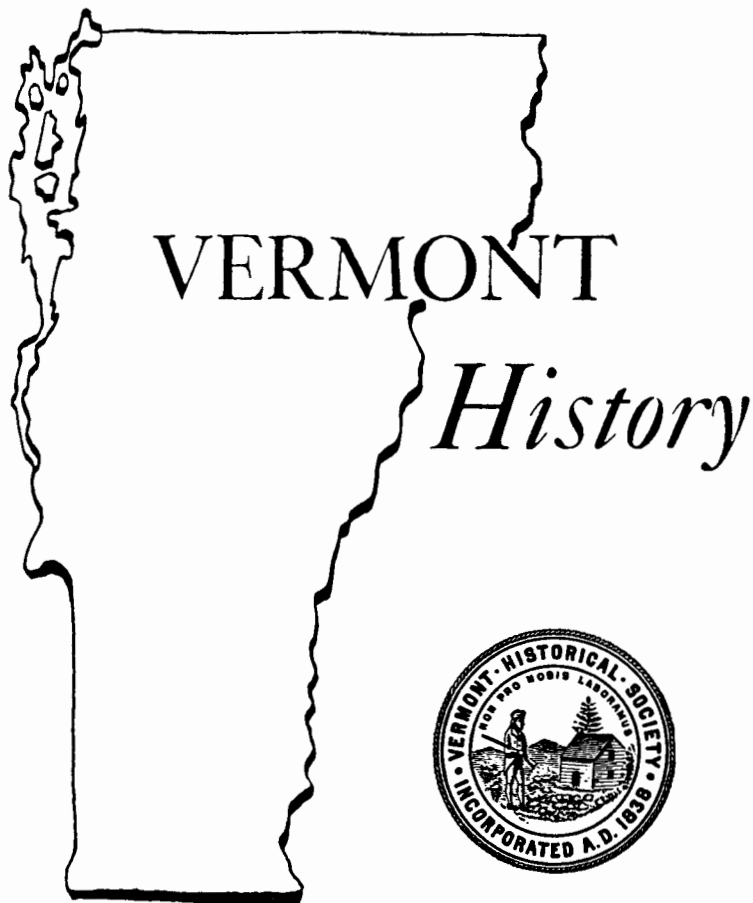


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Vermont's tentative statehood created serious problems within both the territorial limits claimed by the new state and the larger political entity increasingly referred to as the United States of America.

Making the Vermont Constitution: 1777-1824

By GARY J. AICHELE

As a result of renewed interest in constitutional origins stimulated by the national constitutional bicentennial, scholars have begun to take a closer look at the constitutional “foundings” of the individual states. Regrettably, primary sources concerning the framing and ratification of the Vermont constitution are sparse, which may account for the relative paucity of secondary commentary concerning this important period in Vermont’s political history. Nevertheless, from the materials that are available, it is possible to develop a view of the creation of the Vermont republic that distinguishes it rather significantly from those of the original thirteen states in the federal union and provides an important perspective on the meaning and consequences of constitutionalism in America during the waning years of the eighteenth century. Specifically, this article will investigate three aspects of the Vermont constitution of 1777—its historical context, its constitutional content, and its political consequences.

HISTORICAL CONTEXT

The political community known today as Vermont had no historical existence prior to the creation of the Vermont Republic in 1777. Long known as the New Hampshire Grants, the territory and inhabitants of the region existed in a state of political limbo brought about by the ambiguous territorial claim decision of the British Privy Council in 1764. Intended to resolve permanently the disputed claims of the rival colonies of New York and New Hampshire, the order declared the western bank of the Connecticut River “to be” the boundary between the royal colonies of New York and New Hampshire; the decision left unclear what the legal boundary between the two colonies “had been.” This complicated further the legal status of titles west of the Connecticut River originating in New Hampshire patents.¹ New Hampshire governor Benning Wentworth had precipitated the struggle for control of the territory when he

granted a charter to the town of "Bennington" in 1749. Located at the westernmost periphery of the land Wentworth claimed under New Hampshire's royal charter, Bennington lay within the territory claimed by the colonial governor of New York under New York's charter. Thus, from the beginning, the land that would become Vermont was the subject of a legal dispute, the outcome of which would be determined by fundamentally political forces.²

Demographically, people had moved into the Grants from more densely populated neighboring colonies; town names and the records of early settlements suggest that a majority of new settlers were from Connecticut. Together with other "Yankees" from New Hampshire and Massachusetts, they cut the first roads and cleared the first farms. But especially after 1764, they were followed by other settlers, newcomers who were less committed to the New England "town meeting" tradition and more willing to adapt to any form of civil authority that could protect their property and maintain the peace of the community. These settlers, soon to be called "Yorkers" as a result of their willingness to recognize the provincial authority of New York over the Grants, often found themselves at odds with their Yankee neighbors. Perhaps the most significant factor affecting settlement in the Grants, however, was the rough competition that developed between Yankee and Yorker land speculators, the most significant including the Allens and their supporters on the one side, and James Duane, John Tabor Kempe, and William Smith on the other. Each side actively promoted settlement throughout the Grants as a means of solidifying its claims and increasing its profits. Thus, differences in political traditions, social sympathy, and financial self-interest all played a role in fanning the flames of controversy ignited by the Privy Council order of 1764.³

By the spring of 1770, the issue of political sovereignty over the Grants had come to a head in two separate parts of the Grants over two separate issues. In April, 1768, New York had created Cumberland County, a new jurisdiction responsible for the governance of towns situated in the southeastern region of the Grants. Largely through the efforts of Thomas Chandler, Chester was selected as the first county seat, where the first county court was held in 1769. This exercise of authority by New York, and specifically, the imposition of a county court system over a region that historically had known only local town courts, was met with considerable opposition. The problem was made worse by the fact that inhabitants of the new county were unrepresented in the New York provincial assembly. In May, 1770, Cumberland Sheriff Daniel Whipple was seized while trying to execute an arrest warrant for Nathan and Simon Stone and Joseph and Benjamin Waite, all prominent men of the town

of Windsor. A month later, an angry mob led by Nathan Stone kept the county court from sitting in Chester, principally by seizing and holding John Grout, a Yorker lawyer who had brought an earlier suit against Stone. Though the actions of the men of Cumberland County in the spring and summer of 1770 clearly evidenced dissatisfaction with the county court system, the riots had nothing to do with land titles. Most of the settlers in the Connecticut River valley had petitioned New York for confirmatory titles; for a fee New York executed new titles confirming the rights of holders under their original Wentworth grants.⁴

The situation west of the mountains was, however, quite different. If the provincial government of New York headed by Governor William Tryon was prepared to confirm eastern titles for a fee, it was not able to use the same device to quiet contested grants west of the mountains; Wentworth patents frequently conflicted with grants for the same land made by the governor of New York. In 1770 holders of Wentworth titles lying west of the Green Mountains appointed Ethan Allen to present their case before the New York courts. Allen was personally faced with a difficult problem. While many of the owners he represented actually hoped that New York would confirm their Wentworth titles, Allen and other large land speculators claiming to own thousands of acres could not have raised the capital required to pay the legal fees involved. Moreover, in seeking confirmatory titles from New York, the owners were at least implicitly acknowledging the authority of New York over the Grants and their obligation to begin paying taxes known as "quitrents." If small farmers and townspeople were prepared to accept this burden to secure quiet title to their property, the Allens were not. Consequently, winning the lawsuits that were heard in Albany early in 1770 and decided later that year might have brought peace to the Grants, but such a victory would clearly have bankrupted the Allens and other large Yankee land speculators.⁵

Such was not the case, however. The New York court, presided over by Chief Justice Robert Livingston, who himself was heavily involved in land speculation in the Grants, refused to admit evidence presented by Allen proving the existence of Wentworth patents; a verdict was directed in favor of Major John Small, a New York speculator, against Isaiah Carpenter, a Bennington farmer. It is also important to note that James Duane and Attorney General John Tabor Kempe were also large investors in land speculations involving the Grants. Through the court's decision in the Albany ejectment suits brought in 1770, the leading political figures of provincial New York made it clear that they intended to profit personally by throwing Grant inhabitants off their farms and out of their homes.⁶

Not surprisingly, trouble developed the following year when the victors in these lawsuits attempted to consolidate their gains. In a series of skirmishes along the old border, inhabitants of the Grants dealt roughly with New York surveyors and other officials of Albany County who attempted to dispossess them of their land. The dispute was especially keen along the Walloomsac River and in the Manchester-Arlington area, land lying in the area of large New York patents known as the "Walloomsac Patent" and "Princetown." Having unsuccessfully attempted to evict Isaiah Carpenter of Shaftsbury and Samuel Rose of Manchester, Henry Ten Eyck and Abraham Cuyler, the sheriff and mayor of Albany, assembled a posse of some two hundred men and crossed the Walloomsac near the farm of James Breakenridge west of Bennington. There on July 19, 1771, the Yorkers were confronted by an armed force of more than one hundred "Green Mountain Boys" from the surrounding area. When the sheriff tried to execute his eviction notice, it became clear that Breakenridge and his friends had no intention of giving up the farm; it also became clear that Ten Eyck's posse had no stomach for a real fight over the place. As the Yorker officials withdrew, aware perhaps for the first time that many Albany County farmers on the New York side of the Walloomsac were sympathetic to the claims of their neighbors in the Grants, military companies began to organize in the Grants under the captaincies of men like Seth Warner, Remember Baker, and Robert Cochran. Over them Ethan Allen exercised general authority either by election or tacit acquiescence.⁷

The rout of Sheriff Ten Eyck's force exerted a powerful influence over the subsequent affairs of the Grants. From that time, New York's capacity to enforce its claim to sovereignty over the Grants existed in theory only. Emboldened by their victory, and perhaps recalling New York's ineffectual efforts to enforce its authority during its "Anti-Rent Wars" with residents of western Massachusetts in 1755 and 1766, Ethan Allen and his supporters became increasingly free in their opposition to New York officials and Yorker sympathizers. From 1771 to 1775, the Green Mountain Boys burned out Yorker settlers, harassed and banished Yorker sympathizers, and whipped with the "beech seal" New York officials and surveyors. During this same period, the Allens and several close associates had consolidated their land holdings in the Champlain and Winooski River valleys, culminating in the creation of the Onion River Land Company in January, 1773. Perhaps as a consequence, their anti-Yorker actions escalated during the summer of 1773 when they "reclaimed" Allen's property at Otter Creek by burning out Col. John Reid's Scottish tenants, bringing to an abrupt end a temporary truce between the New York authorities and the inhabitants of the Grants agreed to at a meeting in

Bennington in July. The first formal meeting of the leaders of the opposition was held at Eliakim Weller's Tavern in Manchester in early 1774 to consider an appropriate response to Governor Tryon's proclamation offering rewards for the arrest of the leaders of the Green Mountain Boys; at this and a subsequent meeting held at Capt. Jehiel Hawley's home in Arlington in April, 1774, the leadership of what was quickly becoming an organized rebellion openly challenged the continued authority of New York over the Grants and, at least indirectly, the authority of the king. Not long after, Dr. Samuel Adams, a prominent Arlington leader and Yorker supporter, was seized and taken to Stephen Fay's Tavern in Bennington, where he was bound to an armchair and ceremoniously hoisted to the top of the signpole; he hung for hours just below the old stuffed "catamount" at the top of the staff as Green Mountain Boys drank to his health. Intended as an obvious warning, their message was clear. Those who openly sided with New York would do so at their own risk. In January, 1775, the Green Mountain Boys took considerably stronger action against the Rev. Benjamin Hough of Socialborough, who had continued to serve as a justice of the peace under New York authority despite repeated warnings to resign the position. Tried by the leaders of the Green Mountain Boys, Hough was severely whipped and escorted out of the Grants under armed guard.⁸

On the eastern side of the mountains, events transpired that would provide the Green Mountain Boys with an important opportunity to broaden their campaign against New York. Trouble with the Cumberland County court had continued; in January, 1772, an angry mob had openly defied an order of the court by "liberating" property seized by the sheriff from Leonard Spaulding of Putney in payment of a debt owed Jonas Moore. The matter was subsequently resolved when the rioters agreed to pay the forty pounds Spaulding owed Moore.⁹ During the summer of 1774, Spaulding was again at the center of an anti-court mob, but this time for a different reason. Arrested for speaking out disparagingly against the king in connection with the passage of the Quebec Act, Spaulding had been forcibly released from jail by an angry group of his friends.¹⁰ Not surprisingly, Issac Low, chairman of the New York Committee of Correspondence, wrote the supervisors of Cumberland County inquiring into the revolutionary sentiment among its inhabitants. Though the supervisors attempted to suppress the inquiry, Dr. Reuben Jones of Rockingham and Capt. Azariah Wright of Westminster forced the calling of a convention on the issue, which was held at Westminster in October, 1774. At this and two subsequent conventions held at Westminster in November, 1774, and February, 1775, the people of Cumberland County defended their rights as British subjects against the unjust acts of Parliament, appointed a large standing Committee of Correspondence,

and took preliminary measures to organize a provisional county government.¹¹

The regular sitting of the Cumberland Court of Common Pleas was scheduled to be held in Westminster on March 14, 1775; in light of the actions taken at the recent convention, Judge Chandler was urged to postpone the session, which he initially agreed to do. Unfortunately, Judge Noah Sabin let it be known that he intended to hold court as usual, and a group of townspeople opposing him determined to take possession of the courthouse. On March 12, Sheriff William Patterson of Hinsdale (Vernon) raised an armed force in Brattleboro and other Yorker towns, and marched to Westminster; after refreshing themselves at John Norton's tavern, the group attacked the courthouse late in the evening. After several attempts to storm the door and dislodge the defenders failed, the sheriff ordered his men to open fire; ten men inside the courthouse were seriously wounded, and two—William French and Daniel Houghton—died of their wounds. Word soon spread of what was called the “Westminster Massacre,” and by noon of the fourteenth over four hundred men had assembled in front of the courthouse, prepared to support the rioters against the sheriff and judges. Several hundred additional men, including Robert Cochran at the head of a company of Green Mountain Boys, arrived the following day. By a vote of those assembled, the officers of the court were taken under a guard of twenty-five Green Mountain Boys, commanded by Cochran, and twenty-five New Hampshire militia, commanded by a Captain Butterfield, to Northampton, Massachusetts, where they remained in jail until released to New York under a writ of *habeas corpus*.¹²

Though the inhabitants of the Grants had not been immune to the spirit of revolt against royal authority sweeping the American colonies, the claim that young William French was a martyr of the cause of independence is difficult to support. The clash at Westminster was only indirectly related to the growing independence movement in Cumberland County, while popular dissatisfaction with the conduct of local judges and lawyers was the immediate provocation. Though totally unrelated to the situation west of the mountains, the problems resulting from their armed resistance to New York authority led the inhabitants of Cumberland County in a convention called at Westminster a month later to “renounce and resist the administration of the government of New York till such time as they can have opportunity to lay their grievances before his most gracious Majesty in Council.” Significantly, the resolution included the first public sentiment that the Grants should be removed from “so oppressive a jurisdiction” as New York, and “either annexed to some other government or erected and incorporated into a new one.”¹³

Thus, when Ethan Allen and the Green Mountain Boys captured Fort

Ticonderoga on May 10, 1775, liberating its cannon and stores for the Revolution, it was as much a revolution against the tyranny of the colonial government of New York as it was the British Crown. This “revolt within a revolt” provided the perfect opportunity for Ethan Allen and his cronies to reverse serious erosion in support for their cause west of the mountains, and to extend their influence east of the mountains. Anxious to protect his reckless investments in the Onion River Land Company, and convinced of the strategic and commercial importance of the Richelieu-Champlain valley corridor to Montreal and Quebec, Allen had joined Col. Philip Skene’s efforts to secure a royal charter for a new and independent colony in the Champlain region. Skene had gone to London to seek such a charter in 1774; when the rising tide of the American Revolution caused Allen to abandon his hopes for such a royal colony, he quickly joined the patriot cause as the only acceptable alternative. The battles of Lexington and Concord in mid-April had signaled a critical change in American-British relations, and when the Massachusetts Committee of Safety authorized Capt. Benedict Arnold to raise a company of militia in western Massachusetts to capture Fort Ticonderoga, Allen seized the moment. Capturing the dilapidated and poorly defended garrison at Ticonderoga not only gained the Green Mountain Boys badly needed recognition among respected patriot leaders, but also advanced Allen’s larger motive—opening the way for an American assault on British Canada. Allen considered the success of such an adventure likely, and was anxious to secure American domination of commerce and trade in the region.¹⁴

Following the lead of the other colonies, eastsiders declared their support for the American Revolution in a convention at Westminster in early June, 1775. A month later, westside leaders met at Cephas Kent’s tavern in Dorset to elect officers to command the Green Mountain Rangers, a new battalion of Gen. Philip Schuyler’s New York regiment being raised to defend New York against the threatened invasion of Sir Guy Carleton, the British commander in Canada. Schuyler was undoubtedly relieved that Seth Warner was elected to command the battalion with the rank of Lt. colonel rather than Ethan Allen. Whether as a result of his disappointment at not being chosen to lead or his reluctance to wait until the regiment was ready to move north against Canada, Allen headed north almost immediately and was captured in an ill-conceived assault near Montreal in September, 1775. Under the command of Brig. Gen. Richard Montgomery, the regiment succeeded in capturing St. John’s and Montreal during the fall of 1775; on December 31, however, Montgomery was killed in an assault launched against the Citadel in Quebec, which ended in disaster for the Americans.¹⁵

In January, 1776, eighteen westside towns sent representatives to Kent's tavern in Dorset to reconsider the status of the Green Mountain Rangers; a committee was appointed to draft a "Remonstrance and Petition" to the Continental Congress requesting permission for the unit to serve as a part of the Continental forces rather than as a New York battalion. The petition also sought recognition for the Grants as a "separate district" from New York.¹⁶ The petition was presented to the Continental Congress in Philadelphia in May, but was withdrawn in June when it became clear that the Congress was unprepared to support independence for the Grants. In early July, Congress did vote to raise a new regiment of the Continental Army; despite objections from the New York delegation, Seth Warner received a commission as colonel, and the roster of officers included many of the old leaders of the Green Mountain Boys.¹⁷ A second convention was held in Dorset on July 24, 1776, at which representatives from thirty-one westside towns and one eastside town—Townsend—resolved to form "a separate district." Known as the "Dorset Resolution," the statement was promptly circulated throughout the Grants, together with the call for another convention to be held in Dorset in late September. On the twenty-fifth, representatives of twenty-five westside and seventeen eastside towns voted unanimously to endorse the "Dorset Resolution" and to form a separate district.

During this phase of the campaign for independence, the leadership of Thomas Chittenden of Williston and Dr. Reuben Jones of Rockingham became increasingly significant in broadening support for the movement throughout the Grants. If initially Capt. Heman Allen and Dr. Jonas Fay of Bennington, together with Col. William Marsh of Manchester, had been the primary political proponents of independence, it was Chittenden and Jones who encouraged eastsiders to endorse the "Dorset Resolution"; while Joseph Bowker of Rutland was routinely elected to preside over this series of carefully orchestrated conventions, it was Chittenden and Jones who were principally responsible for securing participants.¹⁸

On October 30, 1776, yet another convention convened at Westminster, but attendance was seriously reduced by the threat of an invasion following Arnold's defeat off Valcour Island, and the meeting was adjourned until the following January. At the reconvened meeting, twenty-four delegates representing seven westside and ten eastside towns unanimously declared the Grants to be a separate and independent state named "New Connecticut." Neither Fay nor Marsh attended, and Nathan Clark of Bennington and Thomas Chittenden were entrusted with the task of drafting an appropriate declaration. Though actual representation at the convention was relatively sparse, there is evidence that the action of those present was widely supported throughout the Grants.¹⁹

In early April, 1777, several events occurred that would have a critical impact on the future of the new "state." Early in the month, a petition was presented to the Continental Congress in Philadelphia seeking recognition and the right to send delegates. About the same time, a new state constitution was ratified in New York. Characterized by a strong governor and appointed judges who served for life, the constitution was far too "aristocratic" for the tastes of most inhabitants of the Grants. More important, it provided that the Grants would be entitled to elect only nine of the seventy members of the new state assembly and three of twenty-four members of the state senate. Such an arrangement reflected the serious tensions that existed between the coastal and backcountry regions of the country. In February, 1777, Col. Jacob Bayley of Newbury and Dr. Eleazer Wheelock of Hanover, president of Dartmouth College and leader of the so-called "College Party," a group of prominent upper Connecticut River valley inhabitants who supported a plan for both sides of the river community to remain united regardless of larger jurisdictional issues, had met in Lebanon, New Hampshire, with representatives of the "Exeter Party," the political faction in control of the New Hampshire state government in Portsmouth. Reflecting the underlying discontent of the backcountry with the New Hampshire constitution of 1775, which perpetuated coastal domination of the state, an accommodation was agreed to which would have revived New Hampshire's claim to towns along the western bank of the Connecticut River, and significantly increased the political influence of the region. By early April, however, it was clear that arrangements had fallen through, and no union of the river towns under New Hampshire authority would be agreed to by the Exeter Party.²⁰

The combined failures of the New Hampshire negotiations and the unacceptable New York constitution of 1777 convinced reluctant eastside leaders like Jacob Bayley, who had been elected to represent Gloucester County in the New York assembly, and Charles Phelps of Marlboro, an important leader who had preferred union with Massachusetts, finally to support the formation of the new state of "New Connecticut." Consequently, attempts made by the old Cumberland Committee of Safety in June, 1777, to elect officers under the recently ratified New York constitution met with marked failure; in a series of conventions convened in Westminster and Brattleboro only a handful of towns were represented. Though many staunch eastside Congregationalists agreed with Jacob Bayley that Bennington radicals like the Allens were "friends of Hell," they were now prepared to make a pact with the devil himself to preserve the independence of the Grants.²¹

On June 4, 1777, seventy-two delegates representing twenty-two westside towns and twenty-six eastside towns gathered in Windsor; in addition to

proposing a “Declaration of Rights” and “Frame of Government” the convention adopted “Vermont” as the name of the new state, aware that a group of Connecticut inhabitants of the Wyoming Valley in northeastern Pennsylvania had already established themselves as “New Connecticut.” A month later, on July 2, 1777, the convention reconvened in Windsor, with fifty delegates representing some thirty-one towns roughly evenly divided east and west. Confronted with the possibility of imminent invasion from General Burgoyne’s army, the delegates unanimously endorsed the proposed constitution; following the unsuccessful engagement at Hubbardton on the seventh, a Vermont Council of Safety was appointed, with Thomas Chittenden elected its first president.²²

From this summary of the history of the Grants between 1764 and 1777, several important points should be established concerning the significance of the historical context of the Vermont constitution of 1777. First, the inhabitants of the New Hampshire Grants had lived in a virtual “state of nature” after 1764; law and order were both in short supply with the safety of one’s person and property more dependent upon his standing in the community than on the protection of any provincial government or royal officials. Second, the political unrest caused by New York’s feeble attempts to assert its physical control over the Grants broke into open and armed resistance at approximately the same time that relations between the Crown and its colonies were becoming seriously strained. As a result, Governor Tryon could not rely on units of the regular British army that might otherwise have been available to establish effective colonial control over the Grants. Finally, rejecting New York’s claims of sovereignty, the inhabitants of the Grants, relying increasingly upon community consensus to determine the legitimacy of state action, declared their independence from both the State of New York and the British Empire. Reflecting a political tradition that included both the Mayflower Compact and the Fundamental Orders, a rugged and self-reliant people used town meetings to address essentially local matters and repeatedly sent representatives to conventions called to resolve issues concerning the larger polity. In practice, if not in theory, Vermont was the product of Hobbesian and Lockean philosophy experienced firsthand.

CONSTITUTIONAL CONTENT

For many years, the conventional wisdom was that the constitution proposed by the Windsor convention of June, 1777, and subsequently adopted by the Windsor convention of July, 1777, was essentially a copy of the Pennsylvania constitution of 1776.²³ Early commentators claimed that with the exception of some ten minor alterations, the Vermont constitution duplicated the major provisions of the Pennsylvania model. Both

constitutions created a unicameral legislative assembly with powers reflecting the radical republican philosophy of the times. Both created a “council of censors,” which would ensure that the people’s command as expressed in the constitution would not be altered or abridged by their elected representatives or officials. Both created executive officers who would serve for relatively brief terms of office and who would in theory exercise limited authority and whose discretion would be strictly limited.²⁴

More recent scholarship, however, has suggested that despite the striking similarities between the two documents, the framers of the Vermont constitution actually made some twenty-seven changes from the Pennsylvania original. Though several of these changes altered the text of the instrument only slightly, their political effect was substantial. Under the Pennsylvania constitution of 1776, the government of Pennsylvania grew increasingly unstable until the constitution was significantly amended. In contrast, Vermont established a “closed regime,” which was initially quite stable and essentially governed the state without interruption until its political support eroded during the first decade of the nineteenth century as a result of popular opposition to the Embargo Acts of 1807-8 and partisan controversy concerning the War of 1812.²⁵

The most significant differences between the two texts concerned the way in which state executive officers and censors were to be elected and the nature and authority of the judiciary. Although the Pennsylvania constitution provided for no statewide elective offices, the framers of the Vermont constitution provided for twenty-eight — the governor, lieutenant governor, treasurer, twelve members of the governor’s council, and thirteen members of the council of censors. In sharp contrast to their alleged model, the Vermont framers also eliminated the Pennsylvania prohibition on reelection, as well as the prohibition of holding multiple offices under the constitution at the same time. Most strikingly, the Vermont constitution omitted entirely the section of the Pennsylvania constitution concerning the organization of the judiciary. While the Vermont instrument mentioned a “supreme court,” and provided that “courts of justice be established in every county” of the state, it was completely silent concerning the important issues of judicial qualifications, method of selection, composition, jurisdiction, tenure, and compensation. Unfortunately, no record of the Vermont framers’ deliberations or debates survives, which might help to explain why they followed the Pennsylvania constitution so closely in some areas, and deviated from it so dramatically in others; what little evidence there is suggests that Thomas Chittenden may have played a critical role in transforming the Pennsylvania model into the fundamental law of Vermont.²⁶

POLITICAL CONSEQUENCES

The fundamental challenge precipitating Vermont's constituent act was to create a new political commonwealth where no true political community had previously existed. In this sense, the founding of the state of Vermont represented quite a different experience than that of the other American states. In contrast to the popular enthusiasm that met the declaration throughout the colonies, political leaders in the New Hampshire Grants had difficulty convincing their people that they had the right to self-government.²⁷ Specifically, the new government faced the immediate challenge of demonstrating that it could exercise sovereign authority by protecting the lives and property rights of those living within its jurisdiction. Only over the course of time did the citizens of the new state of Vermont come to accept the legal status and authority of their self-proclaimed "constitution."²⁸

This challenge was compounded by the presence of factional rivalry, regional jealousy, and the misapprehension of a generation of settlers who had experienced only limited political stability. In particular, the evolution of the Bennington faction into a cohesive political alliance known as the "Arlington Junto" did little to assuage the fears of men like Jacob Bayley and Charles Phelps that decisions of state were being made by Thomas Chittenden and Ira Allen — principals of the Onion River Land Company — to advance their own private financial interests. There were also the old Yorkers like Judge Samuel Wells of Brattleboro and Judge Thomas Chandler of Chester, who continued to resist the formation of an independent Vermont. Finally, the decision of the new state government to fund the war effort through the confiscation and sale of property of "Loyalists" rather than through new taxes provided a direct means of rewarding supporters of independence at the expense of less enthusiastic citizens.

Unlike the American colonies, leaders in the Grants could not simply adopt a revised or amended colonial charter as the new revolutionary state constitution. Thus, the nature of Vermont's "statehood" was considerably more ambiguous from the outset. Vermont had joined the American revolution against British colonial tyranny at least partly as a result of what the people considered the "illegal measures" and "oppressive acts" of the colonial government of New York; in their "Declaration of Independence" of January 15, 1777, representatives of the people of the Grants had explicitly declared their independence from "the arbitrary acts of the crown," including "the jurisdiction by said crown granted to New York government over the people of the New Hampshire Grants."²⁹ Ironically, it was precisely for this reason that the new commonwealth's claim to statehood was not embraced or recognized by the other states.

Vermonters had been instrumental in capturing Fort Ticonderoga in 1775 and thwarting Burgoyne's invasion of New England in 1777; not surprisingly, they expected to be welcomed into the new nation as a fully equal partner. Instead, the Continental Congress refused to act favorably upon Vermont's petition to join the union of new American states. Although partly due to New York's adamant insistence that the Grants remain a part of New York, the debates in Congress during the summer of 1777, and later, suggested more far-reaching questions raised by the Vermont problem. The issue provoked potent antagonisms of ancient origin between New York and New England, and heightened existing tensions between coastal and backcountry delegates; more important, it undermined the tenuous and limited alliance between the new states to such an extent that discussion of the Articles of Confederation was delayed. Seriously threatening the cooperation necessary to pursue the war successfully, further debate over the "Vermont Question" was postponed until a future date.³⁰

Vermont's assertion of its right to independence fundamentally challenged the authority of the status of Congress as successor to the Crown. The new state claimed the same right to independence and self-government that the colonies had relied upon in asserting their independence from Great Britain. Recognition of an independent state of Vermont would also have invited further "dissolution" and "disunion" among the original thirteen states; Pennsylvania's jurisdiction over the Wyoming Valley was already being challenged and Virginia in particular was confronted with the political aspirations of frontier communities in Kentucky and Tennessee. Despite these circumstances, inhabitants of the Grants fully expected Congressional recognition, and the failure of Congress to seat delegates from Vermont in 1777 resulted in a politically precarious existence for the new commonwealth. No longer part of the British Empire, and not yet a part of the American union of states, Vermont found itself in the unanticipated circumstance of proclaiming itself to be an independent – if isolated and vulnerable – republic.³¹

Though an independent royal colony may have been considered desirable by Ethan Allen in 1774, by 1778 the American Revolution had rendered such a plan impossible; moreover, the creation of a "Vermont" regiment in the Continental Army had suggested a more favorable reaction by Congress to Vermont statehood. Relying on the political advice of Dr. Thomas Young, an old friend of the Allens who became the chief supporter of Vermont's independence movement in Philadelphia, Congressional recognition was virtually guaranteed. A radical democrat steeped in the traditions of English republicanism, Dr. Young wrote an open letter to his friends in the Grants in April, 1777:

You have nothing to do but send attested copies of the recommendation to take up government to every township in your district and invite all your freeholders and inhabitants to meet in their respective townships and choose members for a general convention to meet at an early date to choose delegates to the general congress, a committee of safety and to form a constitution for your state.³²

Realizing that the Grants had no colonial identity or charter upon which to rely, Dr. Young sent along a copy of the Pennsylvania constitution of 1776, which had been modeled on William Penn's famous colonial charter of 1681 and framed and ratified within weeks of the signing of the Declaration of Independence. It was also Dr. Young who had suggested in his letter that the new commonwealth might better be named "Vermont" than "New Connecticut." Having provided both a model frame of government and a new name for state, Young encouraged his friends to "organize fairly and make the experiment." To those who were concerned that Congress might not endorse statehood, Young wrote:

I have taken the mind of several leading Members in the Honorable Continental Congress . . . I ensure your success at the risk of my reputation as a man of honor or common sense. Indeed, they can by no means refuse you! You have as good a right to choose how you will be governed, and by whom, as they had.³³

Following Dr. Young's advice, seventy-two delegates assembled in Windsor on June 4, 1777. The largest gathering of representatives of towns in the Grants to that time, the delegates elected a committee of safety and appointed a committee to draft a proposed constitution. Joseph Bowker, the president of the first Windsor convention, sent a letter to all the towns of the Grants, informing them of the convention's work, and recommending that they elect delegates "to meet the grand convention at Windsor . . . to form a constitution for the state of Vermont."³⁴ On July 2, 1777, the first constitution for the State of Vermont was adopted by the Windsor convention.³⁵

Although it was believed for some time that as a result of difficulties associated with the war the constitution of 1777 was never ratified by the people of Vermont, more recent scholarship suggests otherwise.³⁶ Though there has been little detailed historical work done in Vermont's early constitutional period, contemporary scholarship challenges the traditional assumption that the work of the Windsor convention was never submitted directly to the people. Available evidence calls into considerable question Ira Allen's assertion that the constitution was not submitted to the people of Vermont for ratification, ostensibly as a result of difficulties encountered in having the constitution published, but in fact because of fear that the people might have rejected the constitution of 1777. In February, 1778, Thomas Chittenden, president of the Council of Safety,

sent a letter to the inhabitants of “the state of Vermont” encouraging them to “adopt” the new constitution and choose delegates to the first general assembly.³⁷ Interestingly, records indicate that several towns, notably Brattleboro and Guilford, either initially abstained or voted against the constitution.³⁸ By March 12, 1778, however, a sufficient number of towns had ratified the document and elected representatives at town meeting to enable the first legislative general assembly to convene at Windsor. It elected Thomas Chittenden the state’s first governor, as well as the twelve men who formed the first executive council.³⁹ Though the Windsor convention had been called principally for the purpose of drafting a constitution, the method by which Vermont’s constitution was implemented at least presaged the formal practice of submitting constitutions to the people for popular ratification.

Chittenden’s election was significant. A seasoned political leader with prior experience in the Connecticut assembly, he had been instrumental in securing east-west cooperation, assuring the ultimate success of the independence movement. Moreover, his election as the president of the Council of Safety and membership on the committee responsible for drafting the constitution distinguished him from other likely contenders. Had Ethan Allen been released by the British through a prisoner exchange a month earlier, or Col. Seth Warner been interested in the position, the situation might have been different. Despite Chittenden’s close ties to the Allens and membership in the “Arlington Junto,” he was nevertheless the man most qualified for the position. The clear “consensus” candidate, his election demonstrated that the people of Vermont had successfully met the first challenge of statehood – finding a way to integrate the east-west political schism of the state’s political factions.

Throughout the early constitutional period, Ethan and Ira Allen and their Bennington friends had dominated the politics of the Champlain Valley, as Col. Jacob Bayley and Dr. Eleazar Wheelock and their various allies had the politics of the Connecticut River Valley. These two rival forces, together with lingering Yorker sentiment in Brattleboro, Guilford, and Putney, threatened to destroy the fragile foundations upon which the new state was to be built. Although Chittenden was closely associated with the political forces west of the mountains, his election revealed a willingness on the part of the easterners to compromise. Motivated in large measure by the unpopular state constitutions adopted in New Hampshire and New York, which seemed to ignore the interests of both these areas, and the complete inability of either New Hampshire or New York to govern effectively at the fringes of their territories, the Allen and Bayley factions accepted internal compromise as the only acceptable alternative available.⁴⁰

Despite the appearance of unanimity, however, the scope of the compromise between these two groups was relatively limited; they continued to compete rather ruthlessly within the new polity for political control of the new government, as well as for control of Vermont's economic future. Despite their continuing dispute over whether the region's economic growth and prosperity lay to the north via the Richelieu-Champlain Valley corridor, or to the south via the Hudson and Connecticut River valleys, the mutual accommodation of these two powerful factions did reflect a common commitment to independence for the Grants.

Vermont's tentative statehood created serious problems within both the territorial limits claimed by the new state and the larger political entity increasingly referred to as the United States of America. On June 25, 1777, Roger Sherman introduced a motion at the Continental Congress requesting official recognition of the new state of Vermont and granting permission for the state to send delegates to Congress. Led by James Duane and other members of the New York delegation who were adamantly opposed to this explicit dismemberment of an existing state, the Congress voted down Sherman's motion.⁴¹ In time, at the insistence of Gov. George Clinton and other powerful voices in the new union, the Congress would adopt in June, 1779, a resolution preserving the rights of the original states—no new state was to be formed out of an existing state without the consent of both Congress and the legislature of the existing state.⁴² Proposed and accepted in order to keep Vermont out of the union, this resolution would be preserved intact as part of Article IV, Section 3 of the federal constitution of 1787.

Unwilling to rejoin the state of New York, and unable to join the new nation as an independent state, Vermont was forced to prove in fact what until 1777 had existed only in theory—the right of a free and sovereign people to form themselves into an independent body politic through their voluntary consent. Lying at the heart of what became known as the “Vermont Doctrine,” this assertion both affirmed and challenged the republican principles of the American Revolution and the ensuing union under the Articles of Confederation. The inhabitants of the Grants had found themselves, as they had proclaimed in their “Declaration of Independence,” without the benefit of “law or government”; returned to “a state of nature,” they enjoyed the inherent natural right to form a government “best suited to secure their property, well being and happiness.”⁴³ In his famous “Vindication of the Opposition of the Inhabitants of Vermont to the Government of New York,” Ethan Allen wrote in 1779 that “the inhabitants of these contested lands governed themselves, and managed their internal police under the direction of committees and conventions” in a manner entirely similar to that of the several states following the Declaration of

Independence. The thrust of Allen's argument was quite plain – Vermont's claim to the right of self-government was precisely the same right claimed by the colonies in their declaration against Great Britain.⁴⁴

Dr. Young had believed as much when he wrote in 1777 that "such bodies of men as looked upon themselves [as] returned to a state of nature" needed only to take the initiative to draft and adopt a plan of government and thus "become a body politic." "You have as good a right to choose how you will be governed and by whom," he instructed his friends in Vermont, as any other free men living in America.⁴⁵ It was in this spirit that Governor Chittenden wrote to Congress in 1782:

How inconsistent then, is it in Congress, to assume the same arbitrary stretch of prerogative over Vermont, for which they waged war against Great Britain? Is the liberty and natural rights of mankind a mere bubble, and the sport of state politicians?⁴⁶

But Dr. Young's brand of republicanism was not shared by everyone. If it was the unusually stringent requirements of consensus under the Articles of Confederation that had initially kept Vermont out of the union, it was the growing fear of anarchy among federalist leaders that would continue to frustrate admission. Sounding more like the British of 1776 than American patriots, leading men began to argue that the people of Vermont had never been returned to a state of nature, nor had they ever really existed as a separate and distinct body politic. Rather than fellow patriots fighting for the Republic, these lawless frontiersmen were outlaws and bandits who had refused to recognize the legitimate authority of the laws of New York. Such men were little interested in the claim that immediately before the Revolution the British Crown had established an independent colony, and had granted a new charter to Philip Skene, its royal governor. The effort invested by the government of Vermont to prove the existence of such a charter suggests the important if not critical role colonial charters played in defining rights and establishing legitimacy during the early constitutional period in America. Vermont's claim to equal status was initially based more on its asserted claim of independent colonial existence than upon the right of its people to form their own government.⁴⁷

Vermont's hesitancy to base its claim of statehood on the will of its own citizens is significant. Contemporary Americans consider it an article of faith that self-determination exercised through representative forms of government and republican government are synonymous expressions of the same ideal. In fact, Vermont's founding and its relations with the American states seriously calls into question whether America's founding generation really shared this view. While the continental union confirmed the legitimacy, autonomy, and territorial integrity of the original thirteen colonies, the implicit assumption of the Articles of Confedera-

tion was that the source of the sovereignty of the several states could be traced to the original sovereignty of the British Crown. The critical link in this evolution was, of course, the colonial charter. Absent such a charter, the necessary source of sovereignty simply did not exist. As one commentator wrote, "Many gentlemen . . . are fully of the opinion that Congress has no authority to admit those people [of Vermont] into the federal union as a separate state on the present principles."⁴⁸ Others shared this sentiment: "If every district so disposed may for themselves determine that they are not within the claim of the thirteen states . . . we may have ten hundred states, all free and independent."⁴⁹ Not surprisingly, the terrible consequences of such a prospect caused one writer to instruct James Madison to "fix the boundaries" and "let the people . . . know that they are citizens and must submit to their government."⁵⁰

Despite the fact that Vermont could prove no legitimate past and could derive none of the benefits of congressional recognition, it clung to its assertion of the right of its citizens to determine for themselves how they would be governed. As one newspaper argued:

When it is for the interest and happiness of the people, for which all governments are, or ought to be formed or constituted, no good reason can be assigned why new states and empires should not arise and branch out from old ones."⁵¹

If in June, 1779, it had been the opinion of Governor Chittenden that "a public acknowledgement of the powers of the earth" was essential to the continued existence of the state of Vermont, by the following summer his view and that of many other Vermonters had become more positive. Increasingly, the argument of Vermonters was that their right to independence depended less upon the existence of a colonial charter or the recognition of the federal Congress than it did upon the simple fact that they would only consent to be governed as Vermonters. Forced to "go it alone," Governor Chittenden entered into a series of secret negotiations with Gen. Frederick Haldimand, British Commander-General of Canada; though considerable scholarly debate exists over Chittenden's motivation for attempting to negotiate Vermont's reentry into the British Empire as a separate colony, Chittenden's questionable diplomatic overture had the effect of protecting Vermont's neutrality when it became clear that Vermont could not expect protection from the Continental Congress.⁵²

The new government also moved to shore up the people's confidence in its ability to guarantee land titles and protect life and limb within its jurisdiction. After a tenuous and troubled start, it was soon established that the new government was in fact taking hold and providing the first reliable authority the people of the Grants had experienced. In the final analysis, Vermonters began to realize that as only the government of Ver-

mont had demonstrated the capacity and will to govern the territory of Vermont effectively, no other justification was necessary to support its legitimacy. As Peter Onuf concluded:

Only in Vermont was the concept of a state as a self-constituted political community fully and radically tested . . . In this sense, Vermont was the only true American republic, for it alone had truly created itself.⁵³

By 1780, the success of Vermont's "experiment" and the unpalatable New York and New Hampshire constitutions of 1779 had encouraged some thirty-five New Hampshire towns along the Connecticut River and twelve New York towns along the western shores of Lake Champlain to seek admission into the Vermont republic. In the republic's only military campaign, Vermont militia had convincingly routed the forces of New York in the abortive "Border War" of December 1781.⁵⁴ Vermont's aggressive territorial expansion dramatically demonstrated the costs of Congress's policy of non-recognition; if the states were unwilling to accept Vermont's sovereignty, Vermonters saw no reason to respect the sovereignty of their neighboring states. The fact that the Allen faction had been politically outmaneuvered by the first Eastern Union of sixteen New Hampshire towns in June, 1778, which had the effect of shifting control in the legislature to the Bayley faction, explains why the "Arlington Junto" utilized Congressional outrage and threats from New Hampshire governor Meseach Weare and Gen. John Stark of the Continental Army's northern command to have the Union dissolved in February, 1780. By the spring of the 1781, however, circumstances had changed significantly with both the Allen and Bayley factions supporting the creation of a "Greater Vermont" through the territorial expansion that accompanied the second Eastern Union with New Hampshire towns and the first Western Union with twelve New York towns. Exposed to the risks of the independent status that non-recognition created, Vermont needed to expand its territory significantly. Lying between British Canada to the north and the United States to the south, the independent republic of Vermont could scarcely expect to survive without expansion. The only other alternative was recognition and incorporation into one adjoining empire or the other.⁵⁵

The Haldimand Negotiations of 1781 made this situation explicit. While most Vermonters would never have tolerated a reunion of Vermont and the British Empire, which explains the serious scandal that developed when the existence of these secret diplomatic negotiations became known, the fact that such an eventuality was even considered by Vermont's leading political figures reveals the fragile nature of the Vermont republic during those early years. Whether undertaken to secure Vermont's neutrality dur-

ing the war or to protect the personal financial investments of the principals in the Onion River Land Company by securing access to the strategic Richelieu-Champlain Valley corridor, the plan lost support following Cornwallis's defeat at the Battle of Yorktown in October, 1781.⁵⁶ While the British recognized the sovereignty of the thirteen original states through the Treaty of Paris signed in September, 1783, and implicitly recognized American claims to what had been the New Hampshire Grants by agreeing to a Canadian boundary that lay north of the Grants, Vermont's status remained unsettled. At the insistence of George Washington, Vermont had abandoned its eastern and western unions in February, 1782; the question of admission into the American union of states, however, remained unsettled. Thus, from 1783 until 1791, when Vermont was finally offered admission to the United States, it remained necessary for the government of the Republic of Vermont to prove itself to the citizens of the United States of America as well as to its own citizens.

Though little has been written on the subject, existing historical research suggests that Vermont developed a system of government in substance if not in form remarkably similar to party or parliamentary government.⁵⁷ As mentioned above, the text of the Vermont constitution of 1777 resembled the Pennsylvania constitution of 1776 in many ways; but the differences between the two permitted a concentration of power in executive officers elected on a statewide basis in Vermont; consequently, a single party or faction within the state was able to control executive decisions and thus dominate politics for the first decade of its existence.⁵⁸ Prior to a constitutional revision in 1786, which provided that the three branches of government "shall be separate and distinct so that neither shall exercise the powers properly belonging to the others," the concept of separation of powers did not operate in Vermont.⁵⁹ The unicameral legislature and governor's council created in 1777 continued as essential elements of Vermont's government until the creation of the Vermont state senate and the abolition of the governor's council in 1836.⁶⁰ The provision of the constitution of 1777 creating the council of censors, which was abolished as unworkable in Pennsylvania in 1790, was retained in Vermont until 1870. Unlike Pennsylvania's council, which was composed of two censors elected from each county, Vermont's constitution provided for thirteen censors to be elected statewide.⁶¹ As mentioned above, the governor, lieutenant governor, and the twelve additional members of the governor's council were also to be elected statewide under the Vermont constitution. Only the members of the state's unicameral general assembly were to be elected by the people of each town at town meeting, initially two from the larger towns and one each from the smaller towns. The absence of any prohibition against multiple office-holding

in the Vermont constitution of 1777 also contributed significantly to the concentration of political power in Vermont and the evolution of a unique style of party government.⁶²

Consistent with the tentative nature of Vermonters' acceptance of the theoretical underpinnings of their independence, few citizens of the new republic believed the Constitution of 1777 to be anything other than a legislative act of a statewide convention. The constitution was not formally declared to be "the supreme law of the land" until 1796, and was ceremoniously reenacted by succeeding general assemblies as an act of allegiance and reaffirmation.⁶³ This "habit" of reconstituting the republic calls into question what has become a rather traditional acceptance of the differentiated roles played by constitutional conventions and general assemblies in the founding period. The practice in Vermont suggests that at a minimum the significance of such a formal difference had not yet been accepted by the citizens of the state of Vermont.

This practice also suggests the extent to which the first citizens of Vermont viewed their constitution instrumentally. As the preamble stated, the constitution was instituted "for the security and protection of the community as such," "to enable the individuals who compose it to enjoy their natural rights," and "to take such measures as may to them appear necessary to promote their safety and happiness."⁶⁴ The experience of the early years of the Vermont republic confirms that the citizens of the state were far more concerned that the broad ends of the new government be achieved than they were with the specific means employed.

Perhaps as a result of the unsettled conditions confronting them, the citizens of Vermont accepted the leadership of what can only be described as the oligarchy of a small but powerful group of men who dominated Vermont politics for over two decades.⁶⁵ From the outset, members of the governor's council participated in and dominated the legislative process. Members of the council drafted legislation and reported bills to the assembly. Members of the council also participated more directly in the work of the assembly, serving as members of legislative committees until 1791.⁶⁶ Thomas Chittenden, the first governor, held that office for all but one year (1789-90) until his death in 1797; during the same period of time barely more than twenty men sat in the governor's council.⁶⁷ It is also significant that until 1786 judges of the state's supreme court were almost always either members of the council or members of the general assembly; from 1777 until 1779 they were elected annually by joint ballot of the governor, council, and assembly, after which time they were elected by the legislature.⁶⁸ Between 1779 and 1786, members of the governor's council held all but one of the five seats on the supreme court, and for five of these years all five of the justices were also members

of the council.⁶⁹ Nor was such multiple office-holding limited to the high court. From 1777 to 1824, twenty-one of the twenty-three members of the Chittenden County court had served in either the general assembly or the governor's council, either before or during their tenure on the court. In Windsor County, the figure was twenty-six of twenty-eight, suggesting that such a pattern was probably typical throughout the state.⁷⁰ In the absence of a constitutional article providing for the organization of the state's judiciary, the general assembly in 1782 established a court system modeled after the Massachusetts Courts of General Session. In such a system, there was no distinction made between trial and appellate courts; moreover, county courts possessed broad supervisory powers over town government and over local economies. Together with local town officials, the courts served in effect as the county governments. Thus, the overlapping personnel on the governor's council, general assembly, and county courts operated to ensure party control of government at all levels of state government.⁷¹

As might be expected under such a system, the general assembly concurred with every recommendation of the governor's council from 1777 through 1781. In that year and the one following, the assembly required an accounting from the state treasurer and passed a tax measure and two private bills over the objection of the council. While the assembly remained generally content to follow the executive's lead, it increasingly asserted its independence.⁷² In particular, the legislature reserved jurisdiction over certain types of disputes, including those over land titles, and asserted the right to amend through private bills decisions of the courts that it deemed unwise. This practice challenged directly the judiciary's authority to interpret and apply the law of the land, as well as the council of censors' role in reviewing the constitutionality of all governmental acts.

It is a particularly fascinating aspect of Vermont's early constitutional period that an important alliance developed between the council of censors and an increasingly professional judiciary. Originally staffed by lay judges, Vermont's judiciary became predominantly the domain of professional lawyers after 1789; lawyers also began to assume a leadership role among the council of censors.⁷³ Between 1800 and 1814, the council of censors and the courts began to attack actions of the legislature as contrary to the constitution — the fundamental law of the land. Though initially unsuccessful in persuading the people of Vermont that there was anything wrong with the legislature interpreting and informally amending the constitution through ordinary legislation, the arguments of the censors and the courts ultimately prevailed. Undoubtedly, the organization and growth of the Federalist Party under the able leadership of such men as Nathaniel Chipman, Isaac Tichenor, and Moses Robinson, and

the strong public opposition to the Embargo of 1807-8 and ensuing War of 1812, helped to weaken the hold of the incumbent government. The governor's council elected in 1808, for example, was the first council on which incumbents did not constitute a majority. Competition between the Federalists and the Jeffersonian successors to the old Allen-Chittenden "Junto"—like former Green Mountain Boy Matthew Lyon, the successful and popular political leader who founded the town of Fair Haven—had become increasingly fierce during the late 1790s. Reflecting fundamental philosophical differences as well as the emergence of nascent national political parties, this political rivalry had important consequences for constitutional developments in Vermont.⁷⁴

In one especially important case, *Bates v. Kimball*, 2 D. Chipman 77 (1824), Justice Asa Aikens ruled an act of the legislature unconstitutional—the first time a Vermont court had explicitly invoked the power of judicial review. Asserting that it was the duty of the judicial branch to “declare the law,” Aikens held that “interpretation of the laws is the proper and peculiar province of the courts.” In language that could only have been taken from Marshall's famous decision in *Marbury v. Madison*, Aikens relied on the republican principle that the constitution was the embodiment of the will of the sovereign people of Vermont, which only they could amend or alter through the specific means set forth in the constitution.⁷⁵ The victory of Aikens' view of the constitution was confirmed the following year when the general assembly passed a bill reorganizing the state's judicial system, creating a politically independent state supreme court, and accepting at least implicitly the court's authority concerning judicial review.⁷⁶

Thus, by 1824, Vermont's constitutional “founding” had been completed. The Vermont constitution of 1777 served the state well during a particularly trying period in its history. The only source of political identity for the new commonwealth, the constitution held the state of Vermont together both legally and socially during its fourteen-year struggle as an independent nation-state. During the time that elapsed from 1777 to 1824, the people of Vermont had come to view their constitution rather differently than they had originally. When the future of their political community had been uncertain at best, they were prepared to consider the constitution as little more than the provisional guidelines of the polity, a declaration of the rights and liberties of free men, and a frame of government that each annual legislature was free to revise, subject only to occasional review by the council of censors. But as greater stability and prosperity developed—perhaps as a result of the success of their constitution—Vermonters began to treat the constitution as something more than a mere legislative act. In time, the constitution became the “fundamental law,” as well as the organic founding act of their polity.

NOTES

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² Allan R. Raymond, "Benning Wentworth's Claims in the New Hampshire-New York Border Controversy," *Vermont History*, 43:1 (January, 1975), 20-32.

³ David M. Ludlum, *Social Ferment in Vermont, 1791-1850* (New York: Columbia University Press, 1939), 16. See also Donald A. Smith, *Legacy of Dissent: Religion and Politics in Revolutionary Vermont, 1749-1784* (Ph.D. diss., Clark University, 1980), Vermont Historical Society, manuscript collection, 152; and Winn L. Taplin, Jr., *The Vermont Problem in the Continental Congress and in Interstate Relations, 1776-1787* (Ph.D. dissertation, University of Michigan, 1956); Vermont Historical Society, manuscript collection, 1-2.

⁴ Matt Bushnell Jones, *Vermont in the Making, 1750-1777* (Archon Books, 1968), 257-263; Charles Miner Thompson, *Independent Vermont* (Boston: Houghton Mifflin Co., 1942), 87-91.

⁵ Frederic F. Van DeWater, *The Reluctant Republic: Vermont, 1724-1791* (New York: John Day Company, 1941), 81-83; Williamson, 18.

⁶ Van DeWater, 82.

⁷ Jones, 284-5.

⁸ *Ibid.*, 280-1, 321-3, 331-2, 334-5.

⁹ *Ibid.*, 264-5.

¹⁰ *Ibid.*, 267.

¹¹ *Ibid.*

¹² *Ibid.*, 268-73; See also H. Nicholas Muller, III, "Myth and Reality: The Politics of Independence in Vermont, 1776-1777," in *Perspectives 76* (Hanover, N.H.: Regional Center for Educational Training, 1976), 63-4; and Thompson, 163.

¹³ Jones, 275; Taplin, 22. See also William Doyle, *The Vermont Political Tradition* (Barre, Vt.: Northlight Studio Press, 1984), 15-21.

¹⁴ Taplin, 2, 16-19; Charles Jellison, *Ethan Allen: Frontier Rebel* (New York: Syracuse University Press, 1969), 84.

¹⁵ Jones, 355-6; Williamson, 52-4.

¹⁶ Jones, 358-9; Williamson, 55-6.

¹⁷ Jones, 351 n. 14; Taplin, 67.

¹⁸ Jones, 358-74; Williamson, 58-60.

¹⁹ Jones, 375-6.

²⁰ Williamson, 79-81.

²¹ Taplin, 28-30; Jones, 351-2.

²² Jones, 383-6; Williamson, 63-6.

²³ John N. Shaeffer, "A Comparison of the First Constitutions of Vermont and Pennsylvania," *Vermont History* 34:1 (January 1966): 34-5.

²⁴ E. P. Walton (ed.), *Records of the Governor and Council of the State of Vermont*, (Montpelier, Vt.: J. M. Poland, 1873), I, 83-103.

²⁵ Shaeffer, 33; Doyle, 26-29.

²⁶ Jones, 389-93; Marshall True, "Why Are There No Biographies of Thomas Chittenden?" in *Lake Champlain: Reflections on Our Past*, Jennie G. Versteeg, ed., (Burlington, Vt.: Center for Research on Vermont, University of Vermont, 1987), 213.

²⁷ Peter S. Onuf, "State-Making in Revolutionary America: Independent Vermont as a Case Study," *Journal of American History* 67:4 (March 1981): 799.

²⁸ Onuf, 803.

²⁹ Vermont "Declaration of Independence," *Vermont and the New Nation: Selected documents illustrating Vermont's founding period and the national context of issues affecting Vermont*, Marshall True and William Doyle, eds. (Hyde Park, Vt.: Vermont Council on the Humanities and Public Issues, 1987), 34.

³⁰ Taplin, 44-49; Peter S. Onuf, "Vermont and the Union" in *Lake Champlain*, 189-2.

³¹ Shaeffer, 797-9.

³² *Vermont and the New Nation*, 35. See also Nathaniel Hendricks, "The Experiment in Vermont Constitutional Government," *Vermont History* 34:1 (January 1966): 63.

³³ *Vermont and the New Nation*, 35.

³⁴ Hendricks, 64-5.

³⁵ *Ibid.*

³⁶ Nathaniel Hendricks, "A New Look at the Ratification of the Vermont Constitution of 1777," *Vermont History* 34:2 (April 1966): 136-7.

³⁷ *Ibid.*, 137.

- ³⁸ *Ibid.*, 138-9. See also Ira Allen, *History of the State of Vermont, 1798* (Rutland, Vt.: Charles Tuttle, 1969), 72.
- ³⁹ Hendricks, "A New Look at Ratification," 139.
- ⁴⁰ Doyle, 33-42. See also True, "Why Are There No Biographies of Thomas Chittenden?" 210-12.
- ⁴¹ Taplin, 57-59. See also Larry R. Gerlach, "Connecticut, the Continental Congress, and the Independence of Vermont," *Vermont History* 34:3 (July 1966): 190.
- ⁴² Gerlach, 190.
- ⁴³ *Vermont and the New Nation*, 34.
- ⁴⁴ Ethan Allen, "A Vindication of the Opposition of the Inhabitants of Vermont to the Government of New York," (Dresden / Hanover, N.H.: 1779), quoted in Onuf, "State-Making in Revolutionary America," 803.
- ⁴⁵ *Vermont and the New Nation*, 35; Onuf, "State-Making in Revolutionary America," 806; Hendricks, "The Experiment," 72.
- ⁴⁶ Thomas Chittenden to the President of the Congress, *Collections of the Vermont Historical Society* (Montpelier, Vt.), 200; quoted in Doyle, 49.
- ⁴⁷ Onuf, "State-Making in Revolutionary America," 805; Doyle, 47-50.
- ⁴⁸ Ezra L'Hommiedieu to George Clinton (8 September 1781), quoted in Onuf, "State-Making in Revolutionary America," 800, n. 12.
- ⁴⁹ "Report of the Committee," *Conventions of Towns in Cheshire County, New Hampshire* (Cheshire County, N.H.: 1780), quoted in Onuf, "State-Making in Revolutionary America," 801.
- ⁵⁰ Joseph Jones to James Madison (2 October 1780), quoted in Onuf, "State-Making in Revolutionary America," 801.
- ⁵¹ *The Pennsylvania Herald* (11 June 1785), quoted in Onuf, "State-Making in Revolutionary America," 801.
- ⁵² Onuf, "Vermont and the Union," 194-5.
- ⁵³ Onuf, "State-Making in Revolutionary America," 815.
- ⁵⁴ Earle Newton, *The Vermont Story: A History of the People of the Green Mountain State, 1749-1849* (Montpelier, Vt.: Vermont Historical Society, 1949), 87-8.
- ⁵⁵ Doyle, 33-45.
- ⁵⁶ *Ibid.*, 42-45.
- ⁵⁷ See H. Nicholas Muller, III, "Early Vermont State Government: Oligarchy or Democracy?", 1778-1815," in *In A State of Nature: Readings in Vermont History*, H. Nicholas Muller, III, and Samuel B. Hand, eds. (Montpelier, Vt.: Vermont Historical Society, 1982), 80-1.
- ⁵⁸ Onuf, "State-Making in Revolutionary America," 798-9, 808-9.
- ⁵⁹ Muller, "Early Vermont State Government," 80.
- ⁶⁰ Newton, 77.
- ⁶¹ Shaeffer, 38.
- ⁶² *Ibid.*, 36.
- ⁶³ Newton, 77. See also Gordon Wood, *The Creation of the American Republic, 1777-1787* (Chapel Hill, N.C.: University of North Carolina Press, 1969), 306-8.
- ⁶⁴ *Vermont and the Nation*, 36.
- ⁶⁵ Shaeffer, 36.
- ⁶⁶ *Ibid.*, 38-9.
- ⁶⁷ *Ibid.*, 36.
- ⁶⁸ *Ibid.*, 39-40.
- ⁶⁹ Muller, "Early Vermont Government," 82-3.
- ⁷⁰ Samuel B. Hand and P. Jeffrey Potash, "Litigious Vermonters: Court Records to 1825," *Occasional Paper #2* (Burlington, Vt.: Center for Research on Vermont, University of Vermont, 1979), 11.
- ⁷¹ *Ibid.*, 4. See also Samuel B. Hand, "Lay Judges and the Vermont Judiciary to 1825," *In a State of Nature*, 94-104, at 99.
- ⁷² Shaeffer, 42-3.
- ⁷³ Hand, "Litigious Vermonters," 13; Hand, "Lay Judges," 101.
- ⁷⁴ Aleine Austin, "Vermont Politics in the 1790's: The Emergence of Rival Leadership," *Vermont History* 42:2 (Spring 1974): 140-154, 153; see also Edward Brynn, "Patterns of Dissent: Vermont's Opposition to the War of 1812," *Vermont History* 40 (1972): 10-27.
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- ⁷⁶ Bickford, 27-8.