 was drafted to meet the needs of waves of immigration to the west).

105. Madison, *supra* note 32, at 15.

developmental framework was, in and of itself, a feat of governmental planning: “It may be claimed for the Ordinance itself, that it is the only instance in human history . . . where the laws and constitutions have been prepared beforehand, pre-arranged, and projected into a territory prior to its occupation by its future inhabitants.”<sup>106</sup> The Confederate Congress did not shrink from the task of developing legal frameworks suited to that growth. When designing the nation’s governing order, members of the founding generation made “seemingly constant reference” to “the safety [and] welfare of the people.”<sup>107</sup> As examined below, Congress paid close attention to how to ensure the short- and long-term welfare of future Northwest Territory residents.

As an aside, a growth mindset was firmly established in the states as well. The Missouri Constitution of 1820, for instance, announced, “[i]nternal improvement[s] . . . shall forever be encouraged by the government of this State.”<sup>108</sup> This bold and unequivocal approach, though, faded with time. As of 1850, many states had adopted provisions inimical to nation building. Michigan’s declared, “[t]he State . . . shall not be a party to, or interested in, any work of internal improvement, nor engaged in carrying on such work.”<sup>109</sup> Others, such as Ohio’s, explicitly banned the sort of private-public partnerships<sup>110</sup> that were essential to statehood becoming a possibility.<sup>111</sup> Financial constraints and risk intolerance eventually quelled public appetite for large infrastructure programs.<sup>112</sup> Yet, to borrow a contemporary term, this “degrowth” spirit did not spread far until *after* the initial implementation of the Ordinance.

Pursuant to a “growth” mentality, the federal government opted for a scalable framework that would facilitate development. The “visionary prescription for development” provided by the Ordinance facilitated the creation of states across the continent.<sup>113</sup> By creating a “procedure for disposing of

---

106. HILL, *supra* note 85, at 242; *see* PAXSON, *supra* note 68, at 63 (describing Congress’s foresight with respect to surveying and planning townships).

107. WILLIAM J. NOVAK, *The American Law of Overruling Necessity: The Exceptional Origins of State Police Power*, in STATES OF EXCEPTION IN AMERICAN HISTORY 96 (Gary Gerstle & Joel Isaac eds., 2020) [https://repository.law.umich.edu/book\\_chapters/513/](https://repository.law.umich.edu/book_chapters/513/) [<https://perma.cc/37T7-MGLQ>].

108. Carter Goodrich, *The Revulsion Against Internal Improvements*, 10 J. ECON. HIST. 145, 146 (1950), [https://www.cambridge.org/core/journals/journal-of-economic-history/article/abs/revulsion-against-internal-improvements/EFD143455403475BC1D579AF8A829689?utm\\_campaign=shareaholic&utm\\_medium=copy\\_link&utm\\_source=bookmark](https://www.cambridge.org/core/journals/journal-of-economic-history/article/abs/revulsion-against-internal-improvements/EFD143455403475BC1D579AF8A829689?utm_campaign=shareaholic&utm_medium=copy_link&utm_source=bookmark) [<https://perma.cc/8DQ7-ZP2R>] (internal quotations omitted) (quoting MO. CONST. art. VII (1820)).

109. *Id.* (quoting MICH. CONST. § 9 (1850)).

110. *See* Adler & Polsky, *supra* note 59, *passim*; Goodrich, *supra* note 108, at 148.

111. Goodrich, *supra* note 108, at 146.

112. *See id.* at 147-48.

113. Madison, *supra* note 32, at 5.



federal lands,” the Ordinance eased and accelerated settlement.<sup>114</sup> “[B]etween 1781 and 1802 the United States received over 400,000 square miles from states with western land claims.”<sup>115</sup> The Ordinance as a template for expansion facilitated those new lands becoming a part of the Union despite the fact that only 265,000 square miles of those new lands were technically within the territory spelled out in the Northwest Ordinance.<sup>116</sup> Put differently, the Ordinance quickly became a broadly applicable means of welcoming in new states; its provisions were relied on for decades. This novel procedure and its relatively successful implementation likewise accelerated economic development across the expanding nation.<sup>117</sup>

The whole of the government embraced an “expansionist economic vision[.]” with the passage of the Ordinance.<sup>118</sup> As detailed below, this involved unprecedented levels of federal investment, mobilization of the Army, and even infrastructure projects that rested on uncertain constitutional authority. Half measures would not have worked given the exigent circumstances.<sup>119</sup> Key provisions, especially those related to property ownership, were specifically included to facilitate “the development and governance of an expanding republic.”<sup>120</sup> What’s more, revenues generated by land sales were not merely for filling coffers (or lining pockets!). Congress leveraged funds from land sales to uplift and support the population through programs such as an early welfare system.<sup>121</sup>

An orientation toward the future did not alone guarantee the success of the Ordinance. In line with the aforementioned growth mindset, the Ordinance established property provisions and the rule of law such that commerce could occur with limited interference and individuals could develop into members of a “virtuous, industrious citizenry.”<sup>122</sup> Alternative systems of land development would have frustrated the speedy and clear assignment of

---

114. *See Festa, supra* note 11, at 414.

115. *Remini, supra* note 33, at 16.

116. *Id.*

117. *Festa, supra* note 11, at 414.

118. *Adler & Polsky, supra* note 59, at 92; *see Festa, supra* note 11, at 412-13 (asserting that the Ordinance reflected widespread views among the American people, particularly with respect to property).

119. *See Remini, supra* note 33, at 21 (describing secessionist efforts underway in Kentucky); *Adler & Polsky, supra* note 59, at 92 (warning that separatist movements threatened the government’s plans for westward expansion).

120. *Festa, supra* note 11, at 409.

121. *See generally* LAURA JENSEN, PATRIOTS, SETTLERS, AND THE ORIGINS OF AMERICAN SOCIAL POLICY (2003); Walter I. Trattner, *The Federal Government and Social Welfare in Early Nineteenth-Century America*, 50 SOC. SERV. REV. 243 (1976) (detailing appropriations by early congresses in the direction of groups with various needs for additional assistance).

122. *Festa, supra* note 11, at 413.

property.<sup>123</sup> Southern colonies, for instance, relied on landowners to define their property boundaries “with as much accuracy as he could.”<sup>124</sup> To the extent this system was replicated beyond the Appalachians—in Kentucky and Tennessee, for instance—it led to conflict and litigation.<sup>125</sup> The township model spelled out under the Ordinance was not perfect but managed to underpin the introduction of dozens of states to the Union.<sup>126</sup>

The clear pathway to statehood for territories likewise furthered the rule of law—a hallmark of any effective government. Rather than follow any one of the vague or complex methods for territories earning their statehood, the Ordinance relied on three explicit stages that manifested a wise principle. “The basic idea” at the time of the founding “was to get government as close to the people as possible.”<sup>127</sup> Experience under the Ordinance bore this out. The “appointive council” or legislative council that was a part of the territorial government at stage two of the Ordinance was “an institution much disliked.”<sup>128</sup> Territorial residents yearned for more popular control. When territorial leaders attempted to block statehood efforts, their constituents bucked. For example, when territorial officials in Indiana attempted to maintain their positions by obstructing statehood efforts, residents invoked the specific population threshold established for statehood to challenge this maneuver.<sup>129</sup>

Respect for popular control and the benefits of government closer to the people informed the distribution of powers in each of those three stages.<sup>130</sup> An early instance of iterative lawmaking,<sup>131</sup> the Ordinance outlined a

123. The land system under the Ordinance was not without fault nor perfectly executed. Territorial officials and some land companies managed to obtain and retain massive landholdings. *See* Rohrbough, *supra* note 88, at 54.

124. PAXSON, *supra* note 68, at 59.

125. *See id.*

126. *Cf.* Shriver, *supra* note 89, at 126-27.

127. W. David Stedman & La Vaughn G. Lewis, *Small Federal Government - Strong Local Governments*, NAT'L CTR. FOR CONST. STUD. (Sept. 17, 1987), <https://nccs.net/blogs/our-ageless-constitution/small-federal-government-strong-local-governments> [<https://perma.cc/WH5G-ALNL>] (summarizing the views of Thomas Jefferson and James Madison).

128. HILL, *supra* note 85, at 231.

129. Madison, *supra* note 32, at 3-8.

130. *But see* Berkhofer, *supra* note 64, at 253 (describing debates around the 1784 Ordinance and concluding that “congressmen were unsure just how much autonomy they should allow frontiersmen in setting up their own initial government[ ]”); Sheehan, *supra* note 34, at 4 (asserting that some confederate-era legislators were not “inclined to leave the frontier settlers to their own devices in the making of political order in the Northwest”).

131. Many members of the Founding Generation, such as Thomas Paine, expected that experience would be the best guide to resolving tricky legal and policy questions. *See* Alden, *supra* note 64, at 473 (recounting Thomas Paine’s analysis of when a new state should receive equal footing to existing states); *see also* 3 ANNALS OF CONG. 231-32 (1791) (sharing remarks of Rep. Hartley who regarded early legislation on the delegation of power to identify post roads as “a law of experiment” and contending that “[i]f, upon experience, we[, Congress,] find ourselves incompetent to the duty [of assigning post roads], we must (if the Constitution will admit) grant the power to the Executive.”).

“pragmatic compromise that allowed for a transition from full control by the national government to gradual representative government and eventual statehood.”<sup>132</sup> This planned devolution of power to the local level spoke to the widely-held belief that local governance was more responsive and accountable to the people.<sup>133</sup> A desire for more local governance had motivated early Americans to seek statehood for their specific political community since well before the conclusion of the Revolution.<sup>134</sup> An elected representative of Transylvania, for instance, sought recognition from the Continental Congress in 1775.<sup>135</sup> The people of Franklin relatedly tried to develop and formalize a state government.<sup>136</sup> These principles and historical context help explain why members of the founding generation concluded, “it as necessary and expedient as soon as circumstances will admit to lay off a suitable district within the said territory and to erect it into a distinct government.”<sup>137</sup>

Yet, the Ordinance did not immediately grant newly admitted states the full scope of powers exercised by older members of the Union. The former could not freely control their unsold public lands.<sup>138</sup> This limitation was less of an indictment of the capacity and importance of local or state government so much as it was a principled effort to ensure the most efficacious and beneficial use of an essential resource, such as land.<sup>139</sup> Rohrbough explains that the incentives facing states and the federal government informed this allocation of power. Whereas states, such as Michigan and Arkansas, may have wanted to let go of land at fire sale prices to recruit more settlers to join the ranks of their fledgling population, the national government relied on strategic land sales to “alleviate present debts and future expenditures.”<sup>140</sup> The more pragmatic approach was the more effective one with respect to one of the other principles informing the Ordinance: an emphasis on supply—in this case, of land.

Before exploring supply-side regulations under the Ordinance in the next subsection, the Abundance Agenda’s focus on effective governance merits

---

132. Madison, *supra* note 32, at 4.

133. See Ralph Lerner, *The American Founders’ Responsibility*, 56 WASH. & LEE L. REV. 891, 900-01 (1999) (setting forth Thomas Jefferson’s ideal education system in Virginia under which officials closer to the people made more specific policy decisions). More generally, the constitutional order adopted by the Founding Generation was grounded in the related ideal of avoiding dysfunctional governance. Roland Lhotta, *Dysfunctional Constitutionalism or Dysfunctional Politics: A Matter of Law, Politics, and Institutional Design*, 65 POLITISCHE VIERTELJAHRESSCHRIFT 285, 290 (2024).

134. Alden, *supra* note 64, at 472.

135. *Id.*

136. *Id.*

137. Berkhofer, *supra* note 64, at 240 (quoting David Howell of Rhode Island, a member of the Confederate Congress).

138. Rohrbough, *supra* note 88, at 56-57.

139. See *id.* at 57.

140. *Id.*

some attention to see the parallels between the Ordinance and contemporary Abundance initiatives. Abundance scholarship commonly invokes or overlaps<sup>141</sup> with “state capacity” or “the ability of a state, to collect taxes, enforce law and order, and provide public goods.”<sup>142</sup> Some daylight exists between the two concepts. State capacity does not necessarily prioritize nor drive towards an end of scarcity, for example. Nevertheless, to the extent the Northwest Ordinance exemplified a streamlined approach to governance that allocated governing resources to where they may have the greatest effect, those focus on adherence Abundance and, by extension, consideration of state capacity may benefit from further study of the Ordinance and its implementation.

## 2. *Emphasis on Supply*

The West held out tremendous promise for early Americans: “[S]tretching toward the West on every hand lay a forested expanse of unclaimed land to which the landless might have recourse in order to realize their own dreams of a freehold estate.”<sup>143</sup> One of the most important reasons for the durability of the Ordinance stemmed from “that provision reaching down to the virgin soil that gave absolute ownership of it in convenient quantities and on terms that secured to each person an opportunity to acquire a homestead of his own.”<sup>144</sup> “[M]uch of colonial life continued to revolve around the search for a ‘freehold estate.’”<sup>145</sup> Most early Americans depended on the land to get by.<sup>146</sup> A dearth of land contributed to a surfeit of discontent. Scarcity had long defined the availability of land and shaped the behavior of early Americans.<sup>147</sup> Per Malcolm Rohrbough, “individuals and families in the colonies and later in the independent American nation sought to acquire it; investors (or speculators if you prefer) capitalized on its scarcity to make fortunes; society’s values everywhere reflected its influence.”<sup>148</sup> The high demand explains why well before the Northwest Ordinance, some Americans had

---

141. See, e.g., Christian Britschgi, *The Abundance Agenda Promises Everything to Everyone All at Once*, REASON (Dec. 2023), <https://reason.com/2023/11/12/the-abundance-agenda-promises-everything-to-everyone-all-at-once/> [<https://perma.cc/FC9N-L4EC>].

142. Brink Lindsey, *State Capacity: What is It, How We Lost It, and How to Get It Back*, NISKANEN CTR. (Nov. 18, 2021), <https://www.niskanencenter.org/state-capacity-what-is-it-how-we-lost-it-and-how-to-get-it-back/> [<https://perma.cc/HW9F-X9WY>].

143. Rohrbough, *supra* note 88, at 47.

144. HILL, *supra* note 85, at 243 (quoting CUTLERS, LIFE OF REV. MANASSEH CUTLER, 368-69 (1888)).

145. Rohrbough, *supra* note 88, at 49.

146. GEORGE HENRY DAVIS, DIVERSITY AND UNITY—TWO THEMES IN AMERICAN HISTORY, THE INAUGURAL LECTURE OF WESLEY FRANK CRAVEN 6 (1964).

147. See *The Founders and the Pursuit of Land*, LEHRMAN INST., <https://lehrmaninstitute.org/history/founders-land.html> [<https://perma.cc/MCU8-A2UX>] (last visited Feb. 19, 2025).

148. Rohrbough, *supra* note 88, at 46.

initiated a push west.<sup>149</sup> When squatters first crossed the Appalachians, however, they did so with no explicit legal authority and no certainty as to the legality of their claims to land.<sup>150</sup>

If the government had failed to take action against lawless claims by squatters, settlement would have persisted in the chaotic nature associated with squatters and speculators divvying up claims for themselves in a haphazard fashion.<sup>151</sup> Before the Ordinance, “[t]here was no orderly legal process for selling or establishing titles.”<sup>152</sup> A few settlers captured massive plots of land, rendering less well-off Americans to bargain with those private landholders for their share of the west.<sup>153</sup> What’s more, speculators had proven adept at manipulating (i.e., buying) political actors in the absence of clear laws.<sup>154</sup> Recordation partially solved that threat to uncertain control over one’s property.<sup>155</sup> Something more was necessary if the promise of the west—namely, its individual and societal financial benefits and its added buffer from foreign threats<sup>156</sup>—were to be realized.

In contrast, thanks to the Northwest Ordinance, “[w]hen the settlers went into the wilderness, they found the law already there.”<sup>157</sup> The Ordinance’s anticipatory, replicable governing structure evidenced the intention of the drafters to secure property rights to attract and retain settlers as well as to “develop and secure a republican society.”<sup>158</sup> A comprehensive and enforceable legal regime, as described above, made real the promised deluge of additional land out west.<sup>159</sup> Absent such a deliberate legal effort, the lands may have been captured and defended by squatters who could not be “controlled and directed.”<sup>160</sup> The Ordinance provided individuals with a number of explicit rights that assured them of their claims.<sup>161</sup>

---

149. *Id.* at 49.

150. *Id.* at 49, 51.

151. Festa, *supra* note 11, at 428.

152. *Id.*

153. Sheehan, *supra* note 34, at 11.

154. See PAXSON, *supra* note 68, at 66-67 (recounting how Yazoo speculators leveraged their finances to steer the Georgia state legislature).

155. The threat of attack by Native Americans had long reduced interest in moving west. See Geib, *supra* note 31, at 9.

156. Rohrbough, *supra* note 88, at 51.

157. HILL, *supra* note 85, at 239-40 (quoting SALMON P. CHASE, SKETCH OF THE HISTORY OF OHIO 8-9 (1833)).

158. Festa, *supra* note 11, at 413, 433; see Madison, *supra* note 35, at 8 (contending that “[i]he commitments made in the Northwest Ordinance encouraged westward movement and ensured that pioneering would take place within the political and psychological boundaries of the American nation”).

159. See Geib, *supra* note 31, at 4 (explaining the “quest for an orderly sales process” that commenced in the 1780s and eventually concluded with the Ordinance of 1787).

160. Rohrbough, *supra* note 88, at 51.

161. Festa, *supra* note 11, at 414.

Supply was further increased by breaking with the norm of large estates that defined some early states. The Ordinance created a system that incentivized property holding and insisted on alienable property rights such that access to property would reach more members of the upstart territories.<sup>162</sup> Put differently, the Ordinance aimed to set about the social and economic conditions necessary to instill “proper habits and opinions” within settlers and provide those settlers with the security and legal assurances to aid in the expansion of the union.<sup>163</sup> By way of comparison, different regions of the nascent nation had adopted bespoke surveying strategies and norms around land sales.<sup>164</sup>

One means of preventing undue concentration of land among speculators or confiscation of land by squatters was an insistence on recordation of claims. Proponents of the Ordinance such as James Monroe sought to promote settlement by “securing to its settlers and others who may purchase the soil, the rights of property and of personal safety.”<sup>165</sup> The recordation process was key to establishing clear legal steps for settlement and, consequently, reducing the high frequency of speculators and squatters “overrun[ning]” the region.<sup>166</sup> Prior to the 1787 Ordinance, the weak and vague provisions of prior ordinances had failed to stop those nefarious actors from seizing lands.<sup>167</sup> Recordation, however, theoretically resulted in “less straggling” due to “greater certainty as to property rights.”<sup>168</sup> In practice, regulatory entrepreneurs found ways to circumvent the recordation process. Malcolm Rohrbough describes how and why this often occurred:

In the Territory Northwest of the Ohio settlers who proposed to purchase land might do so from one of the three private land companies or from the national government under terms laid down in the Ordinance of 1785. Titles from land companies were uncertain. This was especially so in the case of Symmes, a kind and good-hearted man who nonetheless sold much land to which he did not have clear title.<sup>169</sup>

---

162. *Id.*

163. Hill, *supra* note 10, at 41; see Festa, *supra* note 11, at 434-35 (framing property rights as “central to both individual rights and the larger public good”); see also Geib, *supra* note 31, at 8 (describing the general fears among Americans that the West would be dominated by speculators and thereby imperil the interests of poorer individuals) (paraphrasing the views of William Grayson, a member of the Confederate Congress who played a key role in the Ordinance of 1785).

164. Geib, *supra* note 31, at 6.

165. Hill, *supra* note 10, at 46.

166. Festa, *supra* note 11, at 428.

167. *Id.* at 431.

168. PAXSON, *supra* note 68, at 60.

169. Rohrbough, *supra* note 88, at 56.

An ineffective government likely would have let the Symmes of the world persist in their neglectful or intentional abuse of the law. Congress opted instead to continue experimenting with reforms to ensure compliance with the letter and spirit of the ordinances.<sup>170</sup>

The central government also mobilized to ensure a steady supply of labor. Despite fervent opposition to a standing army among many early Americans, the Army played an essential role in facilitating westward migration as well as securing the fruits of labor for those toiling in nascent industries.<sup>171</sup> This was not a small lift. In the same year Congress passed the Ordinance, it also invested in two fighting forces to quell Native American incursions into western territories. At the first sign of those forces being insufficient, President Washington asked and received more soldiers from Congress.<sup>172</sup> Later, Jefferson cajoled Congress into funding a force of more than 12,000.<sup>173</sup>

This seemingly sensible influx was by no means guaranteed. A few years prior, delegates to the Constitutional Convention considered capping the federal government's forces to just two thousand.<sup>174</sup> Congress also "spent at least \$200,000 per year to arm and equip the militias."<sup>175</sup> The continued and significant support for the Army following the Ordinance, then, speaks to the government's commitment to its success. In hindsight, it is likely that the progress that occurred under the Ordinance would not have been possible without this federal support. Soldiers took on squatters who might disrupt and discourage new, lawful settlement.<sup>176</sup> They also enforced the rule of law on the frontier—the "foundation for an orderly market economy."<sup>177</sup>

The Army safeguarded many of the economic drivers of the frontier—thereby fostering more investment in those sectors and generating more profit. With respect to the primary driver—land, affordance of land to the Army in each township via the Ordinance of 1785 further demonstrated an intent to enforce the legal claims of settlers.<sup>178</sup> Troops also accompanied surveyors to map out future townships.<sup>179</sup> The Army's contribution to building out the west extended to other economic drivers as well. By way of example,

---

170. *Id.*

171. Gregory D. Foster, *Why the Founding Fathers Would Object to Today's Military*, DEFENSEONE (July 15, 2013), <https://www.defenseone.com/ideas/2013/07/why-founding-fathers-would-object-todays-military/66668/> [<https://perma.cc/LM5E-DD3Q>]; cf. Adler & Polsky, *supra* note 59, at 91 (reporting that the Army was popular when it provided public goods).

172. Adler & Polsky, *supra* note 59, at 96.

173. *Id.* at 98.

174. Steve P. Mulligan, *The Army Clause, Part 2: Drafting and Ratification History*, CONG. RSCH. SERV. 2 (July 22, 2024), <https://crsreports.congress.gov/product/pdf/LSB/LSB11205>.

175. Adler & Polsky, *supra* note 59, at 93.

176. *Id.* at 96.

177. *Id.* at 94-95.

178. Festa, *supra* note 11, at 430.

179. PAXSON, *supra* note 68, at 64.

forts were frequently placed “close to mineral deposits [to] ensure[] that miners would feel safe to continue their excavations without having to worry about potential Indian attacks.”<sup>180</sup>

It is also worth noting that the Army often partnered with private stakeholders to build out and improve infrastructure projects essential to the west’s nascent economic sectors. These projects perpetuated a virtuous cycle of job creation. In a thorough examination of the role of the Army in private-public economic collaborations before the Civil War, William Adler and Andrew Polsky allege that “although the early republic enjoyed enormous, widely recognized potential for economic development, whether that potential would be realized depended upon the vitality of the public sector as well as private initiative and, within that public sector, on both the states and the national government.”<sup>181</sup> To support their case, Adler and Polsky detail several examples of such private-public cooperation. For instance, they note that the Army freely and frequently lent their engineering and surveying expertise to private endeavors that usually had significant positive spillover effects. In the early 19th century, few higher education institutions existed to train the experts needed to guide nation building.<sup>182</sup> The Army, however, had specific departments, such as what later became known as Topographical Engineers, charged with building out private and public projects.<sup>183</sup>

Proponents of a more dynamic America in 2025 and beyond have emphasized a related willingness to tap into regulatory expertise regardless of its source. A prime example is Ryan Petersen, the CEO of Flexport.<sup>184</sup> Petersen diagnosed an outdated, nonsensical regulation as one cause for excessive delays in ships reaching the Port of Long Beach.<sup>185</sup> He relied on X (f/k/a Twitter) to share his policy prescription.<sup>186</sup> Followers helped spread his analysis. Eventually, relevant authorities heard and acted on Petersen’s idea.<sup>187</sup> Adherence to this Abundance Agenda would make this sort of information exchange and collaboration more common.<sup>188</sup>

Protection of property rights and, thereby, creation of an incentive to create, work, and invest manifested in several other provisions of the

---

180. Adler & Polsky, *supra* note 59, at 101.

181. *Id.* at 93.

182. *Id.* at 88, 93.

183. *Id.* at 104-05.

184. See, e.g., Katherine Boyle, *Building American Dynamism*, ANDRESSEN HOROWITZ (Jan. 14, 2022), <https://a16z.com/building-american-dynamism/> [<https://perma.cc/C2R4-USH3>]; Sarah Constantin, *Unblocking Abundance*, SUBSTACK: ROUGH DIAMONDS (Oct. 10, 2022), <https://sarahconstantin.substack.com/p/unblocking-abundance>.

185. Boyle, *supra* note 184.

186. Ryan Petersen (@typefast), X (Oct. 22, 2021, 8:39 AM), <https://x.com/typesfast/status/1451543776992845834> [<https://perma.cc/W3TP-CXST>].

187. Boyle, *supra* note 184.

188. *Id.*



Ordinance. A just compensation clause limited government taking of private property to exigent circumstances and required owners receive their due following a deprivation.<sup>189</sup> The significance of this protection is made more obvious by comparison to the takings clause in the Constitution, which permits the government to deprive people of property for “public use.”<sup>190</sup> Though the initial settlers in the west would not have known of the additional protection afforded by the Ordinance, later generations of emigrants may have taken note of this added constraint on their governments. The provision also qualified any taking as being “for the common preservation.”<sup>191</sup> This qualification speaks to the Ordinance’s broader focus on directing government toward collective well-being—a focus that appears elsewhere, as discussed below.

A contracts clause further incentivized industriousness among settlers and a steady supply of new laborers. This “unprecedented”<sup>192</sup> clause broadly forbade laws that “in any manner whatever, interfere with or affect private contracts, or engagements, bona fide, and without fraud, previously formed.”<sup>193</sup> From a modern perspective, this protection may seem inconsequential. Settlers, though, would have appreciated a direct limit on the “kind of pro-debtor legislation that was directly impairing property rights and indirectly weakening republican government by producing disaffection with its operation among the solid part of the community.”<sup>194</sup> Respect for contracts and the debts that may result marked a “sine qua non for a stable economic future” in contrast to the “revolutionary tumult highlighted by repudiation of personal debt.”<sup>195</sup>

A focus on simple, light-touch regulations to ensure the supply of land and labor has much to do with the Abundance Agenda’s emphasis on “unblocking” as opposed to “deregulating.”<sup>196</sup> The former, as defined by Sarah Constantin, refers to “remov[ing] the governmental restrictions that restrict supply.”<sup>197</sup> A more nuanced land system, for instance, would have stymied westward migration and development. The grid system, developed and enforced by the Army and other federal actors, preemptively denied a degrowth system from applying in the Northwest. This learning from flawed systems demonstrated a unique ability of the founding generation to identify

---

189. Hill, *supra* note 10, at 50.

190. U.S. CONST. amend. V. This standard was also common in state constitutions at the time. *See, e.g.*, MASS. CONST. pt. I, art. X (1780).

191. NW. ORDINANCE art. 2.

192. Hill *supra* note 10, at 50.

193. NW. ORDINANCE art. 2.

194. Hill, *supra* note 10, at 50.

195. Shriver, *supra* note 89, at 130.

196. Constantin, *supra* note 184.

197. *Id.*

blockages in existing regulatory regimes<sup>198</sup>—a skill that has been in short supply among modern day bureaucrats.<sup>199</sup>

Maintenance of a ready supply of land and regulations in favor of a healthy and growing labor market had another aim as well. Leading officials in early America had low evaluations of the character of people heading west or already there.<sup>200</sup> They structured the Ordinance and the opportunities therein to give these struggling individuals a chance to learn personal “responsibility” and to otherwise develop the civic virtue that the founders regarded as essential to an enduring republic.<sup>201</sup> Proponents of an Abundance Agenda do not have low moral estimations of one group or another but do see Abundance as allowing individuals to exercise more autonomy and independence.<sup>202</sup>

### 3. *Incentivizing Productive Citizens*

The letter and spirit of the Northwest Ordinance aimed to create productive individuals in new territories.<sup>203</sup> Rather than simply hand out land to all settlers, the Ordinance outlined a framework to encourage individuals to seek out and acquire land as well as to seek out and acquire economic and political independence.<sup>204</sup> After all, property rights as the “basic building block of the social order” must encompass meaningful opportunities to acquire property in the first place.<sup>205</sup> For the backers of the Ordinance, “[p]roperty . . . was important to cultivate as a central liberty, in order to *set the conditions* for industrious, virtuous citizens to achieve self-sufficiency.”<sup>206</sup> This was, again, done with the common good in mind and with an intentional desire to spread

198. For another example of unblocking in debates around the Northwest Ordinance, consider that Thomas Jefferson and the other authors of the 1784 Ordinance attempted to minimize those attributes of governance that may hinder individual liberty. In outlining the potential location of states, for example, Jefferson and his colleagues were fine with simply numbering some of them. The expressive value of a name for a state was deprioritized with respect to citizens knowing in which district they lived so they could go about their business. Berkhofer, *supra* note 64, at 247.

199. Constantin, *supra* note 184.

200. See, e.g., Berkhofer, *supra* note 64, at 238 (sharing George Washington’s concerns about unruly individuals living in the west and his desire to ensure “an orderly, well-regulated white society” beyond the Appalachians); Sheehan, *supra* note 34, at 6 (asserting that Americans in the confederation period “tended to mistrust the unruly settlers”).

201. Rohrbough, *supra* note 88, at 59.

202. See Alex Armlovich & Andrew Justus, *An Agenda for Abundant Housing*, NISKANEN CTR. (Feb. 28, 2023), [https://www.niskanencenter.org/an-agenda-for-abundant-housing/\[https://perma.cc/JA5V-5UBP\]](https://www.niskanencenter.org/an-agenda-for-abundant-housing/[https://perma.cc/JA5V-5UBP]); cf. Constantin, *supra* note 184 (“More stuff means better lives.”).

203. Cf. Berkhofer, *supra* note 64, at 244 (discussing how members of the Confederate Congress aimed to set forth a governance framework for the territories that would instill good habits among its citizens).

204. See EDMUND S. MORGAN, *THE BIRTH OF THE REPUBLIC, 1763-1789* 7 (Daniel J. Boorstin ed., 1956) (“Ownership of property gave not only economic independence but also political independence to the average American.”).

205. Festa, *supra* note 11, at 426.

206. *Id.* at 426-27 (emphasis added).

social and economic influence.<sup>207</sup> A broader base of property-holding individuals would increase the aggregate pool of people able to “give back to the common good as political participants and guarantors of the collective social order and security.”<sup>208</sup>

Individuals also went west to seek out other attributes of a better life that the Ordinance made more feasible to attain. A focus on individual flourishing and development was evident in Congress’s recognition of “the importance of navigation to the settlers, who needed a market for their crops if the area was ever to develop beyond bare subsistence.”<sup>209</sup> Article 4 of the Ordinance made “the navigable waters” in the area “common highways and forever free.”<sup>210</sup> This provision may not have meant much if there was not a coordinated effort to expand access to those “common highways” across the nation. Yet, Congress spent more than \$40 million on key infrastructure projects such as canals, harbors, and lighthouses during the antebellum period.<sup>211</sup> Here again one can see parallels between the Ordinance and Abundance with respect to unblocking. It is possible to imagine Congress having adopted a complex regulatory scheme to govern which merchants could use which rivers at what times and so on. Alternatively, Congress could have authorized states to impose such schemes. Yet, the Ordinance preemptively safeguarded a critical platform for entrepreneurship and commercial activity.

In addition to opening existing platforms, the Ordinance and related federal actions built out new means for individuals to apply their trades. The Army made a number of “[a]ccelerative intervention[s]” to aid in productive economic activity in the west.<sup>212</sup> Thanks in part to Army assistance, settlers enjoyed easy access to markets in the east for innovators in the west.<sup>213</sup> The mail system that businesses in the west relied on were defended and often created by the Army.<sup>214</sup> Additionally, “certain Army bureaus fostered manufacturing innovation through contract incentives that had far-reaching spillover effects.”<sup>215</sup> The Army was also keen on diffusing its technological breakthroughs to trigger new waves of commercial activity. Adler and Polsky recount a prime example of such knowledge sharing: “Lt. Col. George Bomford, who led the Ordinance Department from 1821 to 1842, purposely

---

207. See Rohrbough, *supra* note 88, at 49 (“[L]ands had become an important measure of social standing and political influence.”).

208. Festa, *supra* note 11, at 427.

209. *Id.* at 430-31.

210. NW. ORDINANCE art. 4.

211. Adler & Polsky *supra* note 59, at 106.

212. *See id.* at 93.

213. *See id.* at 102 (explaining that mail routes were often explicitly directed through forts to increase security of goods and information).

214. *Id.*

215. *Id.* at 103.

encouraged the diffusion of technological developments from the armories to the private sector by fostering cooperation between private manufacturers and government employees at the armories.”<sup>216</sup> Later, a similar willingness to share information would accelerate the spread of “sewing machines, pocket watches, railroad equipment, wagons, and hand tools.”<sup>217</sup>

Infrastructure projects taken on by the Army likewise played a role in creating opportunities for settlers. If private actors alone were tasked with building roads, they likely would have built them at a slower pace in fewer areas and at a cost to users.<sup>218</sup> Fewer settlers would have had the opportunity to head west if it were not for the Army establishing forts along critical trade routes and in more remote areas.<sup>219</sup> The Army as a facilitator of opportunity is additionally demonstrated by the fact that forts were intentionally placed in desolate areas so as to spur a new wave of migrants.<sup>220</sup> In short, “the Army accelerated population movement in advance of any natural demand for opening new land and even steered people to places that might otherwise never have seen development.”<sup>221</sup>

The internal improvement projects intended to aid those seeking to move west and amplify the economic efforts of those already located beyond the Appalachians are noteworthy for another reason: they stood on questionable constitutional grounds. Notwithstanding those concerns, leaders at the time opted to risk investing in the nation’s future. President Jefferson, for instance, signed the bill funding the Cumberland Road, which connected the East to Ohio, and concurrently called for a constitutional amendment to authorize such projects.<sup>222</sup>

An insistence on diffusing the means and avenues of opportunity resulted in Section 2’s unique provisions. The Ordinance mandated the equal division of property of an intestate among their descendants, regardless of gender.<sup>223</sup> A substantial departure from the status quo, this provision aimed to make property “more purely republican, and more completely divested of

---

216. *Id.* at 106.

217. Merrit Roe Smith, *Army Ordnance and the ‘American System’ of Manufacturing, 1815-1861*, in *MILITARY ENTERPRISE AND TECHNOLOGICAL CHANGE: PERSPECTIVES ON THE AMERICAN EXPERIENCE* 78 (Merrit Roe Smith ed., 1985).

218. See Adler & Polsky, *supra* note 59, at 88, 104.

219. See *id.* at 95, 101.

220. *Id.* at 101.

221. *Id.*

222. Andrew Clarke & Emily Pears, *Distributive Nationalism and Internal Improvements*, CLAREMONT MCKENNA COLL. 7, [https://www.cmc.edu/sites/default/files/distributive\\_nationalism\\_and\\_internal\\_improvements\\_.pdf](https://www.cmc.edu/sites/default/files/distributive_nationalism_and_internal_improvements_.pdf) [https://perma.cc/3QUD-DHNY] (last visited Feb. 19, 2025).

223. NW. ORDINANCE § 2; see also Festa, *supra* note 11, at 439.

feudality than any other titles in the Union in 1787.”<sup>224</sup> The inclusion of intestate disposition protocols—something that may have otherwise been provided by statute—in the Ordinance, especially among its first provisions, signals the seriousness with which the drafters wanted to establish stable property rules.<sup>225</sup>

The Ordinance aspired for more than stability. Section 2 also banned primogeniture and entail.<sup>226</sup> In doing so, the document added significant legal weight to a broader “move toward a republican vision of property in the founding era.”<sup>227</sup> Primogeniture, an “old-world custom,” directs all property of the decedent to their eldest son.<sup>228</sup> Entail, similarly of old-world origins, mandates that all land be passed inalienably through descendants.<sup>229</sup> Both had the effect of entrenching property and wealth within a few hands.<sup>230</sup> The ban prevented “compulsory inequality” from reappearing in these new lands,<sup>231</sup> though a number of states had already established similar bans in their state constitutions,<sup>232</sup> the decision to spread the prohibition is noteworthy given just how important land and its distribution was to early Americans.<sup>233</sup>

A comprehensive assessment of the Section—both banning old-world customs and dictating a specific regime of distribution—indicates a very intentional desire to provide more Americans with more property.<sup>234</sup> Increased alienability of land, for instance, facilitated larger plots being divided up, allowing “a more widespread distribution of land.”<sup>235</sup> This policy had the consequence of giving more individuals of fewer means a chance to begin to build economic security via land ownership and its manifold benefits.<sup>236</sup>

---

224. Hill, *supra* note 10, at 50 (quoting NATHAN DANE, ABRIDGMENT AND DIGEST OF AMERICAN LAW 7:689 (1824)).

225. *See* Festa, *supra* note 11, at 437.

226. *Id.* at 438.

227. *Id.*; Thomas K. Gilhool, *Comparable Worth Is Rooted in U.S. History*, N.Y. TIMES (Dec. 4, 1985), <https://www.nytimes.com/1985/12/04/opinion/1-comparable-worth-is-rooted-in-us-history-201813.html> [<https://perma.cc/34PW-JJDM>] (providing an overview of related efforts to increase access to the means of acquiring property).

228. Festa, *supra* note 11, at 438.

229. *Id.*

230. *See* JAMES W. ELY, JR., *THE GUARDIAN OF EVERY OTHER RIGHT: A CONSTITUTIONAL HISTORY OF PROPERTY RIGHTS* 30 (3d ed. 2008).

231. *See* Festa, *supra* note 11, at 439 (summarizing the analysis of Stanley Katz).

232. *See id.* at 438.

233. *See* Rohrbough, *supra* note 88, at 46 (“From the opening of the seventeenth century to the middle of the nineteenth, land was a central theme in American life.”).

234. *See* Festa, *supra* note 11, at 439; *see also* HILL, *supra* note 85, at 239 (quoting SALMON P. CHASE, *A SKETCH OF THE HISTORY OF OHIO* 8-9 (1833)) (asserting the idea that the Ordinance “comprehended an intelligible system of law on the descent and conveyance of real property, and the transfer of personal goods”).

235. Festa, *supra* note 11, at 439.

236. *See* Erin Presson, *The Moving West: The Formation of the American Midwest Through Westward Expansion*, 21-23 (May 2010) (M.A. thesis, Washington University in St. Louis),

Provision of tools for social mobility applied throughout the lives of male settlers under the 1787 Ordinance. The Ordinance “devoted this nation forever to equality, to education, to religion and to liberty.”<sup>237</sup> Under its Third Article, the Ordinance declared that “schools and the means of education shall forever be encouraged.”<sup>238</sup> This “encouragement” was arguably more of a mandate. Per the 1785 Ordinance, each township included a specific section dedicated to public education facilities.<sup>239</sup> The 1787 Ordinance doubled down on this allocation of valuable land to public schooling on the basis that “[r]eligion, morality, and knowledge [are] necessary to good government and the happiness of mankind . . . .”<sup>240</sup> According to Mabel Hill, the Third Article marked “[t]he first recognition after the Revolution that public education was the duty of the government.”<sup>241</sup>

The provision of educational resources under the Ordinance reflected a goal of fostering “future stability” and was among other “essential safeguards” of liberty.<sup>242</sup> Put differently, this article of the Ordinance was intended to cultivate “the character of republican citizens, that they should be self-controlled enough and enlightened enough to govern themselves with justice and wisdom.”<sup>243</sup> Yet again, it is clear that the Ordinance sought to entrust as much of daily governance to the people as possible, while also inspiring them to voluntarily seek out novel means and processes to improve their own well-being and that of their community. The founding fathers who backed this provision and the supply of educational opportunities saw a close connection between self-governance and educational attainment.<sup>244</sup> Jefferson hoped to leverage education to turn the new territories into an “Empire of Liberty.”<sup>245</sup>

The significance of this investment of resources and political will stands out considering the limited educational pathways available in that era. Phillip Shriver reports, “fewer than three thousand of a total population in excess of three million in the thirteen colonies were college-educated.”<sup>246</sup> Tellingly, the Ordinances of the 1780s opted to emulate the pattern in New England,

---

<http://dx.doi.org/10.7936/K7J67DX0> (explaining how working-class Americans left the eastern seaboard to take advantage of the economic opportunities afforded by the Ordinance).

237. See HILL, *supra* note 85, at 241 (quoting GEORGE F. HOAR, ORATION AT CENTENNIAL AT MARIETTA (1887)).

238. NW. ORDINANCE art. III.

239. Geib, *supra* note 31, at 4.

240. See NW. ORDINANCE art. III.

241. See HILL, *supra* note 85, at 234.

242. See *id.* at 243 (quoting CUTLERS, LIFE OF REV. MANASSEH CUTLER 368, 369 (1888)).

243. Hill, *supra* note 10, at 50.

244. Shriver, *supra* note 89, at 130.

245. See *id.*

246. *Id.*

where community schools were centrally located and easily accessible to the community.<sup>247</sup>

Scholars of Abundance likewise invoke the importance of individuals having the means and opportunities to better themselves and their communities. Sarah Constantin noted that the cost of goods essential to individual achievement have soared in recent decades.<sup>248</sup> Relying on data from the United States Bureau of Labor and Statistics, she flags that college tuition fees, education expenses generally, and medical care have all risen in price to a far greater extent than other goods and services.<sup>249</sup> Realization of increased supply of these tools of mobility would further the goals of Abundance. Veronique de Rugy explains, “[a]bundance will allow more Americans to pursue their professional and personal goals and realize their potential.”<sup>250</sup>

The sum of the provisions of the Ordinance of 1787 reinforces the idea that its drafters aimed to cultivate dynamism and productivity among settlers. The most important thing settlers brought with them to the west was not material but rather simply “the idea that . . . they could be free.”<sup>251</sup> Rather than undermine the exercise of that freedom, the Ordinance attempted to expand the ability of individuals to labor and learn as they saw fit. Relatedly, Abundance and adjacent concepts have identified a shortage of Americans with a “builder” mentality.<sup>252</sup> Those seeking to develop a new generation of optimists can and should learn from how the Ordinance opened manifold doors to opportunity, albeit to a limited fraction of the population.

A quick scan of how the federal government operates today reveals a general absence of these principles, which explains why the Abundance Agenda has gained so much attention in a relatively short amount of time.<sup>253</sup> Political movements are always a product of current conditions. Myopic governance, reliance on demand-side solutions, and failure to develop productive citizens have persisted for too long to escape popular attention. Too many Americans have a sense that we are collectively capable of realizing a better

---

247. See Geib, *supra* note 31, at 6.

248. See Constantin, *supra* note 184.

249. See *id.*

250. Veronique de Rugy, *An Abundance Agenda Can Restore Our Economy, Revitalize Our Society, and Bring Our Country Together*, MERCATUS CTR. (Apr. 24, 2023), <https://www.mercatus.org/research/policy-briefs/abundance-agenda-can-restore-our-economy> [<https://perma.cc/Q5UW-QSY6>].

251. Shriver, *supra* note 89, at 129.

252. See Boyle, *supra* note 184.

253. Tim Cresswell, *The Abundance Agenda Goes Trans-Atlantic*, SUBSTACK: PLACE MATTERS (Oct. 4, 2024), <https://timcresswell.substack.com/p/the-abundance-agenda-goes-trans-atlantic>; Josh Barro, *Now It's Republicans' Turn to Try for Abundance*, SUBSTACK: VERY SERIOUS (Jan. 8, 2025), <https://www.joshbarro.com/p/now-its-republicans-turn-to-try-for> [<https://perma.cc/6SLV-RDRR>].

future to let this moment pass. They can look to the Northwest Ordinance for inspiration and, perhaps, the Abundance Agenda for implementation.

The end of 2024 displayed the federal government's current penchant for letting immediate crises undermine long-term governance efforts. Congress concluded a historically unproductive session by nearly shutting down the government.<sup>254</sup> Governance by self-created crises undermined the ability of Congress to tackle more substantive, long-term issues.<sup>255</sup> Bills updating privacy laws for the 21st century, setting a comprehensive regulatory scheme for artificial intelligence, and investing in the nation's workforce development failed to rally sufficient political capital to move through the chambers.<sup>256</sup> The American public has caught on. As of December 2024, just 17 percent of Americans approve of the way Congress is handling its job.<sup>257</sup> Troublingly, that score marked an improvement upon March's approval rating—15 percent.<sup>258</sup> A return to forward-thinking, simple, effective governance as outlined in the Northwest Ordinance would likely resonate with a public weary of a government unable to address known, significant problems. This is especially true given ongoing reports of failures to implement the Inflation Reduction Act ("IRA").

Proponents of the IRA held it out as a return to a government that extends opportunities by providing jobs, infrastructure, and increased opportunity.<sup>259</sup>

254. Andrew Solender, *The 118th Congress Passed the Fewest Laws in Decades*, AXIOS (Dec. 30, 2024), <https://www.axios.com/2024/12/30/congress-118th-passed-fewest-laws>; Noah Weiland, *Here's What Could Happen in a Government Shutdown*, N.Y. TIMES (Dec. 19, 2024), <https://www.nytimes.com/2024/12/19/us/politics/government-shutdown-funding.html>.

255. See Lloyd Smucker, *Congress Must End Governing by Crisis*, HILL (May 5, 2017, 7:30 AM), <https://thehill.com/blogs/congress-blog/economy-budget/331935-congress-must-end-governing-by-crisis/>; Kathy Goldschmidt, *Congress Lacks the Capacity to Meet the Demands of a 21st Century Constituency*, CONG. MGMT. FOUND. (Apr. 11, 2022), <https://www.congressfoundation.org/blog/1921-congress-lacks-the-capacity-to-meet-the-demands-of-a-21st-century-constituency>.

256. See Caitlyn Kim, *Despite Strong Bipartisan Support, Bill to Protect Kids Online Fails to Advance in Congress*, CPR NEWS (Dec. 30, 2024, 4:00 AM), <https://www.cpr.org/2024/12/30/kids-online-safety-act-failed-to-pass/> [<https://perma.cc/7QW7-QVGE>]; Suzanne Smalley, *As Backlash Mounts, Data Privacy Bill Markup is Canceled Moments Before it Was to Start*, RECORD (June 27, 2024), <https://therecord.media/apra-data-privacy-bill-markup-cancelled-congress> [<https://perma.cc/43G6-5L68>]; Angela Luna, *Primer: A Look at Biden Administration's Approach to AI Regulation*, AM. ACTION F. (Nov. 21, 2024), <https://www.americanactionforum.org/insight/primer-a-look-at-biden-administrations-approach-to-ai-regulation/> [<https://perma.cc/CM3V-HZNR>]; Jessica Blake, *Congress Failed to Pass WIOA Update. What Does That Mean for Higher Ed?*, INSIDE HIGHER ED (Jan. 7, 2025), <https://www.insidehighered.com/news/government/2025/01/07/community-colleges-lurch-after-wioa-bill-founders> [<https://perma.cc/R6W3-ZJ9Q>].

257. *Congress and the Public*, GALLUP, <https://news.gallup.com/poll/1600/congress-public.aspx> [<https://perma.cc/XQW4-6PN3>] (last visited Mar. 5, 2025).

258. *Id.*

259. *FACT SHEET: One Year In, President Biden's Inflation Reduction Act is Driving Historic Climate Action and Investing in America to Create Good Paying Jobs and Reduce Costs*, WHITE HOUSE (Aug. 16, 2023), <https://web.archive.org/web/20240927143349/https://www.whitehouse.gov/briefing-room/statements->



In practice, the Act has done little to achieve those ends. The Department of Transportation, instructed to spend \$7.5 billion in electronic vehicle charging stations, has built fewer than ten; it aspires to build 500,000 by 2030.<sup>260</sup> Utilities have generally opted not to tap into IRA funds to transition to green energy projects.<sup>261</sup> Local, state, and federal regulatory hurdles—generally untouched by the Act—have short-circuited other provisions. Offshore wind farms, for instance, “have been bogged down by . . . shipping restrictions.”<sup>262</sup> The upshot is that money alone, even billions, cannot erase decades of laws and regulations that turn simple goals into herculean tasks. This is not to say that procedural safeguards are not warranted but rather that the balance between expediency and thoroughness has been lost. An appetite for Abundance likely also stems from Congress relying too much on demand-side solutions—namely, subsidies.<sup>263</sup> Over decades, federal laws and regulations have hamstrung the ability of Americans to access necessities of modern life (and the pursuit of happiness) such as childcare and healthcare.<sup>264</sup> Coined “sludge” by Cass Sunstein, the “amorphous accumulation of daily frictions that separate people from the things that can make their lives easier or better” has slowed American progress.<sup>265</sup> The spread of sludge has not gone completely unnoticed.

---

releases/2023/08/16/fact-sheet-one-year-in-president-bidens-inflation-reduction-act-is-driving-historic-climate-action-and-investing-in-america-to-create-good-paying-jobs-and-reduce-costs/ [https://perma.cc/P6ED-K2D7]; see also William Tobin, *The IRA Two Years On: A Signpost of the New Economic Policy Consensus*, ATLANTIC COUNCIL (Aug. 15, 2024), <https://www.atlantic-council.org/blogs/new-atlanticist/the-ira-two-years-on-a-signpost-of-the-new-economic-policy-consensus/> [https://perma.cc/HJ7C-W5WA].

260. Jonathan Lesser, *It Just Won't Happen: Biden's EV Mandate Relies on Pure Infrastructure Fantasy*, THE HILL (June 10, 2024, 7:00 AM), <https://thehill.com/opinion/energy-environment/4702924-it-just-wont-happen-bidens-ev-mandate-relies-on-pure-infrastructure-fantasy/>.

261. Noah Ver Beek, *Leaving Money on the Table: Utilities Failing to Leverage the Inflation Reduction Act*, SIERRA CLUB 2 (Jan. 2024), <https://www.sierraclub.org/sites/default/files/2024-01/Leaving%20Money%20on%20the%20Table.pdf> [https://perma.cc/EF5Q-2ZL8].

262. Brad Plumer, *Here's Where Biden's Climate Law Is Working, and Where It's Falling Short*, N.Y. TIMES (Feb. 21, 2024), <https://www.nytimes.com/2024/02/21/climate/inflation-reduction-act-progress-climate.html>.

263. See Tobin, *supra* note 259 (discussing the prevalent use of subsidies as a policy fix).

264. See Diana Thomas & Devon Gorry, *Regulation and the Cost of Child Care*, MERCATUS CTR. (Aug. 17, 2015), <https://www.mercatus.org/students/research/working-papers/regulation-and-cost-child-care> [https://perma.cc/6APA-BG8L]; *contra* *Our Child Care Crisis Is the Result of Underinvestment, Not Overregulation*, NAT'L ASS'N FOR EDUC. OF YOUNG CHILD. (Feb. 5, 2020), <https://www.naeyc.org/resources/blog/childcare-underinvestment-not-overregulation> [https://perma.cc/D66A-U9T6] (contending that a lack of investment rather than excess regulation has hindered access to affordable childcare); see Russ Roberts, *Health Care Without (much) Government*, MEDIUM (Nov. 21, 2019), <https://russroberts.medium.com/health-care-without-much-government-bf4c57b515b6> [https://perma.cc/ZBN2-CY2X]; *Former Medicare Administrator: How to Solve the Tough Problems that the Affordable Care Act Doesn't*, ARIZ. STATE UNIV. (May 14, 2012), <https://news.wpcarey.asu.edu/20120514-former-medicare-administrator-how-solve-tough-problems-affordable-care-act-doesnt> [https://perma.cc/R95S-67EK].

265. Cass Sunstein, *Sludge: How Paperwork, Wait Times, and Confusion Degrade our Well-Being*, BIG THINK, <https://bigthink.com/smart-skills/sludge/> [https://perma.cc/6BZ7-BES9] (last visited Feb. 19, 2025).

Some politicians and jurists have called out the extreme number of legal barriers to the completion of even mundane tasks and the distortive effects those laws may have on politics and the economy. In his first term, President Trump called for the elimination of two regulations for every one new regulation.<sup>266</sup> Years later, Associate Supreme Court Justice Neil Gorsuch co-authored a book, *Over Ruled*, with a similar deregulatory message.<sup>267</sup> As mentioned above, Abundance calls for a more nuanced, effective approach to sludge. The aim is not to deregulate but instead to “unblock.” This is not a mere question of semantics.

Unblocking may have greater odds of appealing to a bipartisan audience. Unblocking does not regard regulation as unnecessary nor as ill-intentioned. Instead, it aims to identify those regulations that may undermine the very goals of its proponents. Permitting hurdles that have undermined renewable energy projects serve as a great example. Original backers of such hurdles may have expected them to increase community support for projects prior to development. Special interests seem to have been the main beneficiaries of procedural measures such as public hearings and requests for information.<sup>268</sup> It is hard to imagine the Northwest Ordinance succeeding if every new township were subject to extensive hearings and reviews.

Sludge, as discussed by Sunstein, pertains both to governmental malaise and individual frustration.<sup>269</sup> The Northwest Ordinance literally opened highways to collective and individual pursuits. Americans today have cause to welcome a return to the creation of clear pathways to a freer future in which they can realize their professional and personal goals. A recent LinkedIn survey indicated that large swaths of Americans have doubts about their professional future.<sup>270</sup> American workers perceive that their professional security is increasingly uncertain, which does not bode well for their willingness to take the sorts of entrepreneurial gambles and individual risks that bode well for the nation’s dynamism.<sup>271</sup>

The damper on optimism may also relate to cuts to the sorts of programs that traditionally serve as avenues to individual achievement. The Stronger

---

266. Connor Raso, *How has Trump’s Deregulatory Order Worked in Practice?*, BROOKINGS (Sept. 6, 2018), <https://www.brookings.edu/articles/how-has-trumps-deregulatory-order-worked-in-practice/> [<https://perma.cc/DB22-2B44>]; see also Exec. Order No. 13,771, 82 Fed. Reg. 9339 (Jan. 30, 2017).

267. See generally NEIL GORSUCH & JANIE NITZE, *OVER RULED: THE HUMAN TOLL OF TOO MUCH LAW* (2024).

268. See Nicholas Bagley, *The Procedural Fetish*, 118 MICH. L. REV. 345, 391-400 (2019).

269. See Sunstein, *supra* note 265.

270. Rachel Cromidas, LinkedIn News, LINKEDIN (Jan. 7, 2025), [https://www.linkedin.com/posts/linkedin-news\\_american-workers-confidence-in-their-job-activity-7282144340527759361—1L6/?utm\\_source=share&utm\\_medium=member\\_desktop](https://www.linkedin.com/posts/linkedin-news_american-workers-confidence-in-their-job-activity-7282144340527759361—1L6/?utm_source=share&utm_medium=member_desktop) [<https://perma.cc/DB22-2B44>].

271. See *id.*

Workforce for America Act, which would have created greater collaboration between community colleges and workforce development offices, floundered on the Hill.<sup>272</sup> Too few paths for Americans to redefine themselves among economic upheaval is not a new trend. Worker retraining programs have languished for decades.<sup>273</sup> As detailed by Jeffrey Selingo for *The Atlantic*, only a “small chunk of the Americans who missed the conventional on-ramp to higher education and a career out of high school are now getting a second chance at a well-paying job through retraining.”<sup>274</sup> The denial of second chances—in an economy in which many of us will need to reinvent ourselves at least once—flies in the face of the principles undergirding the Northwest Ordinance and Abundance.

### III. CONCLUSION

An Abundance approach to governance has historical roots. Way back to the days of Locke, the purpose of government was centered on protecting “life, liberty, and property.”<sup>275</sup> Implicit to that obligation is that the people have knowledge, goods, and skills worth protecting. In short, protection of those key attributes must also involve protecting the *means* to live life, experience liberty, and acquire property.<sup>276</sup> The pursuit of those aims was championed by Revolutionary-era Americans, especially having experienced British policies that hindered their economic liberties.<sup>277</sup> Our forebears, for instance, “were eager to build up a new country and to make their own fortunes.”<sup>278</sup> They did not wait for that future to arrive on its own schedule but instead supported the most promising approach to realizing greater fortune sooner. In the selection of which agency or actor should take on internal improvements, they “did not feel themselves bound by any permanent and unalterable demarcation of the spheres of state action and private enterprise.”<sup>279</sup>

Members of the founding generation acted on the principles of Abundance in embracing the Ordinance of 1787. This flexible, ends-oriented governing document involved a willingness “to try either [public sector or private sector solutions,] or both, or any combination of the two, as the necessities of the particular case required, and to abandon whichever method failed or

---

272. Blake, *supra* note 256.

273. Jeffrey Selingo, *The False Promises of Worker Retraining*, ATLANTIC (Jan. 8, 2018), <https://www.theatlantic.com/education/archive/2018/01/the-false-promises-of-worker-retraining/549398/> [<https://perma.cc/533G-LT2G>].

274. *Id.*

275. Festa, *supra* note 11, at 424.

276. *See, e.g.*, MASS. CONST. art. I (stating that all men have the right of “acquiring, possessing, and protecting property” as well as “seeking and obtaining their safety and happiness”).

277. Festa, *supra* note 11, at 425.

278. Goodrich, *supra* note 108, at 169.

279. *Id.*

was no longer appropriate.”<sup>280</sup> The Ordinance also advanced effective governance, an emphasis on supply, and investment in individual capacity with an eye toward collective success. On governance, a “stable and orderly government,” exemplified by the flawed but effective grid land system, lured courageous families to the west.<sup>281</sup> On supply, Army officers and private interests collaborated to protect and create jobs and ensure legal recognition of land claims by settlers. On individual and collective flourishing, the building blocks of success at that time—education and land—were made more readily available than under any other legal system in existing states.

Then, as is the case now, questions related to access to land (and, more generally, access to key goods, services, and opportunities) and government are “inexorably intertwined.”<sup>282</sup> Elected officials today who aim to open new frontiers of opportunity and progress should learn from how their predecessors approached the monumental task of equipping Americans for a new future in new lands. The overriding lesson is that the government can design anticipatory governance regimes that focus less on specific ends and more on the provision of the means to foster human flourishing.

---

280. *Id.*

281. Rohrbough, *supra* note 88, at 58.

282. *Id.* at 51-52.