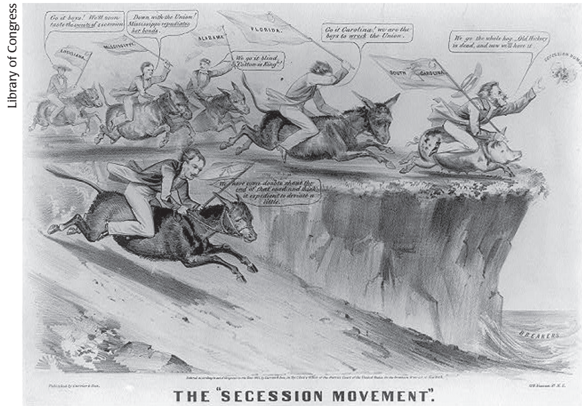

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IF AT FIRST YOU DON'T SECEDE...

BY THOMAS V. DiBACCO

During the 2008 Presidential campaign, the issue of states' secession from the Union arose briefly as a minor sideshow to the main event. This occurred when press reports indicated that Republican vice-presidential candidate Sarah Palin's husband had once been a member of a political party advocating Alaskan independence.

More recently there was another brief flurry of secession talk when Texas Gov. Rick Perry seemingly declined to rule it out when he responded to a question posed during an April 15 "tea party" in that state.

According to the *Dallas Morning News*, Governor Perry said, "There's a lot of different scenarios. We've got a great union. There's absolutely no reason to dissolve it. But if Washington continues to thumb their nose at the American people, you know, who knows what might come out of that? But Texas is a very unique place, and we're a pretty independent lot to boot."

Yet secessionist talk is nothing new. Indeed, secession efforts have been part and parcel of American history. Exclude the most notable effort—the Southern states seceding from the Union after 1860—and there's still much to write about.

That's true even though America's only successful secession thus far occurred during the Civil War, when the western counties of Virginia established their own state. When a Virginia convention voted for secession in 1861, only 11 of the 47 delegates from the trans-Allegheny counties concurred.

To be sure, Virginia's western

region had long maintained that the eastern-dominated Legislature had not been responsive to its needs. So during the early part of the first year of the Civil War, delegates from the west called a convention in Wheeling, voided the acts of secession that had been passed by the Virginia convention, and declared their independence from the Old Dominion.

A constitution was framed, and on May 13, 1862, a petition for statehood was sent to Congress. By year's end President Lincoln signed the admission bill contingent upon the new state's inserting a constitutional clause providing for gradual emancipation of slaves. The stipulation was met, and on June 20, 1863, West Virginia was formally admitted to the Union.

Not surprisingly, the western parts of other states—such as North Carolina's during the Civil War—also voiced secessionist views. But they drew their rationale for separation not from West Virginia's success but from early American history.

As early as 1776, for example, South Carolina threatened secession when the Continental Congress planned to tax colonies on the basis of total population, including slaves. And none other than James Madison anguished over the matter, seeking at the Constitutional Convention a prohibition against secession once states were admitted to the Union.

Madison's Virginia was one of two states (the other was New York) that wanted to make ratification of the Constitution contingent upon the right to secede. Virginia's ratification language, written by Madison and four others who had been delegates at the Constitutional Convention, read, in part:

> "We the Delegates of the People of Virginia duly elected in pursuance of a recommendation from the General Assembly and now met in Convention having fully and freely investigated and discussed the proceedings of the Federal Convention and being prepared as well as the most mature deliberation hath enabled us to decide thereon Do in the name and in behalf of the People of Virginia declare and make known that the powers granted under the Constitution being derived from the People of the United States may be resumed by them whensoever the same shall be perverted to their injury or oppression and that every power not granted thereby remains with them and at their will...."

Of course, much of this language was political, designed to obtain constitutional amendments once the new federal government was launched, for Madison believed—as did other Founding Fathers—that a conditional ratification was not binding.

That disposition was made even more apparent in New York's ratification convention in 1788 when one member, John Lansing, Jr., moved that the Empire State have the right to secede if certain amendments were not adopted within so many

years. Fearing such a resolution, New Yorker Alexander Hamilton had already written to Madison on the matter, and Madison's reply—in unequivocal language—stipulated that such a course was not valid. Lansing's motion went down in defeat, 31 to 28.

And in a subsequent constitutional crisis, when the Alien and Sedition Acts passed during the John Adams administration, both Madison and Thomas Jefferson argued that such arbitrary laws could be annulled by states.

But these and other crises—such as New England states threatening to secede during President Madison's unpopular War of 1812 and the Southern states' quest to "nullify" high tariff laws during the 1820s and 1830s—were deflated as time brought either an end to the war or an expiration or a softening of the offending laws.

By the time 48 states had become part of the Union by 1912 with the admission of New Mexico and Arizona, secession talk had dwindled. The reason is that states have found their own ways to become distinctive and removed from the long arms of the federal government.

Take the example of Arizona: After Congress passed a statehood bill in 1911, President William Howard Taft vetoed it because the state's constitution provided for the recall of elective judges. The Arizona electorate eliminated the recall provision, and on February 14, 1912, Taft approved the statehood bill. Nine months later, however, voters restored the provision for recall of judges.

Utah's Mormon example is even more instructive. In the early 19th Century, community hostility caused the Mormons to remove their original settlement in New York, first to Ohio, then Missouri and Illinois. Finally, under the leadership of Brigham Young, they set themselves up in the Salt Lake Valley.

They hoped to establish a state government quickly under the name Deseret, but Congress demurred, granting instead the name Utah Territory. Under this arrangement, the President of the United States would appoint the first officials, and a petition for statehood could be made only after Mormons decided to become more like other Americans.

Because Mormons initially resisted cooperating with the non-Mormon federal officials, President James Buchanan in 1857 actually sent troops that occupied the territory for four years. Little wonder that Mormons debated secession as a remedy. Cooler heads prevailed, however, with Mormons sacrificing many of their cherished tenets before they were finally granted statehood in 1896. Subsequently, however, except for plural marriages, Utah became a state with a clear Mormon imprimatur.

In more recent decades, as terrorism has become a threat, states have recognized that there is a benefit to belonging to the nation. Article IV, Section 4 of the Constitution stipulates that "the United

States shall guarantee to every State in this Union a Republican [not to be confused with the political party] form of Government, and shall protect each of them against Invasion, and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence."

Still, states recognize that, as Arizona and Utah did after achieving statehood, they can do their own thing—that is, pursue their own version of seceding or being different—without bringing out the federal troops.

In 1996, for instance, California legalized marijuana for medical purposes, and 11 other states soon followed. Despite federal drug laws and court challenges, the program continues.

However, it doesn't take a Ph.D. in political science to recognize that big states such as California aren't the only ones who are necessarily different. Iowa, with its homespun, caucus-loving population, had more to do with the ultimately successful presidential aspirations of Barack Obama than California did. And tiny New Hampshire, with its scarcely modest motto of "Live Free or Die," gave 71-year-old John McCain his life-support for capturing the GOP presidential nomination in 2008.

But perhaps the most egregious example of secession by a state is illustrated by Oregon through its state supreme court. In a 1999 cigarette liability case in which an Oregon jury awarded a punitive damage award of $79.5 million to a widow of a heavy smoker, the state's highest court twice refused the instructions of the U. S. Supreme Court to examine the size of the award consistent with earlier enunciated Supreme Court rulings. When defendant Philip Morris appealed in December 2008 to the high court for the third time, the Oregon Supreme Court argued that its original ruling upholding the award was supported—get this—by a principle of state law that was beyond the power of the Supreme Court to examine.

"Most importantly, individual state residents are the secessionists of today. Some 50 million Americans moved last year…"

Instead of standing up to this legal nonsense, the Supreme Court in late March of this year decided that it should not have agreed to hear the case in the first place. I'm serious.

Most importantly, individual state residents are the secessionists of today. Some 50 million Americans moved last year, about half from one state to another, according to www.Relocation.com.

Indeed, from earliest times, Americans have always been on the move—a safety valve of sorts for discontents. During his historic tour of the United States in 1831-1832,

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narrative that continued to follow the same line of statist political indoctrination. This is why Schweikart's book will remain significant and why students of history should be encouraged to consult as many sources as possible.

When teachers allow students to consult the primary sources and think for themselves, students are often left more stimulated by history, and thus more apt to take a further interest in it. America has an incredible history and Schweikart's book reminds historians to check their politics at their door. As Pink Floyd once proclaimed, "We don't need no thought control.... Teacher leave those kids alone."

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Endnotes

1 http://americancivicliteracy.org/.

CRISIS (Continued from page 21)

7 "Timetable of Class Meetings," Office of the Registrar, Dartmouth College, Dartmouth.edu, 17 May 2008 <http://oracle-www.dartmouth.edu/dart/groucho/timetable.display_courses>; "Approved Distribution Courses 2007-2008, Area II: Formal Studies," Weinberg College of Arts and Sciences, Northwestern University, Northwestern.edu, 20 March 2009 <http://www.wcas.northwestern.edu/advising/degree/distro-courses/documents/Area_II_2007-08.pdf>.

8 Anne D. Neal and Jerry L. Martin, "Losing America's Memory," American Council of Trustees and Alumni, 2000.

9 "Civic Literacy Report—2008-2009 College Test Scores and Rankings," Intercollegiate Studies Institute, 2008, Americancivicliteracy.org, 19 March 2008 <http://www.americancivicliteracy.org/2008/major_findings_finding1.html>.

SECEDE (Continued from page 69)

Alexis de Tocqueville had enormous insight about the ever-perambulating nature of the American psyche:

> "In the United States, a man builds a house in which to spend his old age, and he sells it before the roof is on; he plants a garden and leaves it just as the trees are coming into bearing; he brings a field into tillage and leaves other men to gather the crops; he embraces a profession and gives it up; he settles in a place, which he soon afterwards leaves to carry his changeable belongings elsewhere. If his private affairs leave him any leisure, he instantly plunges into the vortex of politics; and if at the end of a year of unremitting labor he finds he has a few days vacation, his eager curiosity whirls him over the vast extent of the United States, and he will travel fifteen hundred miles in a few days to shake off his happiness. Death at length overtakes him, but it is before he is weary of his bootless chase of that complete felicity which forever escapes him."

Although some 177 years have passed since de Tocqueville wrote those words, his observations of Americans' restless character and frontier spirit are still relevant today.

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