

## Introduction to the Ratification of the Constitution in Vermont

### *The Land*

In early March 1791, Nathaniel Chipman returned to Vermont from Philadelphia. He had been representing the state's interests before the U.S. Congress in an effort to gain statehood for Vermont.<sup>1</sup> He wrote to Governor Thomas Chittenden that the act admitting Vermont to the Union had recognized that Vermont\* was “rightfully possessed of sovereignty independent of the union” and this “clearly secures our property vested by former laws.”<sup>2</sup> Vermont had finally prevailed in a prolonged struggle to secure the validity of New Hampshire land titles. For nearly three decades before Vermont entered the Union as the fourteenth state on 4 March 1791, the possession of the land under valid, legally recognizable and enforceable titles dominated public policy.

In the eighteenth century, extracting value from land served as the primary method to amass wealth in both New England and New York, though each developed different traditions and structures of ownership and governance. In New England land furnished the space for the expansion of traditionally large families to repeat the settlement process of their ancestors. The land provided the subsistence for life itself, and allowed a surplus of crops, livestock, and forest products to create a market economy. It underwrote the demand that stimulated the activities of coastal and inland merchants, the maritime industry, nascent manufacturing, the need for lawyers and other professionals, and religious establishments and schools. The tax base that supported all levels of government, the militia, and public improvements was derived from the land. The ownership and careful management of land created the foundation of the economy and underwrote other activities.

The geography of Vermont exacerbated the overlap of land titles and resulted in competing grant holders. Located between the Connecticut River and New Hampshire on the east side and Lake Champlain and New York on the west, the Green Mountain range bisected Vermont from south to north. The communities that were split between the east and west sides of the mountains often had somewhat different experiences and interests. This gave rise to the terms “east side” and “west side” that were frequently used in early documents and histories of the state. Vermont shared a southern border with Massachusetts and a northern one with Canada. The area held three major drainage systems, which shaped distinct regions and significantly impacted the economic and political behavior in Vermont: the east side of the mountains relied on the Connecticut River, which flowed south to Long Island Sound; in southwestern Vermont, the tributary rivers flowed to the Hudson River, then on to Albany and the port of New York; and northwestern Vermont drained into Lake Champlain, which flowed northward into Canada through the Richelieu River and eventually reached the St. Lawrence River between Montreal and Quebec, providing important access to European markets.

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<sup>1</sup> Although the name Vermont did not exist until 1777, for purposes of simplification, this essay applies to it the territory that became Vermont.

<sup>2</sup> E. P. Walton, ed., *Records of the Governor and Council of the State of Vermont* (8 vols., Montpelier, 1875), III, 486–87 (hereafter *GC*).

## *Colonial Land Disputes*

The path that led to the Vermont ratifying Convention in January 1791 revolved almost entirely around the efforts of speculators and settlers to secure the validation of the land titles west of the Connecticut River. The titles, some established as early as 1750, were granted by New Hampshire's Royal Governor Benning Wentworth as he took advantage of local border disputes. Vermont's situation between hostile Algonquin and Iroquoian nations, along with the competing and often warring empires of the French, on the St. Lawrence, and the Dutch (and after 1664, the English), astride the Hudson River entry, inhibited settlement. In 1666 the French established Fort St. Anne on Isle La Motte in Lake Champlain. The earliest English settlements formed west of the Connecticut River on the Equivalent Lands north of the Massachusetts border. In 1713 Massachusetts and Connecticut rationalized their border and Massachusetts had to compensate Connecticut with 108,000 acres, 44,000 of them in Vermont. Because of anxiety about Indian troubles, in 1724 Massachusetts erected Fort Dummer near the southerly border of Brattleborough on the west bank of the Connecticut River, and a small settlement developed around it. In 1740 the English Crown settled a boundary dispute between Massachusetts and New Hampshire, thus placing Fort Dummer and other towns of the Equivalent Lands north of Massachusetts. New Hampshire then garrisoned and supported the fort and used it as evidence for its rightful jurisdiction west of the Connecticut River.<sup>3</sup>

In 1750, Governor Wentworth began chartering townships west of the Connecticut River with the grant of Bennington, less than forty miles from Albany and only twenty-four miles from the Hudson River. By 1754, when the outbreak of the French and Indian War temporarily halted his operation, Wentworth had chartered thirteen townships west of the Connecticut River. All of the Wentworth grantees, motivated by the potential for financial gain, ignored the crown's requirement of having at least fifty settlers on the ground in a town. The majority of Wentworth grants went to non-resident proprietors, with a preponderance from Connecticut, Massachusetts, New York, and New Jersey, all of whom paid fees to the governor. The pattern of the grants was consistent: the governor reserved two proprietary shares for himself, shares for his family and politically influential local placeman, a right for the Society for Propagation of the Gospel in Foreign Parts (the missionary arm of the Church of England), a right for glebe land in support of the Church of England, and a right for the first settled clergyman. The investors became proprietors of the towns, with the responsibility for its management until enough settlers could organize the town in the traditional New England manner.

Wentworth's actions were not unnoticed by New York. Royal Governor George Clinton (c. 1686–1761) wrote to Wentworth in 1750, asserting New York's jurisdiction and putting forth a variety of reasons that buttressed his position. He made the 1664 charter to the Duke of York the centerpiece of his case. Wentworth responded with arguments in support of his actions. Both colonies laid the matter before London authorities in letters and reports, directly and through their agents, stating their positions to the Board of Trade. New York's rebuttal did not reach London until as late as 1753, when the Board of Trade postponed a determination until it received instructions from the crown. That same year New York issued a proclamation ordering

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<sup>3</sup> Matt Bushnell Jones, *Vermont in the Making, 1750–1777* (Cambridge, Mass., 1939), 6–16, presents an excellent account of the Equivalent Lands and the transfer of Fort Dummer from Massachusetts to New Hampshire.

the apprehension and punishment of anyone taking possession of land west of the Connecticut River with a New Hampshire or Massachusetts title.<sup>4</sup>

The outbreak of the French and Indian War temporarily deflected attention from the controversy, but after the British defeated the French and hostilities ceased in 1760, Wentworth resumed his land business. By 1764, he had granted a total of 129 townships in much of the best land in Vermont before the King in Council ended the operation. By that time, Wentworth had personally amassed 65,000 acres west of the Connecticut River, his father-in-law, Theodore Atkinson, had a share in 57 towns, 766 individuals had shares in two towns, and 306 had shares in three or four towns.<sup>5</sup>

While interrupting Wentworth's activities, the war at the same time promoted and quickened postwar development of Vermont. The newly-established road across Vermont from Fort No. 4 at Charlestown, N.H., to Crown Point on the west shore of Lake Champlain, provided a constant presence of militia units and regular troops between there and Canada through the Champlain Valley, making many aware of the desirability of the land. With the cessation of hostilities in 1760, speculators and potential settlers zealously sought grants, and Wentworth, eager to accommodate them, went back into business. As the Board of Trade noted, "The restoration of Peace having removed the obstacles which prevented the extension of Settlements during the War," allowed both Governor Wentworth and Lieutenant Governor Cadwallader Colden of New York to avail "themselves of this favorable Situation, to dispose of Your Majesty's Lands."<sup>6</sup>

Another effect of the war was the royal proclamation of 7 October 1763. The British Order in Council issued the proclamation in an attempt to rationalize and govern the vast territory that they had gained in North America from the war. To pay the army, it provided patents of ungranted, fee-free crown land, ranging from 5,000 acres for field officers to 50 acres for the rank and file. As most troops disbanded in New York or sailed for home from that port, speculators purchased many of these patent rights at deep discounts. By the beginning of the American Revolution, New York had granted about 300,000 acres, including some in Vermont, a portion of which overlapped the Wentworth titles.<sup>7</sup>

The New York case, now managed by Lieutenant Governor Colden, accused Wentworth of making illegal grants on a number of grounds. When pressed from London for an explanation, Wentworth dilatorily responded with obvious excuses, faulty reasoning, and deliberate factual distortions. The Board of Trade agreed with the New York position and dressed down Wentworth for making grants "in a secret & clandestine manner" that "concealed" them and noting that "had not the Grantees, or persons employ'd by them, travelled" as far as the Province of New Jersey, "publickally offering the Lands to sale at such low rates, as evinced the Claimants had no Intention of becoming Settlers, either from inability, or conscious they could derive no Title." The Board reached the conclusion that New York could manage the land better than New Hampshire and would provide the settlers with a better government. They concluded Wentworth's grants were "in every particular totally inconsistent with the Mode of Settlement

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<sup>4</sup> *Ibid.*, 44, 49–50, 430–32.

<sup>5</sup> *Ibid.*, 21, 27–30, 36, 44, 49–50.

<sup>6</sup> *Ibid.*, 398.

<sup>7</sup> *Ibid.*, 47, 70, 278.

prescribed in Your Majesty's Instructions, and seem to have been made with a view more to private interest than public advantage." On 20 July 1764, on the recommendation of the Board of Trade, the King in Council issued an order declaring that "the western banks of the river Connecticut from where it enters the province of Massachusetts bay, as far north as the forty-fifth degree of northern latitude, [were] to be the boundary line between the two provinces of New Hampshire and New York."<sup>8</sup>

Much of Vermont historiography paints the land controversy between New York and Vermont as a contest between avaricious, cunning men of affairs and the prospective and actual settlers. Ethan Allen claimed that "no sooner had New York obtained Jurisdiction, than Governor Colden began to Patent, to certain celebrated Attornies and principal Gentleman in the Province, the very Lands on which the New-Hampshire Settlers dwelt." He went on to assert that the New York "Executors of the law, are most (if not all) the pretended Claimants to the Lands whereon the New-Hampshire Grantees and Occupants dwell."<sup>9</sup> Ethan Allen and his colleagues ignored the sound legal position of New York and that speculators, not settlers, like the Allen brothers and their Onion River Land Company held a vast majority of the acreage granted by Wentworth purchased at depressed prices. And the seduction of men to secure their fortunes through speculation in land did not stop at the Vermont border. As one historian put it: "patentees, purchasers, or settlers, whether claiming under New Hampshire or New York, acted like men and not like archangels" with "no essential difference in the motives" for either group.<sup>10</sup> By 1775, New York had chartered twenty-five towns that conflicted with New Hampshire grants.

In their efforts to secure recognition of their titles, the Wentworth claimants adopted a variety of arguments and strategies that evolved as circumstances changed, even up to the time of statehood in 1791. They would argue that the July 1764 Order in Council only validated New York authority from that date, leaving the grants prior to that intact. They also believed that they could convince a benevolent king to support them—a belief they mistakenly held even after Lexington and Concord and Allen's capture of Fort Ticonderoga in 1775 made them rebels.<sup>11</sup> In 1767 they decided to send Samuel Robinson of Bennington to London to present a petition to the Board of Trade and make the case for royal recognition. Robinson was a good spokesman, as he was an actual settler who had led his family and others from Hardwick, Mass., to settle Bennington in 1761.

When in London, Samuel Robinson collaborated with William Samuel Johnson, a Connecticut attorney who some of the New Hampshire proprietors had retained. Johnson had access to both the coffeehouse clubs, where influential men often conducted business, and the leadership of the Church of England. It quickly became apparent to Johnson and Robinson that

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<sup>8</sup> *Ibid.*, 75, 397–403.

<sup>9</sup> J. Kevin Graffagnino, ed., *Ethan and Ira Allen: Collected Works* (3 vols., Benson, Vt., 1992), 1, 3, 9.

<sup>10</sup> Jones, *Vermont in the Making*, 41.

<sup>11</sup> It took some time for the speculators on the New Hampshire Grants to abandon their misguided optimism and learn that George III would not come to their rescue and validate their titles. When William French lost his life in a courthouse riot in March 1775 his epitaph referred specifically to the "Cruel Ministerial tools of George the 3rd," but in reality the "policies of King George and his ministers were one and the same" (Nathaniel Philbrick, *Bunker Hill: A City, A Siege, A Revolution* [New York, 2013], 112, 262). For the complete epitaph, see Frederick F. Van de Water, *The Reluctant Republic: Vermont, 1724–1791* (New York, 1941), 125.

the royal government considered much of Wentworth's activity fraudulent, and the obviously fabricated petition Robinson carried would have only damaged the appeal. With Johnson's guidance, Robinson drafted a petition with only one signature: his own. In addition he and Johnson arranged to have a second petition, submitted by the Society for the Propagation of the Gospel and addressed "To the King's most Excellent Majesty, in Council," for recognition of the New Hampshire grants. Robinson's petition sought crown recognition of the grants and the establishment of a new colony or annexation to New Hampshire, arguing the distance, difficulty, and inconvenience of the seat of government in the city of New York created an untenable situation for the Vermont settlers. The Church's petition argued that the "Government of New York claiming the said Lands and the Jurisdiction thereof as belonging" to New York would deprive the Society of the shares in the Wentworth grants. Invalidating a New York grant made by a representative of the king, or equivalently securing recognition of Wentworth's grants, would require the action of the crown or a competent court. Johnson expressed some optimism for success, but in October 1767 Robinson contracted smallpox and died. For a short time Johnson continued to work on behalf of the New Hampshire proprietors, but he only achieved success in securing a 1767 Order in Council seeking to protect bona fide settlers by prohibiting New York from making any grants in the contested area.<sup>12</sup>

As Robinson petitioned the royal government in London, New York, fearing he might succeed, launched a campaign to defame him with such slanders that he had committed a felony in Massachusetts and his military service amounted to only driving an ox cart. In 1765 the New York Council had issued an order that obligated New York not to make grants that conflicted with "*Occupants under New Hampshire, who were settled before the 22nd Day of May 1765.*"<sup>13</sup> However, the dispute over conflicting titles grew increasingly ugly. New York offered to confirm or re-charter New Hampshire towns as New York entities for a fee. Over fifty towns on both sides of the Green Mountains explored the remedy, but only nineteen towns eventually took advantage of it, almost all along or close to the Connecticut River. Robinson's petition claimed that New York charged "at the rate of Twenty-five pounds New York Money for every one thousand Acres amounting to about Three hundred and thirty pounds Sterling at a Medium for every Township." Robinson may have overstated the case, but even when New York Governor William Tryon later reduced the fees, the cash poor speculators like the Allens could not even contemplate the expense. The crown might relent for actual settlers, but it would not indulge the speculators. They would have to secure their titles by other means.<sup>14</sup>

Not wanting their own chance at the opportunity to acquire large tracts and to receive fees for making grants slip away, New York officials became increasingly aggressive, especially as settlers with New Hampshire claims almost doubled the population from about 4,000 to nearly 8,000 between 1767 and 1771.<sup>15</sup> Heeding the royal instructions would have reduced the acreage New York could grant, thus reducing the fees the officials could collect. In the late 1760s New York

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<sup>12</sup> Jones, *Vermont in the Making*, 166, 404–07.

<sup>13</sup> *Ibid.*, 119–20.

<sup>14</sup> *Ibid.*, 108–18, 434–35. The preamble to the Vermont constitution of 1777 claimed that New York "refused to make re-grants of our lands to the original proprietors and occupants, unless at the exorbitant rate of 2300 dollars fees for each township; and did enhance the quit-rent three fold" (*The Constitution of the State of Vermont* . . . [Hartford, Conn., 1778] [Evans 16151], 4).

<sup>15</sup> John J. Duffy and H. Nicholas Muller III, *Inventing Ethan Allen* (Hanover, N.H., 2014), 30.

issued charters for nearly 1,000,000 acres, much of it in the better land and in conflict with New Hampshire grants. In October 1769 a Bennington settler, farming on a New Hampshire claim with a prior New York patent, gathered his neighbors and they collectively drove off a New York surveying team. This effort to survey an operating farm made the potential for a settler to lose their land and all of their improvements starkly clear. The next year a group of New York title-holders filed writs of eviction against nine settlers living in Bennington and neighboring Shaftsbury.

These cases would come to trial in June 1770 in the New York Supreme Court, sitting in Albany County. The absentee proprietors with New Hampshire titles were keenly aware of their relationship with these settlers, and understood the serious threat posed by these cases. At meetings in Sharon and Canaan, Conn., they engaged Ethan Allen to manage the defense. He had lately come to Vermont from Connecticut and had aggressively begun to purchase depressed New Hampshire titles. He went to Portsmouth, N.H., to assemble documents, where, apparently confident of the court outcome, he purchased more Wentworth rights. He traveled to New Haven and engaged a prominent Connecticut attorney to defend the settlers. In Albany they retained Peter Silvester, a well-respected local lawyer who often represented Sir William Johnson and could appear in a New York court. New York Attorney General John Tabor Kempe and James Duane, both of whom owned substantial holdings in Vermont, represented the New York claimants. The court pronounced New Hampshire titles invalid and not admissible. At that point the Connecticut counsel understood that he had no defense and returned to New Haven. The court proceeded to rule for the New York plaintiffs in every remaining case.<sup>16</sup>

Validating Wentworth's grants, or invalidating overlapping New York grants, required action of the crown or a New York court. But the ejectment suits made it clear that the New Hampshire title holders, speculators and settlers alike, could expect no relief from a New York court. In an effort to assert its authority on the ground, in 1766 New York placed its own court and other officers in Vermont by cleaving off part of Albany County, which then included all of Vermont. The area was newly chartered as Cumberland County, located generally between the Connecticut River and the Green Mountains. By the time of the ejectment suits, New York had established its authority east of the Green Mountain by setting up functional courts and appointing judges, justices of the peace, sheriffs, coroners, tax assessors, and other civil officers.<sup>17</sup> Cumberland County began to send representatives during the thirty-first New York Provincial Assembly (1769–76). Because many of the towns in Cumberland County had paid to reconfirm the Wentworth grants with New York titles, the settlers and some speculators, mostly accepting New York authority, did not have anxiety about their ownership of the land. Nonetheless, chief judge Thomas Chandler reported disruptions that frequently forestalled the adjudication of land disputes often abetted by residents of New Hampshire who would flee across the Connecticut River to evade arrest. These New York courts largely dealt with debt related matters, disposing of

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<sup>16</sup> Ethan Allen's biographers and histories of Vermont all treat the Ejectment Trials. Michael Sherman, Gene Sessions, and P. Jeffrey Potash provide a succinct summary in *Freedom and Unity: A History of Vermont* (Barre, Vt., 2004), 82–84. A former governor and careful attorney, Hiland Hall presents a more legalistic account in *The History of Vermont . . .* (Albany, 1868), 118–21. See also Duffy and Muller, *Inventing Ethan Allen*, 30–34, for a more recent treatment.

<sup>17</sup> Benjamin H. Hall, *History of Eastern Vermont, From Its Earliest Settlement to the Close of the Eighteenth Century* (New York, 1858), 762–73, provides a "List of Civil and Military Officers of Cumberland and Gloucester Counties."

as many as ninety cases a day. The organization of Cumberland County “provided such positive results” that in 1770, those living along the northern reaches of the Connecticut River petitioned for the formation of yet another county. The institution of organized government had proven such a threat to “undesirables” the petitioners explained, that they thought a new county could help them deal with the “Rapine and Plunder from a Sett of Lawless wretches of Banditti, Felons & Criminals, who fly thither from other places.” New York responded in 1770 and chartered Gloucester County, which was north of Cumberland County and east of the Green Mountains. Newbury, founded by Jacob Bayley, who would have a prominent role in the creation of Vermont, became the county seat in 1772.<sup>18</sup>

Meanwhile, in the area west of the Green Mountains, that was under the jurisdiction of Albany County, the Green Mountain Boys harassed New York civil officers and settlers, often with physical abuse, in an effort to prevent the exercise of their authority. The depredations of Allen’s guerillas were recounted in numerous depositions made in the safety of Albany and included accounts of kangaroo courts, corporal punishment with the “beech seal,” burning houses, banishing settlers, trampling fields, and other intimidating behavior frequently accompanied by brandishing firearms and salty language.<sup>19</sup> As the tumult grew, New York tried conciliatory measures to lessen the tensions. In November 1773 a mob led by Allen destroyed property and terrorized New York officials in Clarendon. Outraged, the New York General Assembly passed an act in March 1774 that provided the authority to capture and hang without trial the ringleaders of the Green Mountain Boys. In response to this “Bloody Act,” the leaders announced their own readiness for a “Game of Scalping . . . for our martial Spirits glow with Bitter Indignation.”<sup>20</sup>

In 1772 New York established Charlotte County from the northern part of the somewhat diminished Albany County. The new county covered the west side of the Green Mountains as well as some land west of Lake Champlain and north to the Canadian border. Three rival groups sought to secure the new county seat in their holdings. The seat of county government would stimulate development on their land by erecting a courthouse and jail, employing court personnel, attracting attorneys and all of the other support apparatus including lodging, taverns, and a transportation infrastructure. Two small groups of investors based in the city of New York petitioned to secure the county seat. A third investor, Philip Skene, sought to place the seat at Skenesborough on the vast tract of over 25,000 acres at the southern end of Lake Champlain that he had secured directly from the crown and not from New York. (He later received additional land from New York.)<sup>21</sup>

Ethan Allen and some of the prominent west side leaders had developed a friendly relationship with Skene, a tough and successful British officer in several European conflicts (in 1746 with the Duke of Cumberland against the Scots at Culloden and in the French and Indian War). He had developed a good relationship with Generals Jeffery Amherst, Thomas Gage, and William Howe. In 1771, as New York justice of the peace, Skene conveyed a message to Allen

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<sup>18</sup> Gary G. Shattuck, “‘A Heathenish Delusion’: The Symbolic Constitution of Vermont” (MA thesis, American Public University System, 2016), 42–43.

<sup>19</sup> E. B. O’Callaghan, ed., *The Documentary History of the State of New York* (4 vols., Albany, 1851), IV, 518–21 (hereafter *DHNY*).

<sup>20</sup> Graffagnino, *Collected Works*, I, 19–20, 24.

<sup>21</sup> *DHNY*, IV, 469–471.

asking him to “repair to Connecticut” and stay there until he was no longer supposed to arrest him. In March 1772 Allen wrote to Skene indicating that he could not “Dispute Your friendship to me” and thanked him for the “Generous & Sotiable Treatment to me when at Your house.” He also never “had Ground to Distrust Your friendship Either to me” or the New Hampshire title holders. With other flattering and obsequious comments, he “Retained the Most honourable Sentiments Toward You . . . as the Most Consummate politician” who would “Not be an Adversary to the Setlers.” Yet Allen would not flee, reminding Skene of a “Late Law in Province, they are Not Allowed to hang any man before they have ketched him.”<sup>22</sup> Skene and Allen had clearly discussed the issue of the Wentworth grants, and apparently they understood that a friendly New York court could resolve the matter in favor of the New Hampshire title holders.

Skene presented Governor Tryon with a petition bearing 379 signatures seeking to locate the seat of Charlotte County in Skenesborough. In October 1772 Jehiel Hawley of Castleton wrote to Skene that deputies from the New Hampshire townships had made Hawley their agent to “solicit matters relative to their old [New Hampshire] Grants.” He informed Skene “some designing People of Bennington, “ i.e. the Green Mountain Boys, “would be glad to present a petition” about the seat of Charlotte County. But many of those “designing People” did sign the petition, including Robert Cochrane, an object of the “Bloody Act” and a key leader of Allen’s Green Mountain Boys. Seven of the signatories on Skene’s petition accompanied Ethan Allen’s small force of eight-three (sixty-six Grants residents), on the successful assault of Fort Ticonderoga in the pre-dawn hours of 10 May 1775.<sup>23</sup>

Governor Tryon also understood the implications of a court disposed to validate New Hampshire titles. Because “A great part of the said [Charlotte] county being involved in a state of anarchy and confusion, by reason of the violent proceedings of riotous and disorderly people, from what it must of present be extremely difficult, if not impracticable, to bring offenders to justice,” the legislature passed an act locating the county seat at Fort Edward, much closer to Albany than Skenesborough. Fort Edward had made no provision for a courthouse or a jail. New York appointed Philip Schuyler, a leading member of the colony’s aristocracy, judge of the Court of Common Pleas, and reserved all criminal proceedings to the Supreme Court in Albany. Although the Charlotte County Court held a session in October 1773, New York was never able effectively to extend its legal jurisdiction over Vermonters.<sup>24</sup>

With no functioning court system in Vermont and sporadic violence taking place, Skene and his allies in the New Hampshire Grants, including Ethan Allen, tried a new approach to secure their titles.<sup>25</sup> “To avoid the government of Newyork,” the Reverend Samuel Williams reported two decades later in his pioneering first history of Vermont, “a plan was contrived about this time [1774], by some of the inhabitants, and *Phillip Skene*, to have the Newhampshire grants formed into a royal government, as a new province.”<sup>26</sup> In February 1780 Jonas Fay, Moses Robinson, and

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<sup>22</sup> John Pell, *Ethan Allen* (Boston, 1929), 45–46.

<sup>23</sup> *DHNY*, IV, 486, 496–98, 818–21; Russell S. Taft, “The Supreme Court of Vermont: The Pre-Revolutionary Courts,” *The Green Bag*, V (1893), 558.

<sup>24</sup> Taft, “Supreme Court,” 558; Doris Begor Morton, *Philip Skene of Skenesborough* (Granville, N.Y., 1959), 35.

<sup>25</sup> Willard Sterne Randall, *Ethan Allen: His Life and Times* (New York, 2011), 279.

<sup>26</sup> Samuel Williams, *The Natural and Civil History of Vermont* (Walpole, N.H., 1794) (Evans 28094), 224.



Stephen Row Bradley, attending the Continental Congress to look out for Vermont interests, confirmed the existence of the plan. They informed Congress “that in consequence of their remonstrances and petitions to the court of Great Britain,” it created “a distinct government of the territory now comprehending the state of Vermont, and appointed Gov. Skene to preside” over it. Had the outbreak of the Revolutionary War not thwarted Skene’s becoming lieutenant governor of the new colony, it would have obliged “every man, even those interested [i.e., New York claimants], to acknowledge that Vermont had an equal right . . . to assume an independent government” with authority to resolve land title disputes. Skene later confirmed the arrangement, writing that he had “Steped out” to secure the “rights of the Good people of Vermont” by “concuering advice of my old Friends at Castletown,” including Hawley and Ethan Allen.<sup>27</sup> The plan to turn Charlotte County into a jurisdiction separate from New York rested on Skene’s reputation, connections, and influence in top governmental circles in London, and to some extent the crown’s desire to end the dispute over New Hampshire titles that had vexed it since the 1750s. By enlisting Philip Skene, the New Hampshire title holders thought that they had finally gained influence in the highest levels of British government.

Even as the Bennington mob continued to disrupt New York’s attempts to establish authority in Charlotte County, its leaders remained hopeful that “his most Gracious Majesty” would settle the dispute in their favor with “Royal Confirmation.” Ethan Allen reported on the “General Meeting of the Committee for several Townships on the West Side of the Range of Green Mountains, of New Hampshire title holders, convened on March 1, 1774 at the House of Mr. Eliakim Wellers in Manchester.” The meeting resolved that “we purchased our Lands of One of his Majesty’s Governors, and on the good Faith of the Crown of Great-Britain, we are determined to maintain those Grants . . . until his Majesty’s Royal Pleasure shall be known.” They asserted their loyalty and “so for the future we will remain loyal and dutiful Subjects,” and would rely on him as their “political Father.”<sup>28</sup>

Skene, after a visit with General William Howe in New York, departed for London in 1774. His access to highly placed members of the government quickly produced results. On 28 January 1775 he received an appointment from the crown as lieutenant governor with an annual salary of £200. His appointed province included the forts Ticonderoga and Crown Point and much of the surrounding New York territory. Less than three weeks later, on 16 February, he received the appointment of “Inspector into the state of all lands not claimed as private property being within the district of the Province of Quebec and that part of New York which lay on Lake Champlain” at an annual salary of £300.<sup>29</sup> He set sail for North America carrying a potential remedy to the title controversy that probably would have favored the New Hampshire title holders, including the speculators. But larger events overtook him. Delayed at sea by contrary winds and storms, off the Grand Banks he learned of the fighting at Lexington and Concord and that Ethan Allen had captured Fort Ticonderoga. He would find out later that Samuel Herrick at the head of another contingent of Green Mountain Boys had plundered his estate at Skenesboro, defiled his late wife’s casket to turn its lead lining into ammunition, and captured his sloop. The captain, hoping for clemency from the Quaker populace, headed for Philadelphia where Skene, labeled by John

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<sup>27</sup> Hiland Hall, *History*, 305; Heather M. Haley, ed., “Philip Skene of Skenesborough: Selected Transcriptions,” *The Bulletin of the Fort Ticonderoga Museum*, XVII (2016), 43.

<sup>28</sup> Graffagnino, *Collected Works*, I, 10–12.

<sup>29</sup> Morton, *Skene*, 38.

Adams an “infernal scoundrel,” became a prisoner in June 1775 as he came ashore. By joining the Revolution, Ethan Allen had turned his friend into an opponent.<sup>30</sup>

Other events on the New Hampshire Grants loosened New York’s authority and propelled the efforts to make Vermont independent. In the spring of 1775 farmer-debtors on the east side of the Green Mountains petitioned Chief Judge Thomas Chandler of the Cumberland County Court to postpone the foreclosure cases until after the harvest provided them the ability to pay creditors. Chandler agreed to limit the session to a single murder case. Hearing rumors that more hardline judges who would sit with Chandler would insist on trying the original docket, the day before the session would open on 13 March, an angry mob seized the courthouse at Westminster. In response, New York’s Cumberland County Sheriff William Paterson raised a posse and went to the courthouse. There the Yorkers and the insurgents exchanged insults and verbal threats. Paterson and his posse retreated to John Norton’s tavern to fuel their courage. The posse returned to the courthouse that night. In what became known as the “Westminster Massacre,” Paterson’s men, failing to evict the protestors, fired, killing two and wounding others; they then secured the courthouse and jailed ten protestors. Word of the confrontation spread quickly and a mob of angry settlers, supported by local militia from New Hampshire and Massachusetts, gathered the next day and forcefully reclaimed the courthouse. The court prudently adjourned, never to meet again under New York authority. The militia took Paterson and some of his men into custody and marched them to the Northampton, Mass., jail. When news of the event reached the west side of the mountains, Ethan Allen dispatched a company of Green Mountain Boys to support the insurgents. Led by Robert Cochran, who had signed the petition to locate the Charlotte County Court in Skenesboro, the company arrived at Westminster on 15 March 1775 and lifted the spirit of the settlers. “Upon their application to the chief justice of Newyork” the jailed members of the posse “were released from their confinement, and returned home,” angering the rioters and their supporters. A meeting in Westminster on 11 April 1775 attended by “a large body of the people” resolved “That it is the duty of the inhabitants, wholly to renounce and resist the administration of the government of Newyork, until such time as the lives and property of the inhabitants may be secured: Or until such time, as they can have opportunity to lay their grievances before his most gracious Majesty.”<sup>31</sup> With the news of the fighting at Lexington and Concord, those supporting the growing revolutionary movement quickly conflated a debtors’ riot with opposition to both British and New York authority. They would soon memorialize William French, one of the two killed, as a victim of “Cruel Ministerial tools of George the 3d.”<sup>32</sup> Many quickly turned their attention “to the general cause of America” in which “the enterprising spirit of *Allen*, soon found a new object for its employment.”<sup>33</sup>

## *The American Revolution*

Allen opened his 1779 *Narrative of the Capture of Ticonderoga and of His Captivity and*

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<sup>30</sup> Robert Taylor et al., eds., *The Adams Papers: The Papers of John Adams* (Cambridge, Mass., 1977–), III, 54–56; John G. Pell, “Philip Skene of Skenesboro,” *The Quarterly Journal of the New York State Historical Association*, IX (1928), 34–36; Morton, *Skene*, 38–39, 46–47.

<sup>31</sup> Williams, *History*, 225.

<sup>32</sup> For a succinct account of the Westminster Massacre, see H. Nicholas Muller III in John Duffy, Samuel B. Hand, and Ralph H. Orth, eds., *The Vermont Encyclopedia* (Hanover, N.H., 2003), 317–18.

<sup>33</sup> Williams, *History*, 226.

*Treatment by the British* with the self-serving observation that “Ever since I arrived to a state of manhood . . . I have felt a sincere passion for liberty.” The “systematical and bloody attempt at Lexington, to enslave America, thoroughly electrified my mind, and fully determined me to take part with my country.” With a small company, largely made up of Green Mountain Boys, he overran the sleeping garrison and demanded the surrender of Fort Ticonderoga “In the name of the great Jehovah, and the Continental Congress.”<sup>34</sup>

Always ambitious for fame, Ethan Allen had become something of a celebrity with his success at Ticonderoga. He and his lieutenant Seth Warner, who had captured the British post at Crown Point the same May night, traveled to Philadelphia to convince the Continental Congress to authorize an invasion of Canada and to form a regiment of Green Mountain Boys. On the way they tarried several days in New York City, where the Bloody Act of 1774 had only months before made them both liable to arrest and hanging without trial. In Philadelphia the Continental Congress agreed to the regiment, and on 24 June 1775 President John Hancock asked the New York Provincial Congress to employ the Green Mountain Boys “among the Troops you shall raise.”<sup>35</sup> After some delay spent in debating whether or not to receive a man deemed in New York an outlaw, the Provincial Congress narrowly agreed to Hancock’s request to form the new regiment including the provision to allow it to select its own officers in the New England tradition. While a regiment formed under the auspices of, and paid for by, New York, a convention of committees from “several townships on the New Hampshire Grants” met at Cephas Kent’s tavern in Dorset on 26 July 1775 and “chose” the officers. Seth Warner was elected the lieutenant colonel by secret ballot with a vote of forty-one to five. Allen, who assumed he would become colonel, bitterly blamed the action on “the old farmers” who were not inclined “to go to war.”<sup>36</sup> His desire for fame and recognition not sated, Allen pled with Philip Schuyler to permit him to join the pending expedition against Canada as a volunteer. Schuyler, who “always dreaded his impatience” reluctantly relented after exacting Allen’s witnessed and “solemn” promise to “demean himself properly.”<sup>37</sup> Yet in September 1775, Allen led a rash and unauthorized attack on Montreal and was taken prisoner by the British. Allen remained a British captive for two and a half years.

The Revolutionary War changed the struggle for the recognition of New Hampshire titles and New York’s effort to maintain authority in Vermont. Because of its position along the entire length of the Lake Champlain corridor, Vermont had become critical to the 1775–76 American invasion of Canada and to the defense of the northern approaches after the failure of the Canadian campaign. Since the 1760s, New York’s royal government had encountered difficulty in establishing its authority in the separatist stronghold west of the Green Mountains, and the new government of the State of New York, distracted by the prosecution of the war, fared no better. Despite New York’s providing munitions and funds, coordinating with committees of safety in Cumberland and Gloucester counties, assisting militia units, and establishing small ranging units on both sides of the Green Mountains, the separatists persisted in their efforts to

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<sup>34</sup> Graffagnino, *Collected Works*, II, 3–4.

<sup>35</sup> PCC, Item 40, Other Reports of Committees of Congress: Papers Relating to the New Hampshire Grants, 1776–1784, Vol. I, p. 401.

<sup>36</sup> See *G&C*, I, 5–10, for the record of the convention. For Ethan Allen’s response, see John J. Duffy, *Ethan Allen and His Kin: Correspondence, 1772–1819* (2 vols., Hanover, N.H., 1998), I, 47 (hereafter *EAHK*).

<sup>37</sup> Pell, *Ethan Allen*, 114.

undermine New York authority.<sup>38</sup> The failure of the invasion of Canada, the consequent anticipation of a British invasion over Lake Champlain, and the loss of the capital city of New York in the summer of 1776, forced the revolutionary government of New York to focus its attention and resources on more pressing military matters than its authority in Vermont. Some believed the separatists capitalized on this shift of focus. James Duane complained that, when New York's "misfortunes and her dangers ought to have excited an earnest solicitude for her safety," instead "the Leaders of her revolting Citizens" took "advantage of her distresses, and press forward their project of independence."<sup>39</sup>

### *A New State Constitution*

The Vermont separatists, an increasingly organized minority, opened a new chapter in the defense of their titles. Between January 1776 and December 1777, those "warmly engaged in setting up their new State" pursued "that which they esteem their private interest," to secure the recognition of New Hampshire titles.<sup>40</sup> While dealing with the threat of the British in Canada, they put into motion general conventions, a series of seven consecutive meetings, each adjourning with agreement on a time and a place for the next session. They boldly asserted the legitimacy of their actions by adapting the principles and rhetoric of the American Revolution to their struggle against New York. These meetings, beginning in January 1776, moved incrementally from questioning "if the Law of New York shall have free circulation" where it did not "infringe" on land titles, to discussing the advantages of forming a separate state, to an outright declaration of independence in January 1777.<sup>41</sup>

In July 1776, the convention—attended by representatives of thirty west side towns and one eastside (Townshend)—named a committee "to treat with the Inhabitants of the New Hampshire Grants East side of the range of Green Mountains, relative to their associating with this Body." Through these efforts the separatists gathered momentum by expanding the size and geographic scope of the movement. The conventions grew from representatives of eighteen towns in July 1776, all but one from the west side, to a meeting in June 1777 of fifty towns, twenty-three west side towns and twenty-seven from the east.<sup>42</sup> The west side ringleaders understood the importance of broadening their support, and in a gesture of recognition and inclusion the last four conventions met on the east side. The meetings understood that the Continental Congress could recognize the newly forming state and, through that, remove the New York impediment to securing recognition of the New Hampshire titles or, conversely, robustly support New York and make matters more difficult. To monitor and informally to argue their case, they regularly sent representatives to attend Congress. They generally encountered a rather unsympathetic Congress swayed by New York's opposition and wary of sanctioning nascent separatist movements in any of the thirteen states. The New York delegates to Congress ably refuted the Vermont arguments. The Vermont conventions deemed "enemies to the Common Cause of the N. Hampshire

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<sup>38</sup> Shattuck, "Heathenish Delusion," 102.

<sup>39</sup> James Duane, "State of the Evidence and Argument in Support of the Territorial Rights and Jurisdiction of New York . . .," *Collections of the New-York Historical Society for the Year 1870*, Publication Fund Series, III (New York, 1871), 34–35.

<sup>40</sup> Shattuck, "Heathenish Delusion," 103.

<sup>41</sup> *G&C*, I, 11, 37, 48–50.

<sup>42</sup> *Ibid.*, 15, 21, 53–54.

Grants” any inhabitants with an association with New York or its counties’ committees of safety.<sup>43</sup> Eventually they established committees of war for the east and west sides of the mountains.<sup>44</sup> The convention at Westminster in January 1777 declared the territory’s independence as “New Connecticut” and called for another convention to draft a constitution and establish a government for the new state.<sup>45</sup>

The convention that convened on 4 June 1777 in Windsor formally agreed to call the new state “Vermont,” following a recommendation made by Ethan Allen’s boyhood mentor Dr. Thomas Young. They also requested all towns to meet on 23 June 1777 to “choose delegates to attend a general convention [on 2 July] at the meeting-house in Windsor . . . to form a Constitution.” This convention, upon learning that Burgoyne’s army had appeared on Lake Champlain, sent a delegation to the commander at Fort Ticonderoga to “consult with him respecting the regulations and defense of the frontiers.” During most of 1777 Vermont would focus on the dual effort to defend itself from the British and establish its government.<sup>46</sup>

The separatist leaders expected a constitution would provide the framework to assert their independence and secure their titles. The State of New York exacerbated the problem by circulating its new constitution (April 1777) that retained much of the hierarchical structure of the old royal government rather than traditional New England patterns of governance. Jacob Bayley, speaking for east siders, informed the New York council of safety that “before they saw the constitution,” the people “were not willing to trouble themselves about a separation from the state of New York, but now almost to a man they are violent for it.”<sup>47</sup>

On 15 May 1776 the Continental Congress recommended that the colonies form their own governments. Vermont used this recommendation as a screen to legitimize its drafting a constitution asserting independence from New York. In a letter to the inhabitants of Vermont, Thomas Young, who John Adams referred to as an “Eternal Fisher in Troubled Waters,” recommended that “*your committee*” drafting a constitution consider the “constitution of Pennsylvania for a model.”<sup>48</sup> In large measure they followed Young’s advice, doing more copying than drafting. But unlike the Pennsylvania model, the final draft began with a preamble added by the council of safety well after the convention. The preamble catalogued the grievances with New York, making clear that they intended the constitution to confirm independence from New York as much, if not more, than from the British. Chapter I enumerated “A DECLARATION of the RIGHTS of the INHABITANTS of the STATE of VERMONT.” Chapter II laid out the “PLAN OR FRAME OF GOVERNMENT.”<sup>49</sup> Historians have analyzed the Vermont constitution of 1777 at some length, and they generally agree that it represented “the most democratic constitution

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<sup>43</sup> *Ibid.*, 24.

<sup>44</sup> *Ibid.*, 46.

<sup>45</sup> *Ibid.*, 44.

<sup>46</sup> *Ibid.*, 55, 57–59.

<sup>47</sup> *Ibid.*, 30–31.

<sup>48</sup> *Ibid.*, 58; Pauline Maier, “Reason and Revolution: The Radicalism of Dr. Thomas Young,” *American Quarterly*, 28 (1976), 229–49.

<sup>49</sup> Constitution (1777), 7, 11.

produced by any of the American states.”<sup>50</sup> The ringing opening statement of the Declaration asserted “That all men are born equally free and independent.” It further declared that no male who reached the age of twenty-one, or female eighteen, would be required to “serve any person as a servant, slave or apprentice” unless “bound by their own consent.” This age-determined prohibition against slavery made no mention of any racial dimension and Vermont has become widely accepted as the first American state to outlaw black slavery.<sup>51</sup> Historians also point to Section VI of the frame that provided the right of suffrage to every twenty-one year old male who had lived in the state for a year, without the necessity to own property.<sup>52</sup> The constitution of 1777 also made guarantees that any disputes concerning property had a right to trial by jury and that “no part of a man’s property can be justly taken from him, or applied to public uses, without his own consent.”<sup>53</sup> Other provisions prohibited the seizure of property without a warrant and that enumerated rights “ought never to be violated on any pretence whatsoever.”<sup>54</sup> The constitution also contained conservative elements as it created a unicameral legislature and assigned executive, legislative, and judicial powers to the governor, deputy governor, and a twelve-member council elected at large, which helped Vermont establish its authority.<sup>55</sup> The document made no provision for popular approval and there was no attempt to seek official statehood because the early leaders of Vermont distrusted the Continental Congress.

In the absence of an “official record, and no full and satisfactory unofficial account” of the proceedings of Vermont’s constitutional convention, historians rely on piecing together relevant documents, newspaper reports, and the account written and published by Ira Allen two decades after the fact.<sup>56</sup> The convention concerned itself more with military affairs and Burgoyne’s thrust from Canada than the drafting of constitutional provisions. The news that the British had, on 6 July 1777, routed the heavily defended American stronghold at Fort Ticonderoga and Mt. Independence stunned the delegates. Many of them, with their family and farms threatened, prepared to leave the convention until, in Allen’s version, a providential summer thunderstorm forced them to delay. They remained in Windsor long enough to adopt the constitution without dissent. They also set December 1777 for the first elections of the assembly, governor and deputy governor, and the twelve-person council and January 1778 for the new government to assemble in Bennington. The delegates then named a council of safety to “act in the recess of this Convention,” which “shall supply the place of a Council for the next [i.e., the first under the new Constitution] General Assembly, until the new Council be declared chosen,” and left Windsor.<sup>57</sup>

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<sup>50</sup> Robert Shalhope, *Bennington and the Green Mountain Boys: The Emergence of Liberal Democracy in Vermont, 1760–1850* (Baltimore, 1996), 170–72.

<sup>51</sup> Constitution (1777), 7. Harvey Amani Whitfield, *The Problem of Slavery in Early Vermont, 1777–1810* (Barre, Vt., 2014), 74–75, demonstrates that the Vermont constitution notwithstanding, Vermont continued to harbor a small number of slaves as demonstrated by Vermont’s 1786 “Act to prevent the sale and transportation of Negroes & Molattoes out of this State.”

<sup>52</sup> Constitution (1777), 12.

<sup>53</sup> *Ibid.*, 9.

<sup>54</sup> *Ibid.*, 10, 23.

<sup>55</sup> *Ibid.*, 11, 16–17.

<sup>56</sup> *G&C*, I, 62.

<sup>57</sup> *Ibid.*, 108.

The council of safety played a critical role in transitioning Vermont from a series of meetings and a not-yet printed constitution to a working state. Nine of the twelve members and all of its officers came from the west side of the mountains, with four,—Nathan Clark, Jonas Fay, Joseph Fay, and Moses Robinson—residing in Bennington. Three others—Heman Allen, Ira Allen, and Thomas Chittenden—had moved to towns close to Bennington because of the British threats to their northern residences. Only three—Jacob Bayley, Benjamin Carpenter, and Paul Spooner—lived on the east side. Chittenden served as the president of the council and Ira Allen as its secretary. This group of west side leaders formed the Arlington Junto, or the Allen-Chittenden faction, a family compact that would dominate Vermont government well into the next decade. They opposed both the ratification of the Constitution of the United States and Vermont statehood.<sup>58</sup>

The military crisis that persisted until Burgoyne's surrender at Saratoga in October 1777 prevented having the new Vermont constitution printed and distributed in time for the December elections. The council of safety employed the delay unilaterally to make small revisions in the constitution, like changing the time of elections from December to March 1778 and creating the lengthy preamble to justify the split from New York.<sup>59</sup> Knowing that the state must raise funds to support the militia, the council of safety began a systematic violation of the new constitution before it went into effect by appointing "Commissioners of Sequestration, with the authority to seize the goods and chattels of all persons who had or should join the common enemy; and that all property so seized should be sold at public vendue."<sup>60</sup> This practice flouted the constitutional guarantee that no "man's property" be taken or "applied to public uses, without his own consent."<sup>61</sup> When the first General Assembly met in March 1778, it not only sanctioned the practice legislatively but also expanded it. The west side Confiscation Courts dominated by the Chittenden-Allen faction were much more aggressive than those on the east side. Ethan Allen, especially, who had developed a hatred for the British during his captivity, conflated Yorkers and Loyalists. Many claiming loyalty to the United States protested that Vermont officials, as a means of culling opposition to the new state, persecuted them because of their New York ties. They asserted "partizans for a new State have confiscated & sold & are selling many valuable real & personal Estates," and "they have attempted repeatedly to exercise judicial and military Authority over those who continue loyal to the State of New York." Shortly after returning to Vermont following his captivity, Allen stated his views clearly when he wrote he would send "17 wicked Tories" to Albany. "These inimical persons are Yorkers as well as Tories," he added.<sup>62</sup>

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<sup>58</sup> Graffagnino, *Collected Works*, III, 50; *G&C*, I, 109. *G&C*, I, 110–29, provides a very useful analysis of the membership of the council of safety. For the familial ties in the council of safety, see Patricia Lavery Thomas, "A Study of Familial Ties in Early Vermont Government" (MA Thesis, University of Vermont, 1972).

<sup>59</sup> *G&C*, I, 85–6; Graffagnino, *Collected Works*, III, 58.

<sup>60</sup> Graffagnino, *Collected Works*, III, 52.

<sup>61</sup> Constitution (1777), 9.

<sup>62</sup> *G&C*, I, 22–23, 235, 283–87; *State Papers of Vermont* (20 vols., Montpelier, 1918–1969), VI, *Sequestration, Confiscation, and Sale of Estates*, 13–17; Randall, *Ethan Allen*, 455–56; Michael Bellesiles, *Revolutionary Outlaws* (Charlottesville, 1993), 167; *DHNY*, IV, 576–77; *EAHK*, I, 82.

In March 1778 the freemen elected Thomas Chittenden governor. He would hold the office, with the exception of the single and critical year of 1789–90, until he resigned a short time before his death in 1797. In 1778 the freemen returned a council with six west side representatives and eight from the east, but with Chittenden as governor, the Allen-Chittenden faction continued to dominate the council, especially as it often met in special sessions in Arlington which the east side members could not attend on short notice. The council of safety and the new government that replaced it in March 1778 frequently flouted the dictum of the constitution that government ought not operate for the “advantage of any single man, family, or set of men.” As Daniel Chipman noted, the Allen-Chittenden faction governed in a more “patriarchal than constitutional” fashion.<sup>63</sup> The confiscation and sequestration of land raised money for the support of the military effort and paid the expenses of the new government, making Vermont an asylum for persons who wanted to avoid taxes and, for some, military duty. The confiscated land often ended up in the hands of the leaders. When the Assembly made grants of land, the governor affixed the seal of the state to the town charter and often awarded rights to himself, judges, soldiers, councillors, representatives, and prominent out-of-state men to induce them to favor Vermont. While not so magnificently as Benning Wentworth, Chittenden received a proprietary share in forty-four towns, about one-third of the towns he granted. His four sons and his wife also received a few shares.<sup>64</sup> These actions built an investment in Vermont independence and support for the new government.

The council of safety devoted much of its attention to military matters, and the stunning victory at Bennington in August 1777 bolstered the credibility of the new government. Already with substantial authority, the governor and council assumed power beyond that explicitly specified by the constitution. In its first years the weak Assembly did little to check the governor and council, as most suggestions for laws or the actual drafts came from the governor and council.

In February 1779 the Assembly, apparently with pressure from the council, passed “An Act for Forming and Regulating the Militia. . . .” The act delineated the militia’s organization and included an oath of loyalty to Vermont. Refusal or neglect to serve as ordered carried a fine “levied on the goods and chattels of the respective delinquents.” Designed as much to force support of Vermont from the disaffected leaders who continued to support New York authority as to organize a militia for defense, the act led to a situation, dubbed the Cow War, in which Vermont asserted its authority. New York’s Governor George Clinton continued to encourage residents to defy Vermont in a manner Ethan Allen characterized as “either romantic, or calculated to deceive woods people, who, in general, may not be supposed to understand law, or the power of a legislative authority.”<sup>65</sup> The attempt to recruit militia ran into opposition from New York supporters in Cumberland County and resulted in a fine of two cows, which were advertised for sale at public auction on 28 April 1779. A few days before the scheduled sale, about a hundred New York supporters assembled and reclaimed the cows.<sup>66</sup>

With reports from Cumberland County of the resistance to Vermont authority, Governor Chittenden “commanded” Ethan Allen “to engage one hundred able bodied effective men . . . in

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<sup>63</sup> *GC*, I, 233–4; Daniel Chipman, *A Memoir of Thomas Chittenden* . . . (Middlebury, Vt., 1849), v.

<sup>64</sup> Frank Smallwood, *Thomas Chittenden: Vermont’s First Statesman* (Shelburne, Vt., 1997), 96–97.

<sup>65</sup> *State Papers of Vermont*, XII, *Laws of Vermont*, 57, 64; Ethan Allen, *An Animadversory Address to the Inhabitants of the State of Vermont* . . . (Hartford, Conn., 1778) (Evans 15719), 21.

<sup>66</sup> Duffy, *Vermont Encyclopedia*, 142.



the County of Bennington” to assist the sheriff of Cumberland County to execute orders he may receive from the superior court in the county.<sup>67</sup> Samuel Minot, the head of the Yorker committee of safety in Cumberland County, reported that “Col. Ethan Alline [i.e., Allen] with a number of Green Mountain Boys” came across the mountains “for the purpose of reducing the loyal Inhabitants of this County to submission to the authority of the State of Vermont.” Allen, Minot continued, “treated the people here with the most insulting language assaulted and wounded several persons with his sword without the least provocation” and bid “defiance to the State of New-York.” Allen arrested forty-five of the protesters and hauled them off to jail in Westminster to await court appearances. In a “critical and distressing” situation, Minott urged Clinton “to take the most speedy & effectual Measures for our Relief; otherwise our Persons and Property must be at the disposal of Ethan Allin which is more to be dreaded than Death with all its Terrors.”<sup>68</sup>

When the Cumberland County court allowed the Yorker prisoners to engage legal counsel, they retained Stephen Row Bradley, who cited Blackstone as a legal authority to have the charges dropped. Allen, watching the proceedings, unbuckled his sword and “strode up the aisle” to the front of the courtroom and thundered, “I can upset your Blackstones, your whitestones, your gravestones, and your brimstones,” and made it clear that releasing the prisoners would be a grave mistake.<sup>69</sup> Allen’s bluster produced the desired result. Ira Allen later commented on the wisdom of foregoing the letter of the law, which permitted whipping, by simply fining and releasing the Yorker prisoners as Vermont would not treat “the inhabitants of this county with severity, but with as much lenity” as the “case” admitted. “We mean not,” he continued, “to boast of our victory over those gentlemen” who favor New York, “but hope to make them our friends.”<sup>70</sup> On 2 June 1779 the Vermont General Assembly appointed a three-man committee “to wait on his Excellency the Governor and the honble the Council and give them the thanks of this Assembly for their raising and sending the *Posse Comitatus* into Cumberland County in May last past for the purpose of apprehending the rioters who were tried at Westminster.”<sup>71</sup>

New York’s response was limited. Before the outbreak of the Cow War, New York’s Governor Clinton had advised Cumberland County “in no instance to acknowledge the authority of Vermont, unless where there is no alternative left between Submission & inevitable Ruin.” And in the case of threats by the “Green Mountain Boys or any Parties,” Clinton promised his support. However, he never came close to sending forces to relieve Cumberland County. Instead he relied on the Continental Congress, with its powerful New York delegation, to threaten and intimidate Vermont. In the face of the military situation with Burgoyne on Lake Champlain and the British army on the lower Hudson River, he could only threaten to issue “orders to the militia & make the necessary arrangements for marching to repel this outrage.” At the same time he urged the Yorkers to hold fast and to “rest assured that I shall make every exertion for your

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<sup>67</sup> *GC&C*, I, 298–300.

<sup>68</sup> *DHNY*, IV, 581.

<sup>69</sup> Charles A. Jellison, *Ethan Allen: Frontier Rebel* (Syracuse, N.Y., 1969), 223–24.

<sup>70</sup> Benjamin H. Hall, *Eastern Vermont*, 345. Hall provides a full rendition of the Cow War on pages 332–47.

<sup>71</sup> *State Papers of Vermont*, III, *Journals and Proceedings of the General Assembly of the State of Vermont . . .*, Part 1, 69.

Protection of which the Executive Authority of Government is capable.”<sup>72</sup> Yet Clinton had little capacity to take the forceful action he loudly proclaimed.

The Cow War provided a harbinger of the political division that would roil Vermont and become an important factor in the process of Vermont’s ratifying the Constitution and joining the union. Clinton’s inability to act led the Yorker sympathizers in the southeastern corner of Vermont to transfer their allegiance to Vermont, though they were still unsupportive of the Allen-Chittenden faction. The incident also hardened the hostility of Chittenden, the Allens, and their allies against New York and Clinton, and heightened their distrust of Congress.

A serious threat to the new government, and especially to the Allen-Chittenden faction’s control of it, came in 1778 with an alliance of Vermont’s Connecticut River towns with sixteen New Hampshire towns across the river. The formation and dissolution of this so-called “East Union” bloc would reinforce both Chittenden and Allen’s distrust of Congress. It began when the residents of the New Hampshire towns in the Connecticut River Valley complained that the state’s government, located in coastal Exeter, had neglected their defense, did not provide adequate representation or sufficient civil and military appointments, paid little heed to the transportation needs of the inland towns, and did not support Dartmouth College properly. Sixteen New Hampshire towns withdrew from the state, and with neighbors in the Vermont river towns, petitioned the Vermont Assembly in March 1778 to annex them.<sup>73</sup> The Assembly, “much perplexed with this petition,” decided to refer the matter “to the consideration of the freemen of the several towns,” in a form of referendum by towns.<sup>74</sup> This both angered New Hampshire and threatened to provoke the wrath of Congress. More importantly, it threatened to wrest control of the new state from the west side Arlington Junto. On 11 June 1778 the Assembly voted that the union take place, 37–12. The east sides demonstrated their power when the Assembly later voted “to take the incorporated university of Dartmouth, under the patronage of this State” and to appoint college president Eleazar Wheelock a justice of the peace.<sup>75</sup>

The representatives from the New Hampshire towns participated in the October 1778 elections and sent representatives to the Assembly, giving the east side a substantial majority. Governor Chittenden and the council went into action. They dispatched Ethan Allen to Congress to assay its attitude and sent Ira Allen to meet with New Hampshire Council of Safety president Meshech Weare in Exeter. After asking the New Hampshire delegation to enlist the aid of Congress to dissolve the East Union, Weare wrote to Chittenden expressing his astonishment that Vermont “should supply their enemies with arguments against them,” that many of the residents in the sixteen towns preferred to remain in New Hampshire, and that “for the sake of their future peace and tranquility,” Vermont should “relinquish every connection . . . with the towns on the east side of Connecticut river.” Ethan Allen reported that both New Hampshire and New York vigorously opposed the union of the sixteen New Hampshire towns and that Vermont

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<sup>72</sup> *DHNY*, IV, 579, 582, 584.

<sup>73</sup> Jere R. Daniel, *Experiment in Republicanism: New Hampshire Politics and the American Revolution, 1741–1794* (Cambridge, 1970), 153–4.

<sup>74</sup> Graffagnino, *Collected Works*, III, 61.

<sup>75</sup> *State Papers of Vermont*, III, *Journals*, Part 1, 24–27.

had to “recede from such union, immediately,” or else “the whole power of the confederacy of the United States of America will join to annihilate the state of Vermont.”<sup>76</sup>

Despite operating without a majority, the west side leaders outmaneuvered the eastern faction. The October 1778 Assembly session, meeting in the west-side stronghold of Bennington, took up the issue of forming new counties to accommodate the New Hampshire towns. To the east side’s surprise, the Assembly voted 35 to 26 to retain the county structure in place before the union, effectively leaving the New Hampshire towns without county government, including courts.<sup>77</sup> The east siders argued that the action was “in direct opposition to the report of the Committee” the preceding June which had favored union. They next tried to attach the sixteen towns to Cumberland County, but that failed by a 33 to 28 vote and “effectively debarred” the towns on the east side of the Connecticut River “from all benefit protection and security of the Commonwealth of Vermont.” A third attempt to form the New Hampshire towns into a “distinct county by themselves” failed by exactly the same vote. The angry east siders then launched a protest led by Joseph Marsh, the Lieutenant Governor, along with two members of the Council, and twenty-four Assembly members resigned and walked out in an effort to cripple the government by leaving it without a quorum.<sup>78</sup> On 23 October the Assembly passed resolutions asking the towns to instruct their representatives on how to deal with the sixteen New Hampshire towns and to replace the representatives who had walked out. When the Assembly reassembled in February 1779, it dissolved the East Union.<sup>79</sup> The Allen-Chittenden faction survived the threat and maintained control.

In the aftermath of the East Union debacle, the Continental Congress took steps to resolve the Vermont situation. In June 1779 Congress established a five-member commission to visit Vermont. Only two delegates came to Vermont, sapping the commission of a quorum and any authority it had. In the more than two years operating as an independent state, the desire to retain independence had solidified in Vermont. Chittenden made it clear to the delegates from Congress that even with the recognition of New Hampshire titles, Vermont would not accept New York authority.<sup>80</sup> A year later, in September 1780, Ira Allen and Stephen Row Bradley attended Congress as observers. They asserted that Vermont had greatly assisted the prosecution of the war against Britain and that, if Congress would not defend and recognize it as a state, Vermont reserved the right to negotiate with any allies. Chittenden supported that position in a lengthy letter to the president of Congress. He pointed out that the many towns in New Hampshire, Massachusetts, and New York would “have been ravaged by the common enemy, had it not been for the indefatigable exertions of this state.” Vermont, he declared, will take such “measures as self-preservation may justify.”<sup>81</sup> In fact, the Arlington Junto had already embarked on that path.

After Burgoyne’s defeat at Saratoga, the British, fearing that the Americans would consider another invasion of Canada, pursued a two-part policy toward Vermont. Lord George Germain,

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<sup>76</sup> *GC&C*, I, 413–16.

<sup>77</sup> *State Papers of Vermont*, III, *Journals*, Part 1, 41–45.

<sup>78</sup> *Ibid.*, 41–45; *GC&C*, I, 423.

<sup>79</sup> *State Papers of Vermont*, III, *Journals*, Part 1, 47–48, 53; *GC&C*, I, 423.

<sup>80</sup> *GC&C*, I, 520–25.

<sup>81</sup> William Slade, comp., *Vermont State Papers . . .* (Middlebury, Vt., 1823), 118–22.

British secretary of state for the colonies, ordered Frederick Haldimand, the governor of Canada, to launch raids into Vermont and the neighboring New York towns along the Hudson River north of Albany. The activity was meant to disrupt the invasion routes from the upper Connecticut River and Lake Champlain. Germain also ordered Haldimand to assist General Henry Clinton, named commander-in-chief in North America in 1778, in the effort to lure Vermont back into the British orbit.

Between 1778 and Cornwallis' surrender at Yorktown in October 1781, the British in Canada conducted sporadic and small, yet lethal, raids led by regular officers accompanied by troops and Native American allies. In 1778 the British conducted two raids in the Champlain Valley, in which they burned buildings, took cattle, and took prisoners. In 1780 British troops went up the Onion (Winooski) River, where a previous raid had destroyed Ira Allen's blockhouse. Lieutenant Richard Houghton's force of regulars, along with nearly 200 Native Americans, burned Tunbridge on 15 October. The next day at Royalton they burned dozens of buildings, dispatched livestock, killed four settlers and took twenty-six men prisoner. On their retreat to Canada, they burned Randolph. The raid itself had little military import, but the killings, scalping, transport of captives to Canada, and sudden assaults on the settlements in the Indian fashion of warfare, set the Vermont frontier on edge.<sup>82</sup>

The British and the Indians also launched raids along the Hudson River. In 1780 they took Fort George at the south end of Lake George. During those raids, the villages of Sandy Hill, Fort Ann, and Fort Edward were burned. Perceiving that they could not reach the objective of Schenectady, they stopped after skirmishes at several towns. Governor Clinton, with inadequate resources to resist, requested and received the help of Seth Warner's badly depleted Green Mountain Continental Regiment. Ill health and exhaustion caused Warner to resign his commission and the unit disbanded in late 1780. New York's inability to defend these towns caused them to look toward an alliance with Vermont.<sup>83</sup>

In October 1780, the same month of the Royalton raid, Ethan Allen and the council agreed to a temporary truce and negotiations with the British, after Allen had received a secretly delivered invitation from the British. Vermonters knew about and approved of the truce, but they did not know the extent of the negotiations. Agents of General Frederick Haldimand conducted clandestine negotiations with Ira Allen ostensibly under a flag to conduct a prisoner exchange. When rumors reached Vermont that the discussions may have gone further than the exchange of prisoners, the Assembly created a committee of investigation. Chittenden, the Allens, and a handful of others in the inner circle who knew about the secret meetings, dissembled and produced a second set of doctored documents. This satisfied the Assembly, but in approving the cartel to exchange prisoners and the truce, it requested that Chittenden "discharge the Militia and Volunteers raised for the defence of the Northern frontiers."<sup>84</sup> This request and his apparent wish to disassociate himself, at least publicly, from the negotiations, caused Ethan Allen's noisy

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<sup>82</sup> Neil Goodwin, *We Go As Captives: The Royalton Raid and the Shadow War on the Revolutionary Frontier* (Barre, Vt., 2010), provides a full account of the Royalton Raid and the experiences of the captives. David Bennett, *A Few Lawless Vagabonds: Ethan Allen, the Republic of Vermont, and the American Revolution* (Philadelphia, 2014), 162–70, provides a summary of the raids and an analysis of their effect. See also Oscar E. Bredenberg, *Military Activities in the Champlain Valley after 1777* (Champlain, N.Y., 1962).

<sup>83</sup> Bennett, *Lawless Vagabonds*, 166–67; Bredenberg, *Military Activities*, 27–29.

<sup>84</sup> *State Papers of Vermont*, III, *Journals*, Part 1, 145–46.

resignation as brigadier-general of the Vermont militia. With the surrender of Cornwallis at Yorktown, the Haldimand negotiations ended, as there was no longer any possibility that the Assembly would approve a return to British affiliation.

Historians disagree about the seriousness of the Haldimand negotiations. In the nineteenth century, the accepted version became that the wily Vermonters had found a strategy both to defend the northern border and pressure Congress for recognition, but they had no real intention of rejoining the British. This view continues to persist in some of the most recent literature. However, beginning in the 1920s, revisionists found the Allens and their fellow conspirators serious in considering the return to the Empire primarily motivated by the opportunity to win recognition of their New Hampshire titles and access to the Canadian and British markets.<sup>85</sup> That the Allens would return to the negotiations in 1782 provided further evidence of the seriousness of the negotiations, as did their attempts to form a close tie with Quebec in the late 1780s.

Earlier in 1781 Chittenden and his supporters took aggressive measures to further their control and Vermont's independence. They induced the Assembly to adopt "Articles of Union," which created a second Eastern Union by annexing thirty-five New Hampshire towns. At the same time, towns in northeastern New York, unhappy with what they deemed a tepid defense by New York during Burgoyne's invasion and the subsequent British raids, expressed an interest in joining Vermont. When Philip Schuyler and others supported a bill in the New York Assembly to recognize Vermont, Governor Clinton blamed the activity on "some of our monied gentlemen" who were induced "to speculate in lands and solicit grants."<sup>86</sup> The bill was killed, but Vermont responded by annexing fifteen New York towns between the informal New York-Vermont boundary and the Hudson River. They then announced a "Greater Vermont" with the Eastern and Western Unions.<sup>87</sup>

Incensed by Vermont's actions and his inability to force Vermont out of the West Union, Clinton sent Congress documents that implicated Vermont in the Haldimand negotiations, demonstrating an express purpose of returning Vermont to the British. At the same time, Chittenden wrote to George Washington complaining that the hostile activities of neighboring states and the failure of Congress to act had provoked Vermont's actions. Washington feared that the Vermont situation could touch off a civil war. He wrote to Chittenden that if Vermont withdrew to the confines "of your old limits," then "all further difficulties would be removed also, and the matter terminated to the satisfaction of all parties."<sup>88</sup> Washington's reference to "old

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<sup>85</sup> Historians of Vermont have long offered opposed positions about the Allen-Chittenden faction's intent in the Haldimand negotiations. Williams in his 1794 *History* allowed Ira Allen to review the manuscript and make his case prior to publication. Williams told Allen that he had "inserted every thing that you mentioned to me, and I believe it now stands in a light that cannot be construed unfavorable to any person who was concerned in it, or by the british in Canada" (*EAHK*, II, 423–24). That the Allen-Chittenden group slyly out-foxed the British to secure the northern border against British attack from Canada and to put pressure on the Continental Congress for recognition remained the only interpretation until the 1920s. Since then revisionists have opened a debate asserting that the Vermont leaders negotiated in earnest. For a recent and full discussion of the historiography of the debate see Duffy and Muller, *Inventing Ethan Allen*, 167–94. A recent and carefully documented analysis by Bennett, *Lawless Vagabonds*, comes down squarely and definitively on the side of the revisionists and seriousness of the negotiations.

<sup>86</sup> *GC&C*, II, 270.

<sup>87</sup> Sherman, *Freedom and Unity*, 115–16.

<sup>88</sup> *GC&C*, II, 350–54.

limits” tacitly recognized Vermont independence. In response, Chittenden called a special session of the Assembly where he presented Washington’s letter. The governor pledged to continue military aid to the dissolved towns if they left Vermont, and he endorsed numerous grants of land, especially to leaders of the thirty-five New Hampshire towns. When “Greater Vermont” dissolved in April 1782, Vermont applied to Congress for admission as the fourteenth state. Congress did not act, adding to the Allen-Chittenden faction’s distrust of the Confederation.<sup>89</sup>

### *Postwar Vermont*

As the leaders of Vermont continued to consolidate its authority, the state was changing. The estimated population of 7,000 in 1771 had grown to about 14,000 at the time of its declaration of independence in 1777. From 1780 to the first federal census in 1791, the Vermont population grew from roughly 30,000 to 85,000. With an annual average growth rate of 12 percent and the rate of natural increase at about 2.2 percent, most of the population growth came from immigration.<sup>90</sup> Drawn to Vermont by inexpensive land, no state taxes, or to avoid military service, migrants did not bring with them the experience of the bitter struggle with New York. Coming from other states, they also did not have the same wariness and antipathy for Congress and a federal government.

When the Assembly gathered in Rutland in 1784 nearly half (45 percent) of the representatives had never previously served, and they elected one of the freshmen representatives as speaker. Only seventeen of the eighty-three members had sat in its first gathering of the Assembly in 1778. The revolutionary leaders with their “bottom up” predilection in public policy gradually exited the stage. The new arrivals brought a different perspective to Vermont’s changing demography and conditions. Some also, unlike any of the Vermont separatist leaders, had served in the Continental Army, had a college education, and practiced law or other professions. Nathaniel Chipman, Yale educated and an aspiring and ambitious lawyer who had studied law with Tapping Reeve, resigned his commission in the Continental Army in 1778 and followed his parents to Vermont. College of New Jersey (Princeton) graduate Isaac Tichenor came to Vermont as a Continental quartermaster assigned to Bennington in June 1777. He made Bennington his permanent residence. Nathaniel Niles, a College of New Jersey (Princeton) graduate who studied medicine, law, and theology in New York, migrated to Vermont in 1781 and became a lay minister. These men and their associates held more aristocratic values, emphasizing respect and deference for authority. The Chipman-Tichenor-Niles faction and their allies became the chief opponents of the Allen-Chittenden bloc.<sup>91</sup>

The two competing factions clashed on a variety of matters that ranged from public policy to sheer personal dislike. Chipman and Matthew Lyon, a Chittenden stalwart and later his son-in-law, exchanged taunts in Stephen Row Bradley’s Westminster office in 1780. When Chipman called Lyon “an ignorant Irish puppy,” Lyon, sensitive about his Irish roots and his time as an indentured servant, attacked. Chipman defended himself with the knife he had used to sharpen a

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<sup>89</sup> Smallwood, *Chittenden*, 116–17.

<sup>90</sup> H. Nicholas Muller III, “Shifting Boundaries, Elusive Settlers, and the Population of the ‘Republic of Vermont’: A Review Essay on Vermont 1771 Census,” *Vermont History*, 51 (1983), 179–89.

<sup>91</sup> *G&C*, III, 103; Robert A. Mello, *Moses Robinson and the Founding of Vermont* (Barre, Vt., 2014), 203–16; *State Papers of Vermont*, III, *Journals*, Part 3, 65; John M. Comstock, ed., *Principal Civil Officers of Vermont from 1777 to 1918* (St. Albans, Vt., 1918), 16.

quill pen. It took both Bradley and Chipman to subdue Lyon.<sup>92</sup> Isaac Tichenor, with some allies, engaged in ugly and often *ad hominem* attacks on Ira Allen. These brutal attacks, both in the Assembly and under pseudonyms in the press, claimed Allen mishandled his offices as Vermont's treasurer and surveyor general. "A Plain Man" expected that "Mr. Allen's recommendation of himself as a very honest Treasurer" would no longer fool the voters. "A Friend to Justice" reflected on the threat of not re-electing Allen as surveyor general, claiming that if Vermonters "neglect him he becomes an enemy, and so ruins us. . . . If this be our case, miserable indeed is our present situation, and most deplorable our future prospects!"<sup>93</sup> Allen defended himself with lengthy self-serving reports, but they did not effectively compete with the more lively and damning prose of his opponents. He would lose both offices.

As the settlers arrived in Vermont, many fell short of having clear, legal ownership of the land they had laboriously cleared and planted. With murky titles, some cheats, and no central registry, certain settlers could not defend themselves against others who labeled them squatters and claimed the land and improvements for themselves. In 1781 the Allen-Chittenden faction, with Matthew Lyon leading in the Assembly, passed the Betterment Act entitling those dispossessed of their farms to receive payment for their improvements from the "true" owners. The growing number of lawyers and more conservative members of the Assembly strongly opposed forcing rightful owners to pay because someone had taken possession without their knowledge or consent. In 1784, the Assembly formed a committee to reconsider betterments, which recommended the re-enactment of the 1781 law with tighter controls on how to establish the amount of restitution. The Assembly rejected the bill. The conservatives—in an effort to kill betterments altogether—successfully sponsored a bill for a non-binding referendum on the issue. Roughly 60 percent of the voters supported a betterment act, but by a narrow margin the bill failed in the Assembly, defeated by the same coalition of lawyers and east side opponents of the Allen-Chittenden faction. A new bill, making a settler entitled to the "value of improvements and betterments," if he believed that he had good title to the land, and half of any enhanced value of the land, passed by a margin of five votes. In this instance the Chipman-Tichenor-Niles faction had not prevailed.<sup>94</sup>

In 1785 the voters elected the first council of censors, a body provided for in the constitution of 1777 to meet every seven years to review all of the activities of the state government, report to the people, and make recommendations for legislative repairs for the consideration of the Assembly. If it deemed it was warranted, the council of censors could recommend a constitutional convention. Elected at large, with no state office holder eligible, the thirteen members of the 1785 council of censors had only a small minority of reliable supporters of Chittenden and several inveterate opponents, including Joseph Marsh and Jonathan Hunt.<sup>95</sup>

After its review of the governmental activities, the council of censors made its recommendations. The council called for the impeachment of Matthew Lyon for refusing to turn

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<sup>92</sup> *Annals of Congress* (42 vols., Washington, D.C., 1834–56), 5th Cong., 2nd Sess., 999–1000.

<sup>93</sup> See Jonathan K. Graffagnino, "Revolution and Empire on the Northern Frontier: Ira Allen of Vermont, 1751–1814" (Ph.D. Diss., University of Massachusetts, 1993), 228–34, for samples of the politics of personal attack against Ira Allen.

<sup>94</sup> Mello, *Moses Robinson*, 205–9; Smallwood, *Chittenden*, 123–29.

<sup>95</sup> Paul S. Gillies and Gregory Sanford, eds., *Records of the Council of Censors of the State of Vermont* (Montpelier, 1991), xi–xii; *GC*, III, 64.

over records. In addition, the council made many recommendations for the amendment or repeal of laws, especially the more draconian punishments. The council opposed the Betterment Act and laws that addressed specific individuals like divorces, land disputes, and debtor issues. The council also called for a constitutional convention.<sup>96</sup>

The constitutional convention met as scheduled in Manchester in June 1786. The convention suggested changes to improve governance by stipulating that the legislative, executive, and judiciary powers should be “separate and distinct” and protecting Assembly members from retribution or prosecution for positions taken in deliberation or debate. They also required recording deeds in the office of the town clerk where the land was located. The convention turned down the recommendations to constrict male suffrage by limiting it to tax payers and limiting the Assembly to fifty members, as well as apportioning the seats not by towns, but in districts. The convention also rejected term limits for the elected executive offices of governor and treasurer. They also opposed the effort to change the council through electing it by counties rather than at large. The proposed changes to the Assembly and Governor’s Council would have placed power in the older, more populous and wealthy southern towns that increasingly provided the base of opposition to the Allen-Chittenden group.<sup>97</sup>

The major victory of the Chipman-Tichenor-Niles faction was the provision that no individual could hold more than one state office simultaneously. The leaders of the Allen-Chittenden circle, especially Ira Allen, but also notably Moses Robinson and Matthew Lyon, had held multiple offices. New members elected to the council gave the growing opposition a majority. They included Jacob Bayley, who had once called the Chittenden gang “all the Friends of Hell Combined and using all their Deiabolical Arts to Disunite us . . . Changing themselves into angels of light now pleading you were abused by the State of N, Y.”<sup>98</sup> Jonathan Hunt of Vernon, formerly a strong adherent of New York, also opposed the Junto. Isaac Tichenor, a conservative thorn in the side of both Chittenden and Allen, also won a seat. Nathaniel Chipman and Nathaniel Niles won election to the supreme court.<sup>99</sup> The new constitution provision weakened the old guard’s grip.

The postwar economic downturn that provoked farmer’s protests from Georgia to New Hampshire did not bypass Vermont. Many farmers found themselves unable to pay the creditors who obtained court judgments against them. In August 1786 two hundred farmers from ten towns gathered in Rutland where the court had a long docket of cases against debtors. Chittenden responded to the protest with a message to the people of Vermont and a proposal for relief. He noted that, “Law suits are become so numerous that there is hardly money sufficient to pay for entering the actions.” The cries to “kill the lawyers and deputy sheriffs” would not, he admonished, resolve the matter.<sup>100</sup> That October and November it took employment of the militia to quell rioters’ threats to close the courts in both Windsor and Rutland counties. In Rutland the anti-court protests led to some violence, arrests, and prosecution. In August

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<sup>96</sup> *GC*, III, 30–31, 33, 37–42.

<sup>97</sup> *Ibid.*, 43–57, 80–83.

<sup>98</sup> *DHNY*, IV, 560.

<sup>99</sup> *GC*, III, 101–104.

<sup>100</sup> *GC*, III, 359–61.



Chittenden had proposed a tax on law suits, the creation of a state land bank, and issuance of paper money to address the problem. He proposed that the land bank, run by the state, would issue paper money that farmers could borrow to pay their creditors. The lawyers and creditors opposed Chittenden vehemently. They recalled the experience of severe wartime inflation of Continental and state paper money that would allow debtors to repay loans with devalued currency. Neither the land bank nor the issuance of paper money were adopted by the assembly at its October session, but an act passed allowing the payment of debts in certain specified articles. Creditors objected to being forced to accept perishable agricultural products and livestock, at legislatively fixed high values, in a depressed market.<sup>101</sup>

Incensed by the proposed tax on lawsuits and a visceral dislike of paper currency, Nathaniel Chipman led the opposition to the proposals, claiming they would “greatly increase and prolong the sufferings of the people.” Fearing that Chittenden had enough support in the Assembly to prevail, he proposed a referendum for January 1787 on component issues like the wisdom of paper money, general tender, and fulfillment of contracts. Chipman and his associates campaigned in both Vermont newspapers and it had their desired effect as voters rejected Chittenden’s initiative by wide margins.<sup>102</sup>

However, the debtor crisis did not subside. News of Shays’s Rebellion in neighboring Massachusetts quickly reached Vermont. This induced Chittenden to issue a proclamation on 27 February 1787 by the “request of the General Assembly” and “advice of the Council” admonishing Vermonters not to “harbour, entertain, or conceal” Daniel Shays and his followers nor to take arms nor furnish the rebels “with arms, ammunition, or otherwise” or they would answer for it “at their peril.” Ethan Allen’s letter to Massachusetts Colonel Benjamin Simmons, conveyed—as Allen expected—to Massachusetts Governor James Bowdoin and from him, to Governor Clinton in New York, stated somewhat disingenuously that the Vermont “government are so alarmed at the present conduct of your Insurgents” that it would do anything “requisite for the mutual peace.” Vermont, despite its protestations, did little to enforce Chittenden’s proclamation and many Shaysites remained in Vermont.<sup>103</sup> This communication between Massachusetts and Vermont, along with an article in the Boston *Independent Chronicle* that envisioned New England forming itself into a separate republic of five states, gave tacit recognition of Vermont as a state.<sup>104</sup> With the widespread agrarian rebellions and other issues demonstrating the weakness of the Articles of Confederation, national leaders set into motion events that would result in the Constitutional Convention that would draft a new frame of government for the United States.

The proposed Constitution of the United States responded to the situation in Vermont. Article IV, section 3, addressed the admission of new states and the power of Congress over territory. It provided that “no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or parts of States,

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<sup>101</sup> *Ibid.*, 364; Smallwood, *Chittenden*, 141–47.

<sup>102</sup> Sherman, *Freedom and Unity*, 123; *State Papers of Vermont*, III, *Journals*, Part 3, 284–85.

<sup>103</sup> *G&C*, III, 375–80.

<sup>104</sup> Joseph J. Ellis, *American Creation* (New York, 2007), 93. Maine would not become the sixth New England state until 1820.

without the Consent of the Legislatures of the States concerned as well as of the Congress.”<sup>105</sup> With the ratification of the Constitution in 1788, the path to Vermont’s statehood required New York first to recognize it and then to obtain confirming congressional action. It would also require Vermont to agree to become a state under the terms and conditions of the U.S. Constitution. The robust New York debates that led to its ratification of the Constitution recognized that Vermont presented a real problem that required resolution. Whether New York and Vermont could reach an accommodation in the face of the opposition some leaders in Vermont and New York still felt, and, even achieving that, whether Vermont would ratify the U.S. Constitution, remained open questions.

The Allen-Chittenden faction did not support statehood. In a long letter of 16 July 1788 to Lord Dorchester, governor of Canada, Ethan Allen discussed the “subject of American politics.” He affirmed the importance of the trade with and through Canada to European markets, that “Haldimand’s policy would still be the best,” referring to the former negotiations with the British. “The leading men of Vermont,” he asserted, “are not sentimentally attached to a republican form of government.”<sup>106</sup> Levi Allen confirmed that “the principal men of Chittenden’s and Allen’s party was clear for joining Great Britain immediately.” To his wife and brother he exclaimed, “in the name of almighty *God*, You will not Join Congress. Govr C——n, my deceased Brother [Ethan], Yourself, Col. Lyon, Clark, Enos, Hitchcock, Spafford’s, Coit, Ebenr. [Ebenezer Allen] &c. &c. &c. all being fully determined” against statehood. Levi feared that something “respecting Joining Congress, while [Governor Moses] Robinson was in the Chair” would need undoing because of “consequence to Vermont & our Family in Particular.”<sup>107</sup>

In July 1788, Nathaniel Chipman wrote to Alexander Hamilton about the need to overcome the hurdle posed by the Vermont government and the link between opposition to joining the union and securing land titles. “The governor and some few gentlemen deeply interested in those lands,” he reported, “have expressed themselves some what bitterly against the new federal plan of government.” Chipman recognized that conditions concerning New Hampshire and, by then, Vermont titles as well, would have to accompany Vermont’s entry into the union.<sup>108</sup>

Yet the pressure for Vermont statehood continued to rise from a variety of quarters, as many in New York appreciated that the Vermont situation needed resolution. In the spring of 1787 Alexander Hamilton introduced a bill in the New York Assembly to confirm the sovereignty and independence of Vermont. Hamilton labeled New York’s efforts to assert authority in Vermont “fruitless,” and asserted that Vermont’s independence was “a matter fixed & inevitable.” He also knew of the danger inherent in Vermont’s negotiations with the British. He thought it best to recognize Vermont’s independence and have it “*confederated*” into the union.<sup>109</sup> Hamilton and others also recognized the need for an additional northern state to counterbalance the anticipated addition of Kentucky as a slave state. In a long, powerful speech rebutting opposition, Hamilton pointed out the reasons that Vermont’s non-confederated status posed threats to New York and the United States. He noted that, “Vermont is, in fact, severed from New York, and has been so

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<sup>105</sup> RCS:Vt., 255.

<sup>106</sup> RCS:Vt., 150–53.

<sup>107</sup> RCS:Vt., 228, 230.

<sup>108</sup> RCS:Vt., 148–50.

<sup>109</sup> *G&C*, III, 422–24.

for years. There is no reasonable prospect of recovering it, and the attempt would be attended with certain and serious calamities.”<sup>110</sup> At Governor Clinton’s urging, the New York senate killed the bill. However, other key leaders like James Madison, John Adams, and John Jay, who had reversed Clinton’s previous opposition, joined Hamilton in acknowledging the importance of the matter and did not relent.

Aware of the activities in New York, Nathaniel Chipman had opened an unofficial private channel of communication with Hamilton. He introduced himself as a “citizen” of Vermont, and he suggested the “people of this State, could certain obstacles be removed, I believe, might be induced almost unanimously to throw themselves into the foederal scale.” Some in New York thought “The State of Vermont is laying on her oars and watching the proceedings” in New York.”<sup>111</sup> Chipman, grasping an oar, identified the major obstacle as the recognition of the Wentworth and Vermont land titles. The pressure to join the union mounted. Governor Chittenden received several communications from prominent New Yorkers requesting to know what conditions Vermont required to “come into the union” and offering to facilitate it.<sup>112</sup> On 22 October 1788 the Vermont Grand Committee (made up of the Assembly and Council) elected Moses Robinson, Ira Allen, and Jonathan Arnold as agents to Congress; they were then instructed “to use all due diligence to remove every obstacle to the accession of this State to the Federal government.”<sup>113</sup>

In February 1789 the New York senate once again thwarted a bill to negotiate with Vermont, but the proponents did not give up. A July bill to appoint commissioners with the power to recognize “a certain territory within the jurisdiction” of New York (i.e., Vermont) became law. On 16 July 1789, the New York commissioners informed Chittenden of their powers and requested he advise them “of any measures which may be taken on your part to effect the attainment” of negotiations.<sup>114</sup> Chittenden did not inform the Assembly or call it into session, which would have likely established a parallel Vermont commission with tight instructions about the latitude of negotiations.

Those favoring statehood, well aware the New York legislature wanted to begin negotiations that could lead to Vermont statehood, determined to remove the barriers. The principal proponents arranged what amounted to a coup to remove Chittenden from office in the elections of October 1789. The plot harkened back to 1781 when Major Theodore Woodbridge forfeited his Vermont grant of a Canadian border town for not paying the requisite fees. In 1783 the Assembly passed an act authorizing the governor and council to fund the survey of the state’s remaining ungranted towns, including Woodbridge. They directed Ira Allen, the surveyor general, to dispose of Woodbridge and part of the town of Jay to pay for his expenses. Allen instead paid for the work with his own funds. In 1785 the council meeting in Arlington authorized payment, but with only six members present it did not have a quorum, and Allen did not get reimbursed. In the statewide elections of 1786, Ira Allen lost his bid for re-election as treasurer and requested that Chittenden reimburse him for his surveying expense with the grant

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<sup>110</sup> *Ibid.*, 433.

<sup>111</sup> RCS:Vt., 148; RCS:N.Y., 1301.

<sup>112</sup> *G&C*, III, 443–45.

<sup>113</sup> *Ibid.*, 447.

<sup>114</sup> *Ibid.*, 448–49.

of the entire town of Woodbridge. Chittenden made the grant in spite of the absence of a quorum. In October 1787, Jonathan Hunt of Vernon, a member of the council first elected in 1786, had to have known about the technical problem with Chittenden's action. Hunt, a proponent of statehood and enemy of the Chittenden government, in October 1787 petitioned the Assembly for a grant of a town that matched the description of Woodbridge. During the 1788 session, Hunt expressed shock and outrage that Chittenden had already granted the town to Ira Allen. The Assembly appointed a three-man committee of inquiry made up of the governor's political opponents that reported Chittenden had failed to "keep the *Public Seal* of this State *sacred*: and that he has converted it to *private, sinister views*."<sup>115</sup> The report was entered into the journal of the Assembly, thus making the scandal and rebuke a matter of public record. That sufficiently damaged Chittenden and he fell short of an absolute majority in the October 1789 elections. The Vermont constitution required that, without a majority, the election would default to the combined session of the Assembly and council. In that session Moses Robinson, with only 26 percent of the popular vote to Chittenden's 44 percent, won election as governor.<sup>116</sup> Moses Robinson's politics mirrored Chittenden's, but the two men differed on statehood. Robinson would work with the Chipman-Tichenor-Niles faction to bring about statehood, though he did not align with their other politics.<sup>117</sup>

A few months later, in 1790, a special independent committee established to settle Ira Allen's accounts as surveyor general, issued a report that cleared Chittenden and Allen of any fraudulent intent.<sup>118</sup> Chittenden won election again in October 1790, but by that time the activities that would lead to Vermont's ratifying convention and statehood in 1791, with its evident public support, had proceeded too far for the popular governor to thwart it.

In October 1789, after Chittenden had lost the election, he went to the Assembly where he "communicated such letters & advices as he had received from abroad touching our situation with the Federal government." Two days later the Vermont "Agents to Congress verbally reported their proceedings" on their mission. After that report the Assembly resolved "that a sub-committee of seven be appointed to draft a bill" naming their own commissioners to deal with New York's commissioners.<sup>119</sup> They passed the resulting legislation on 23 October 1789 and named Nathaniel Chipman, Isaac Tichenor, Stephen Row Bradley, Elijah Paine, Stephen Jacob, Israel Smith, and Ira Allen commissioners.<sup>120</sup> Allen, the odd man out among prominent, well-educated Federalist advocates, never attended a meeting. On 21 October 1790, having concluded their negotiations, the commissioners issued a report to the Assembly on their agreement with New York. The commissioners had encountered little difficulty in dealing with the Vermont-New York boundary and war debt, but the issue of land remained unresolved until New York agreed to accept \$30,000 in compensation from Vermont.<sup>121</sup> The Assembly confirmed the agreement and passed an act calling a convention to consider the U.S. Constitution on

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<sup>115</sup> *Ibid.*, 508–14; Smallwood, *Chittenden*, 153–59.

<sup>116</sup> *State Papers of Vermont*, III, *Journals*, Part 4, 119–21.

<sup>117</sup> Mello, *Moses Robinson*, 254.

<sup>118</sup> Smallwood, *Chittenden*, 157.

<sup>119</sup> *State Papers of Vermont*, III, *Journals*, Part 4, 135, 138, 141.

<sup>120</sup> *State Papers of Vermont*, XIV, *Laws*, 477.

<sup>121</sup> *GC*, III, 460–61.

27 October 1790. The Assembly also enacted legislation agreeing to pay New York \$30,000 by 1 June 1794.<sup>122</sup>

The 1791 Convention voiced its approval of the Constitution, 105 for and 4 dissenters (See RCS:Vt., 218–20). The Convention reported to Governor Chittenden, who also presided as the Convention’s president. He had the duty to report to the Assembly and request it “take effectual measures in the proposed negotiation with the Congress of the United states of America for the admission of this state into the Confederated government.” He was also required to inform them that the agreement to end the “disputes concerning landed property be in no wise impeached” and must “remain in full force.”<sup>123</sup> On 20 January 1791 Vermont named Nathaniel Chipman and Lewis R. Morris commissioners to represent Vermont and monitor Congress to make certain that federal legislation would remain true to the terms of the agreement with New York.<sup>124</sup> By February both the United States Senate and the House of Representatives had agreed to an act that provided for the United States judiciary, a collector of customs, a census, and other federal apparatus and, on 4 March 1791, formally admitted Vermont to the union as the fourteenth state.<sup>125</sup>

Becoming the fourteenth state caused exuberant celebrations in Vermont. The Rutland festivities included the “discharge of cannon,” and toasts to the president of the United States and, magnanimously, to “The state of Newyork.” A song composed for the occasion instructed the celebrating throng to “Fill fill your bumpers high” in the best tradition of the Green Mountain Boys.<sup>126</sup> The long, arduous path to recognition of the Wentworth, and later, Vermont, land titles, concluded when New York recognized that it had lost all authority in the Green Mountain State. After decades of dispute and rancor, and with Governor Clinton still opposed, New York had actually facilitated Vermont’s entrance into the union as the fourteenth state.

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<sup>122</sup> *State Papers of Vermont*, III, *Journals*, Part 4, 220.

<sup>123</sup> RCS:Vt., 220.

<sup>124</sup> *G&C*, III, 485.

<sup>125</sup> Linda Grant De Pauw, Charlene Bangs Bickford, Kenneth R. Bowling, et al., eds., *Documentary History of the First Federal Congress of the United States of America, March 4, 1789–March 3, 1791* (22 vols., Baltimore, 1972–2017), VI, 2003–5.

<sup>126</sup> RCS:Vt., 222, 223.