



Law “at the Muzzle of the Gun”: Archaeology of a Fugitive Terrain, the New Hampshire Grants, 1749-1791

*“The claimants under New-Hampshire
appealed to club law, and, in this mode of
trial . . . [became] the terror of the
government of New-York.”
Ethan Allen, describing events after 1770*

By GARY G. SHATTUCK

The creation story of Vermont and its Yankee-Yorker rift is both simple to convey in outline and, at the same time, complicated when examining its messy details. It became so early on when the brothers Ethan and Ira seized upon an attractive, easily understood perspective that portrayed those times simplistically as an honorable-David-versus-a-tyrannical-Goliath contest, a view perpetuated by over two hundred years of historiography that rarely deviated from the tone they set. For New Englanders to wrest a huge portion of New York’s northeastern region from its grip and then create the four-

.....

GARY G. SHATTUCK graduated with magna cum laude honors from the Vermont Law School and served with the Vermont State Police, as a state assistant attorney general, and assistant United States attorney with the U. S. Department of Justice. He researches and writes on historical matters from a legal perspective. His most recent book is *Green Mountain Opium Eaters: A History of Early Addiction in Vermont* (2015). His next book, co-authored with John J. Duffy and H. Nicholas Muller III, will detail new information about the New Hampshire Grants between 1759 and 1775.

Vermont History Vol. 87, No. 1 (Winter/Spring 2019): 1–42.

© 2019 by the Vermont Historical Society. ISSN: 0042-4161; on-line ISSN: 1544-3043

teenth state has understandably brought satisfaction and pride to many reading those early accounts.

The breathtaking accomplishment of the breakaway Vermonters notwithstanding, they faced a much more complicated contest and not because they achieved legal legitimacy. Rather, their success was based upon sheer physical strength, propelled by a sense of shared, unbridled exuberance that allowed them to exploit the fortunes that distance and geography allowed, which placed them far away from others with divergent views that were muted by their inability to respond in a similar fashion. Historians have recognized the large-scale violence that took place during the process, reluctantly acknowledging that the state was founded virtually at the point of a gun, but they have also overlooked other nuances that may have played a role. Principles derived from the field of archaeology, the so-called “handmaiden to history,” can provide important insights showing that there was, perhaps, more to the story than its embodiment of the adage that possession is nine-tenths of the law.¹

TRADITIONAL VIEWS

Archaeological concepts and enthusiasm of the Grants settlers aside, it is first necessary to acknowledge the overriding importance of law, both in the region and in the mindset of the colonial population. As John Adams noted in 1771, his fellow New Englanders understood the law well. “The great principles of the constitution,” he wrote, “are intimately known; they are sensibly felt by every Briton; it is scarcely extravagant to say they are drawn in and imbibed with the nurse’s milk and first air.”² However, the long-established law was in the early stages of great change. These years immediately before the outbreak of the Revolutionary War marked a defining moment as it transformed from feudal, judge-made common law precepts to the implementation of positive, or codified, law created by elected representatives. Perhaps in no other North American arena was that change taking place more profoundly than in the environment occupied by the Allens, a region uniquely haunted by two conflicting notions of land ownership: tenancy in New York versus fee simple in republican New England.³

The proprietors and settlers in the Grants who challenged the efforts of New York claimants at the time of the notorious Ejectment Trials in 1770 and 1771 had a second avenue of recourse available to them beyond the common law itself. Centuries of British legal practice demonstrated that strict adherence to the law’s dictates could inflict unintended and unjust results that brought great hardship to litigants.⁴ To limit the possibility of harsh outcomes, concepts of fairness, or equity, entered into the process that were determined in specially-created courts of chancery or

allowed through petitions to London that avoided the law and equity courts altogether. Colonists understood that these various avenues were available to them and used each repeatedly. When the Grants proprietors assembled before the Ejectment Trials to consider how to defend the legality of their New Hampshire titles, they expressed their awareness of those dual approaches and pledged to protect themselves “as far as . . . can be defended by law or equity.”⁵ Unsurprisingly, following their losses, which they refused to pursue on appeal, the settlers’ leaders pivoted and argued to their farmer audience that they had a right to oppose New York authority employing the language of equity to convince them they had been treated unfairly.⁶

The law or equity? Which formed the basis for Vermont’s founding? The colonists certainly appreciated the distinction, but it has been largely overlooked in the following two centuries. This has resulted in confusion for later generations and it must be acknowledged if the predicate legal environment existing before the outbreak of violence in the Grants is to be fully understood.

While the Allens and their followers claimed they had suffered improper legal results at the Ejectment Trials, it is notable that even Vermont’s first historian, Rev. Samuel Williams, could not fault the New York claims. Recognizing that it “had a proper right to claim the jurisdiction of the whole territory,” Williams determined that the proceedings employed against the Grants claimants to vindicate those legal rights were “agreeable to the forms of their laws.”⁷ Correct or not, the claim of equitable as opposed to legal remedies persisted and was later acknowledged for the first time by former Vermont governor and president of the Vermont Historical Society Hiland Hall in 1868,⁸ and then in 1939 by attorney-historian Matt Bushnell Jones.⁹ They expressed different points of view—respectively, opposition and agreement—about the soundness of the New York Supreme Court of Judicature’s decision in favor of that colony’s jurisdiction based upon its interpretation of the law and not equity. Unstated by either Hall or Jones is the fact that the exercise of equity by the Supreme Court as a part of its authority was unavailable to it, specifically withheld because of a 1699 law.¹⁰ Whether one agrees with the court’s decision or not, and the conflicting interpretations placed upon it by historians, it has become a *sine qua non* in Vermont’s historiography.

A final point concerning the legitimacy of the Supreme Court’s decision, as well as the competency and conduct of the four New York courts with jurisdiction in the Grants sitting in Albany, Charlotte, Cumberland, and Gloucester counties, deserves attention. Consistent with the early allegations of bias made against them by the Allen brothers, most historians of the past two hundred years have frequently echoed those claims,

while also adding their own condemnation.¹¹ However, contrary to such assertions, and as described in what follows, a close examination of the records of those particular courts fails to provide evidence of a single instance substantiating those serious allegations of corruption or bias. Admittedly, justices of the peace chosen from within an ill-educated population may have been minimally competent, but on the whole, the law and procedures employed were consistently administered in a credible, unbiased fashion in accord with eighteenth-century notions of due process.

The challenges posed to the law and questions concerning the applicability of equitable principles to the litigants at the time of the Ejectment Trials began decades earlier. On January 3, 1749, sitting in his Portsmouth capital, New Hampshire Governor Benning Wentworth set into motion a four-decade-long period of grievous contention and heartache that seriously affected large numbers of people. His usurpation on that day of 23,040 acres of land contained within a six-mile-by-six-mile tract of New York's forests and waters located 120 miles to his west, in the form of a township called Bennington, a mere twenty miles east of that colony's vibrant metropolitan center at Albany (1749 population: 10,634), effectively upended the long-established order that separated the two colonies. From that time forward until the region that encompassed Bennington and the dozens of other townships he created obtained statehood as Vermont, this large swath of northeastern Albany County (established 1683) was plunged into a hybrid, fractured, geopolitical third zone, an outlier area constantly at odds with itself, both internally and externally.

The area that then became known as the New Hampshire Grants remained in this amorphous political and legal state as it turned into a contested borderland region. Unaccepted by its inhabitants as definitively marked by its longstanding boundary at the west bank of the Connecticut River, Wentworth's implementation of a warped notion of colonization now focused their attention on the so-called Twenty Mile Line, an imaginary point that distance to the east of the Hudson River. This became the definitive boundary over which so much of the ensuing trouble took place.

The legal situation created by the ambiguity of the border was not easily corrected by those governing at the center of power in far off London. The many settlers dependent on the validity of Wentworth's grants and calling for fair treatment in their petitions found themselves in a tangled web of land ownership of perpetually questionable legal status. The situation was made all the more complicated by their own dependence on the material goods available to them in nearby Albany. The ease they experienced in traveling there created divided loyalties as they argued for legal legitimacy under New Hampshire rule while they used the phys-

ical benefits allowed them by New York. This ultimately resulted in their assuming, based upon their shifting fortunes, a binary view of legal right and wrong that involved a series of protectionist displays of political violence committed against New York's sovereignty as they sought to maintain an aura of legitimacy. In contrast, uncomfortably thrust into an unwanted defensive mode as it sought to protect its impinged jurisdictional limits, all that a powerless New York was able to do was to seek the remedies allowed to it through the rule of law.

THE BORDERLAND HAMPSHIRE GRANTS

To appreciate the unique circumstances of Vermont's pre-statehood years it is necessary to suspend any thought of a commonly understood line separating New York from the New England colonies, even in the absence of Wentworth's actions.¹² Surveyors and the maps they created may have conveyed a particular understanding of legal and jurisdictional lines, but reality on the ground was different when the concerns of settlers uninterested in such formalities were factored in. A clearly marked border line serves a useful function as individuals can appreciate that in passing over it they have stepped from one political or administrative entity into another. However, such a line does not separate people sharing common characteristics living in the area through which it cuts, such as ethnic or linguistic features, factors so strong they can alter, or "condition," the terms under which the border itself is understood.¹³

The totality of land on either side of a marked border constitutes a more refined aspect of the larger regional division understood as a frontier. Frederick Jackson Turner's contention of a closed frontier in 1893 received new life in 1921 with Herbert Eugene Bolton's in-depth study of Spanish America, where persistent adherence to cultural mores, mobility, and intermingling defied politically inspired border lines.¹⁴ Anthropologists and historians now generally agree on definitions differentiating these two concepts. Frontiers are viewed from a broad perspective and are described as a "meeting place of peoples in which geographic and cultural borders [are] not clearly defined."¹⁵ A borderland, or so-called "third space," on the other hand, is magnified and possessed of "contested boundaries between colonial domains." In essence, borderlands constitute a transitory condition that exists between a frontier and a definitively determined border. However, this is an uneasy characterization because borderlines continually expand and contract as a result of political, ideological, and cultural clashes that might occur within them.

This introduction of a borderland environment provides a unique set of considerations apart from those presented in the frontier situation and

of settled bordered states.¹⁶ It is a removed middle ground, separate from the concerns of the “rigid political and cultural divisions” present in settled situations and constitutes a hybrid space marked internally by “mobility, situational identity, local contingency, and the ambiguities of power.”¹⁷ Ethan Allen acknowledged the challenges presented to Grants inhabitants by the confusion wrought by Wentworth’s actions and wrote in 1774 that, “where the limits of governments are clearly ascertained and notoriously known . . . a farmer trespassing . . . on another’s property, must bear the loss.” However, he reasonably contended that when the people suffer under “a deception as to matters of jurisdiction, and purchase land and make great improvements, and all on a mistaken footing; men in such circumstances should be considered in the most favorable light.”¹⁸ Living in an anomalous legal situation such as Allen identified can result in fragmentation within the settler population. Inhabitants may negotiate among themselves within this “vague and undetermined place,” and loyalties may shift as opportunities arise to “interface” between internal and outside interests.¹⁹ In such an environment of uncertainty, face-to-face relationships, family ties, patron-client relations, and local alliances dictate the structure of power systems within the area and the assimilation of outsiders.²⁰

To understand the way New York authorities sought to control this removed and disputatious part of Albany County, one must consider the important distinctions between territorial and hegemonic forms of governance. A territory is a locale over which a political entity seeks to exert its authority through direct rule. In such an environment, it is the “elite, state bureaucrats, and militaries” that “are responsible for applying state policies, extracting resources . . . and providing security.”²¹ By its very nature, this effort first emanates from a metropolitan center, such as New York City or Albany, which then establishes subordinate, dependent administrative centers on the periphery. The process demands significant investments in infrastructure and the placement of loyal functionaries.

Before the settlers sponsored by Wentworth appeared in this newly created borderland, financially hard-pressed New York never needed to expend its precious resources to accomplish such an end. But now, the new challenge forced it to rely on a different form of governance, one of hegemonic rule that did not draw so heavily on its resources. This was a process better suited to New York’s situation and involved the use of indirect control, albeit subtly re-enforced through threats of force. Issues related to security and the improvement of land were delegated to local elites, removing the need to expend the large sums that direct territorial oversight required. Even in this compromised position, New York’s efforts were notably more robust than Wentworth’s, as he was never in a

position, or even personally inclined, to exercise either territorial or hegemonic governance over the region's inhabitants. Wentworth's derelict attention only diminished the legitimacy of the claims of ownership of the lands they occupied.

The exercise of hegemony in a borderland also poses significant challenges to the exercise of a colony's rule of law. The law itself is dynamic, an "important technology" possessed with the indisputable ability to shape the inhabitants' identities.²² It is in these contact zones, far removed from metropolitan oversight, that concepts of normalcy are tested and ambiguous legal identities are created. It is also where unique opportunities arise, so richly demonstrated by Ethan Allen and his followers, to violate the law, sponsored by individuals or groups able "to affect, influence, or control people, phenomena, and relationships, by delimiting and asserting control" over the area.²³ Those so inclined are then able to avoid the effects of laws implemented from a distance as they exploit ambiguities of power in the pursuit of "agendas of their own, in compliance with the official political goals."²⁴ In such circumstances the land can assume the identity of a "fugitive terrain" capable of harboring miscreants from adjacent jurisdictions seeking their arrest.²⁵ Where these "islands of resistance, rebellions, and the break off of border areas" exist, concepts of territoriality become seriously challenged and threaten in turn to destabilize the metropolitan center.²⁶ In the New Hampshire Grants, a borderland definition is particularly appropriate because it fell squarely within the parameters of being "politically and juridically attached to one nation, province, or empire" while, at the same time, was, "under strong economic, cultural, and demographic influences from an adjacent polity."²⁷

MATERIAL CULTURE: PROJECTING METROPOLITAN AUTHORITY INTO THE PERIPHERY GRANTS

Evidence of these borderland contests can be seen through the physical improvements made on the landscape by the protagonists. This can occur on two levels: either when outside "state agents invade local spaces" or when "locals invade state-claimed spaces."²⁸ The expression of conflicting ideological relationships between locals and outsiders can be found in the material or built environment. This is critical to understanding the fundamental differences in the Grants between the two sides until reconciliation took place at the time of statehood. New York had not faced any serious challenges to its suzerainty in the northeastern portion of its jurisdiction until Wentworth fired the first figurative shot in 1749. Not willing to tolerate such intrusions on his border by unwanted adventurers from Massachusetts and New Hampshire, New York Governor George Clinton addressed the issue early on in the only way available to

him: a proclamation in 1753 for the arrest of the “rioters,” whose cases were to be heard in Albany.²⁹ As evidence of the presence of additional trespassers mounted in the years after the Seven Years’ (French and Indian) War, questions of New York’s ability to maintain its control in this vast area only increased. The colony then turned to additional means to project and assure its authority on the periphery by creating appropriate structures representative of it: the important courthouses and jails around which so much of colonial life was conducted.³⁰

The utilization and ordering of space is “at the core of human life.” It is where “people engage one another and the material world” in ways that allow them to transform a raw landscape into “cultural places.”³¹ The exercise of power is inexorably intertwined with such an effort, and it was through the creation of administrative structures at the edge of its border, such as courthouses and jails, that New York was able to project its authority onto the Grants. These structures were directed specifically at the administration of the law. In the contested borderland Grants, this process emphasized to the population its connection to the New York metropolitan center as it strengthened its jurisdictional border claims to the Connecticut River. Accordingly, courthouses and jails acted as critical mediums of state power binding these distant communities to the sensibility of what it meant to be a New York colonist, while also allowing the government to consolidate its overall authority.³²

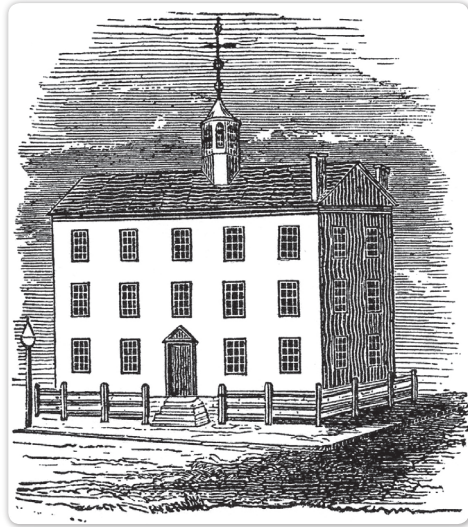
Unlike the New England colonies, which relied heavily on a township form of government to control their inhabitants, New York duplicated the English practice of creating counties to do such work. Whereas the entirety of the New Hampshire colony constituted a single county with one sheriff, an act of 1683 divided New York colony into ten counties, each with borders that were never surveyed and only loosely understood.³³ Albany County was the largest, and of such size that ten more were carved out of it between 1768 and 1809. While the colony’s overall rule emanated from New York City, institutionally each county constituted a separate administrative unit that oversaw its particular needs, most often executed through the judiciary’s office of the justice of the peace. Charged with ensuring the enforcement of minor criminal laws, these critically important functionaries also held extensive powers that touched virtually all aspects of colonial society.³⁴

Until Wentworth created this borderland, Albany County’s courts located in that city were the sole location where litigants went for legal business, except for particular cases conducted in New York City by the supreme court. Albany’s courts were located on the second floor of the city’s three-story city hall (built in 1673), referred to by its Dutch name the “Stadt Huys and City Hall.” The importance of this building to the

county cannot be overstated. Located a short distance from the Hudson River, allowing easy access by land and water, it constituted the third-largest structure on the skyline after the Dutch Church and Fort Albany, and is where the Albany Congress conducted its business in 1754.³⁵ As one early twentieth-century Albany official noted, “No public building in this country other than Faneuil Hall in Boston and Independence Hall in Philadelphia became more famous in history.”³⁶

All of this changed radically as a result of Wentworth’s nearby land grants to the east of the Hudson River. New York authorities responded by restructuring their administrative centers of power, and between 1768 and 1772 carved out additional counties from Albany’s domain. This also entailed the construction of courthouses and jails to ensure the integrity of the colony’s laws and to project its authority to the banks of the Connecticut River. The region had not required significant attention until then because of the Seven Years’ War and the ongoing delay as the two colonies awaited the Crown’s resolution of the impasse in 1764. However, after that decision (made public in 1765), the conditions immediately changed with the arrival of adventurous New England settlers to the west of and adjacent to the river, presenting the elites among them loyal to New York with peculiar challenges to ensure order.

As that process unfolded between this distant locale and the governor and his council in New York City, it is clear that a monumental shift threatening to alter the colony’s balance of power took place. Great care would have to be used to ensure an incremental delegation of authority to this far off, untested region. It is noteworthy that, except on one occasion, at no time in the next few years did any of these newly created counties ever host the colony’s Supreme Court of Judicature as a part of



Stadt Huys and City Hall, Albany, NY (c. 1743). George R. Howell, ed., History of the County of Albany, N.Y., from 1609 to 1886 (New York: W. W. Munsell & Co., 1886), 347.

its annual circuit duties to conduct trials in each of them.³⁷ As a result, the absence of such a display of judicial authority, or of military strength, in these administrative entities on the periphery offered the prospect of impaired hegemonic rule. Those absences served to undermine the legitimacy of county authority in the eyes of loyal local residents who desperately sought to maintain their connection with the metropolitan center.

The integrity of the law and assuring that its effective administration remained under the auspices of the colony's leaders was of concern. The issue first arose in response to a series of petitions in October 1765 from local elites living along the Connecticut River, headed by Thomas Chandler, seeking to divide Albany County into five counties.³⁸ Initially rebuked for suggesting too aggressive a plan, Chandler pressed on and explained that a new county with enforcement capabilities was desperately needed because of concerns over public safety in order to "detect Vice" (a murder had recently been committed and the perpetrator of a second one was on the run) and for the protection of creditors seeking to enforce the obligations of debtors by legal means. Chandler revealed his and the other petitioners' palpable fears that should their request not be acted upon, "the Land would be filled with Nothing, but Villins and Murderers" because it had become "an out Law'd place."

The new county Chandler proposed would extend from the Connecticut River westward twenty-six miles to the crest of the Green Mountains and stretch from the Massachusetts border to the 45th parallel at the Province of Québec. The choice of a county seat, or shiretown, was a pragmatic one and Chandler suggested the spatially centermost community, New Flamstead (Chester), as the most appropriate location "for the Convenience" of the county.³⁹ Had his petition been granted, separate courts with appropriate administrative authority manned by those loyal to New York would have been in position to institute order more effectively instead of relying on those functions in distant Albany. However, he did meet with some success when, in a manner consistent with the cautious exercise of hegemonic governance, New York appointed twenty-one individuals, including Chandler, as justices of the peace on January 20, 1766.⁴⁰ Demonstrating just how seriously the colony's leaders intended to maintain control over the region, these appointments markedly increased Albany County's overall number of justices from fifty-six in 1763 (328 for the entire colony) to seventy-seven, an average of one justice for every 350 people.⁴¹ Cloaked with such authority, and as required by an act of the British Parliament, Chandler and his fellow justices then proceeded to project London's legal dictates onto the periphery of power and administered the necessary oaths of allegiance,

supremacy, and abjuration to all civil and military officers in the area.⁴² Additionally, on February 27 the newly named justices appointed constables in five towns that allowed the residents to actually see “the forms of justice” among them and thereby create “a better state of manners” throughout the region.⁴³

Chandler was also commissioned a colonel of the local militia on January 20, which required him to deal with the challenge of punishing troublesome members within his ranks, but without the benefit of a jail to house them. Just months later, he sponsored another request to New York officials for his new county to address the problem and was met with approval. In rapid fashion, on July 3, 1766, Cumberland County sprang into existence “to promote the peace and Good Order of Government and the due Administration of Justice.”⁴⁴

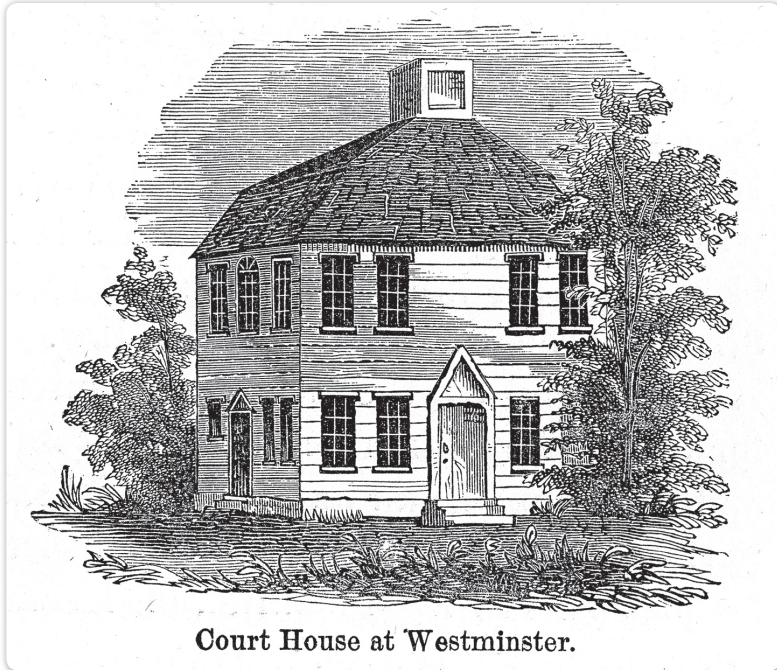
To answer Chandler’s additional security concerns the assembly maintained its tight control and allowed the new county’s officials to raise £200 to erect a courthouse and jail. It also agreed with his assessment that they be placed in Chester, “it being the most convenient township for that purpose and nearest the center of the said county.” Lastly, the petitioners were allowed to elect their own supervisors, assessors, collectors, and treasurer in the same manner as those in the colony’s other counties. Only days later, on July 11, 1766, the council acted to extend the law itself into the region and authorized the creation of a court of common pleas and a court of general sessions, to be overseen by judges and justices of the peace.⁴⁵ Within a few days, the county’s new leaders had appointed many of their fellow elites, including Chandler, to various roles: commissioners to administer oaths of office, judges and assistant judges, justices of the peace, county clerk, sheriff, surrogate, and coroner.⁴⁶

Faced with evidence that New York was serious about defending its border, in 1767 newly installed New Hampshire Governor John Wentworth (nephew of Benning Wentworth) sponsored petitions in an attempt to undermine those efforts. Members of his own assembly then peddled them surreptitiously throughout the area, seeking to overturn the Crown’s 1764 decision by proposing “reannexation” of the Grants from New York to New Hampshire governance.⁴⁷ While the Crown subsequently voided all that New York had done on Chandler’s behalf in 1766, on March 19, 1768, the governor and council reauthorized the creation of Cumberland County, based upon the clear threat that New Hampshire continued to pose and the need to maintain the nascent peace already evidenced by his efforts.

Time was of the essence to the inhabitants and the material manifestation of New York’s authority through the creation of a courthouse and

jail was deemed imperative. Unfortunately for Chandler, with no monetary assistance arriving from New York, his impaired ability to build those structures quickly became apparent. A 1770 description of what passed for a jail revealed it as “a place made in the corner of a dwelling house or hut” with walls “made of small hackmatack poles” stuffed with “tow, moss or clay” in between. The place of confinement within it was no better and allowed “any man who might be put into [it] to push away the loose upper floor boards, and move away the palisades, and be at liberty.”⁴⁸ Local residents unhappy with the situation began efforts to relocate the county seat from Chester to Westminster near the river where, they asserted, three-quarters of them already lived. Chandler argued instead that other buildings were available and continued to advocate in favor of Chester because it was removed from the Connecticut River, which New Hampshire intruders could easily cross to destroy them and then flee homeward. Despite Chandler’s protestations, in 1772 New York changed the shiretown designation to Westminster, where the residents had better success in building the necessary structures representative of New York authority. There, replicating the Albany configuration with a jail on the ground floor and the courtroom above, a “nearly square” forty-by-forty foot, two-story structure capped by a cupola was finally erected.⁴⁹

Despite his displeasure at the move, Chandler continued in his role as chief judge and presented the face of New York authority in a community divided in its loyalty to either it or New Hampshire. Contrary to one nineteenth-century historian’s assertion that “little is known concerning the court . . . records of Cumberland County before the year 1775,”⁵⁰ extant documents demonstrate the effectiveness of Chandler’s efforts by the presence of a vibrant court system replicating, albeit in a more modest manner, much of what was taking place in Albany at the time. At its first convening on June 9, 1772, Chandler, accompanied by five other judges and nine justices of the peace, oversaw the court’s opening. So that there was never any question in the public’s mind of their authority, in a ritualistic manner the clerk read out “his Majesty’s Commissions” issued to each man “under the Great Seal of the Province of New York” that allowed them to conduct their work.⁵¹ The court’s documents further reveal that among the many debt-related cases very few concerned property claims, that many licenses were granted to petitioners to sell intoxicating spirits in their inns, taverns, and retail establishments, and the court’s enactment of an impressive list of twenty-nine “Rules and Orders for the Regulation of the Practice of this Court.”⁵² In stark contrast to this highly credible display of New York’s hegemony, there is a total absence of any corresponding evidence that the New Hampshire authori-



Westminster Courthouse (1773). Vermont Historical Society.

ties provided services even remotely resembling these comprehensive processes. In fact, that colonial administration had retreated from its earlier boisterous claims of authority over this borderland and left its loyal adherents destitute and legally adrift in defending their claims of legitimate titles to the lands they occupied.

Despite the difficulties Chandler faced, his stumbling efforts actually marked an important point that assured New York's jurisdictional interests to the banks of the Connecticut River. In February 1770 the council received another petition signed by 120 individuals living to his north, seeking the creation of a second county out of Albany's domain to allow them to duplicate those favorable conditions. Troublemakers had fled from Chandler's bailiwick and now infested that area to such an extent the petitioners believed themselves "exposed to Rapine and Plunder from a Sett of Lawless wretches of Banditti, Felons & Criminals."⁵³ They envied what officials in Cumberland County had accomplished in such a short time and argued, as Chandler and his associates had previously, that in their current state "it is impossible to obtain Justice while they remain a part of the County of Albany as the Magistrate can have no Eye upon

these distant Parts; nor can the Petitioners procure officers to come thither, or they in their present state go to them.” A sympathetic council agreed and on March 16, 1770, created Gloucester County, invested, as in Cumberland County, with “such powers as are necessary for the due administration of Justice,” and located the shiretown in Kingsland (Washington).⁵⁴ Anxious to take up the reins of authority, members of the local elites were named the next day as commissioners to administer oaths, judges and assistant justices of the court of common pleas, justices of the peace, county clerk, and sheriff.⁵⁵

The work associated with creating the critical physical infrastructure of a courthouse and jail was complicated by Kingsland’s remote and sparse settlement inland from the Connecticut River. While a log jail was erected, surviving records of the Gloucester County courts describe the problems with the creation of the courthouse itself. These documents are of a significantly less quality than the volumes that describe the operations in Cumberland County and consist of a sparse thirty-eight pages (with one blank) that conclude in 1781. However, they demonstrate the same kinds of problems that Chandler faced in erecting these necessary structures representative of New York’s authority. Only cursory information reveals the first sitting of Gloucester’s courts of common pleas and general sessions at an unidentified location in May 1770. Then, in February 1771, in an entry that provides mirthful reason for later historians to ridicule their actions (without appreciating the importance placed on the court convening on a specific date), it is recorded that the court met in the deep woods with judges huddled together on snowshoes when they could not find any nearby structure in which to conduct their business.⁵⁶ Perhaps it was this incident that prompted the council in New York City to direct in April 1772 that the courts rotate their hearings between that remote community and Newbury, located closer to the river. With such order established, one historian noted that, in a manner consistent with Cumberland County’s experience, “the throne of sovereign law was, doubtless, established with greater dignity, and the scepter of justice regarded with more profound respect.”⁵⁷

The conduct of the Gloucester County court appears entirely consistent, albeit in severely abbreviated form, with what took place in Albany and Westminster. Brief entries describe a number of cases that indicate a heavy emphasis on debt matters, with a virtual absence of contested land cases. Additionally, pragmatic attention was paid to establishing rules of the court, the improvement of roads, and the construction of a courthouse at Newbury. In 1773, the records relate that court met at “the House of Mr. Robert Johnson” and arrangements were made for the construction of a proper courthouse. That building was eventually com-

pleted as an addition to the existing meeting house. It consisted of a single-story log structure that measured forty by fifty feet and fourteen feet in height, of utilitarian configuration (“not be over nice in doing it” was the leaders, admonition to builders), with “rooms for the use of judges and jury and a tenement for the sheriff who was also the keeper of the jail.” A separate one-story jail was also constructed that measured twenty-eight by fourteen feet, of which little is known, but is believed to have fallen into disrepair within the next decade.⁵⁸ The combined structure became known as the “State-House,” “Court-House,” and “Meeting-House,” and is where notables of the time came to preach, conduct court hearings, and, during the war, resolve the administration of estates of fleeing loyalists through their courts of confiscation and trials of resident Tories.⁵⁹

Further to the west lay metropolitan Albany, with a population in 1771 of 42,706, courts and jail in full operation, a robust merchant marine fleet of 125 sloops sailing up and down the Hudson River to New York City, the city’s first newspaper, a fire department with a large contingent of men (at least thirty-one in 1763) manning state-of-the-art fire engines, and streets lit at night by twenty oil lamps.⁶⁰ In stark comparison, just twenty miles to the east in Bennington lived 644 individuals who, together with those in neighboring towns, totaled an estimated 1,773.⁶¹ Following their arrival in the area ten years earlier, no confrontations occurred between the two communities as each went peacefully about its way. In 1762 Wentworth appointed Captain Samuel Robinson as a justice of the peace, charged with overseeing the administration of the grant he had awarded years earlier.⁶² Those terms included routine provisions that mandated the conditions of settlement to be fulfilled in order to obtain rights of ownership. At the same time, and in a manner consistent with what New York promised to settlers in Cumberland and Gloucester counties, the grant also assured them that they would be “enfranchised with and entitled to all and every the privileges and immunities that other towns within our province by law exercise and enjoy.”⁶³ However, that is where the substantive comparisons between the two colonies largely ended.

Notably, and wholly opposite from what New York provided, at no time did Wentworth or his administration ever mandate the presence of courthouses and jails in Bennington or any other township he awarded in the Grants. Nor did they ever provide for the creation of courts of common pleas and general sessions or appoint judges or court personnel to see that the dictates of the law were fulfilled in this area so far away from Portsmouth. Minutes of the New Hampshire Council make clear that in 1768 authorities were procedurally hamstrung in their ability to consider

establishing counties and courts elsewhere in the colony to administer to the population's needs.⁶⁴ While towns were allowed to elect local selectmen and appoint justices of the peace, as they did in other New England colonies, those functions were largely conducted in isolation, separated from any meaningful accountability in the metropolitan center at Portsmouth. In the absence of a county form of government there were neither sheriff nor deputies in Bennington to assure that court process was executed. When legal cases required their presence in Portsmouth, Grants residents endured additional hardship as they traveled long distances and spent precious money to make the trip out to the coast. The absence of the basic infrastructure of courthouses, jails, and court officials representative of the metropolitan center's authority, such as Cumberland and Gloucester counties enjoyed, eventually posed a significant hindrance for the Bennington settlers in their claims of legitimacy so dependent upon it.

Notwithstanding the absence of these institutions, the settlers did succeed in making other improvements directed toward their religious and community needs, and their ability to exploit the land. The Bennington grant required that before any of the land could be divided for settlement, the proprietors (meaning Robinson) were required to identify "a tract of land as near the centre of the said township as the land will admit of" and to mark out one-acre lots for each grantee, thereby assuring the presence of a town center. Such efforts were by no means unique. Roman conquerors had imposed such a grid system upon the landscape of captured lands centuries earlier, and more recently the Spanish had used a similar process in the New World.⁶⁵

A meetinghouse was subsequently erected in 1764 on one of those town plots, preceded by the Protestant congregation's building the First Church of Bennington two years earlier. However, because of additional demands in creating their necessary roads, bridges, and grist and saw mills, the settlers made no attempt to put up either a courthouse or jail. The absence of any requirement that they build these essential structures fostered a belief among some that others bore that responsibility and not they themselves. Their lack of interest in being bothered with such a burden continued and became even more apparent in 1779, when the newly created Vermont General Assembly considered making the town the center of a new county bearing the same name. This would have required the residents to fund and erect those buildings; but one faction objected and argued that the town was definitely not in the center of the county but, rather, on its edge. They saw no reason to assume that responsibility and thereby allow their neighbors to escape such an obligation. "One minute's reflection," they protested, "will con-

vince any rational mind that it will be nearly impossible to alter the county town after those houses are once built: and to subject us, our children and future generations to the grievous task of being obliged to [pay] six times so far for all our privileges as those of our brethren who reside in Pownal.”⁶⁶ In 1781 the assembly responded and divided the county into two shires: one in the south at Bennington, and the other to the north in Manchester, each obligated to build their respective court-houses and jails.⁶⁷

Because of the anomalous absence of these vital structures and institutions early on in Bennington, historians seeking to explain how public order was maintained have provided conflicting versions of the process. As one wrote, “the little community became an organized government, acknowledging the authority of New Hampshire; though from their distant and isolated situation, the settlers were in a great measure independent of all government, but that which they chose to impose on themselves.”⁶⁸ However, such an idealized version had little basis in fact, for a more pragmatic view is provided by another historian who noted the settlers’ dependence upon the nearby Albany metropolis because that is where the “courts were regularly held,” and contended that they were being “held in check by a superior force of influence, if not by superior numbers.”⁶⁹ The developing resentment they held toward the Albany courts of common pleas and general sessions aside, the records of those courts reveal a robust system available to the Grants settlers that competently heard many different kinds of civil and criminal cases. They also show that in its role as county administrator, despite the rising tensions, in 1771 the court of common pleas continued to exercise oversight in the region and named several individuals to lay out roads in Shaftsbury, Arlington, Pownal, and Bennington and gave permission to appoint constables.⁷⁰

POLITICAL VIOLENCE (TERRORISM) IN THE GRANTS

As officials worked to create the necessary courthouses and jails in Cumberland and Gloucester counties, the New York Supreme Court of Judicature met in Albany in June 1770 to hear the first set of Ejectment Trials that marked the future course of the lives of Grants settlers on both sides of the Green Mountains. They also served as the critical events that triggered the changes in settler attitudes upon learning of their losses, as they moved from resentful co-existence with officials in Albany to the implementation of outright violence against them sponsored by the efforts of Ethan Allen and the Green Mountain Boys.

Historians have rarely described the trials themselves in any detail. However, close examination of the court records reveals a contest of

titanic proportions that involved many more cases than have been previously reported.⁷¹ These actions actually began months earlier in October 1769, when the Albany County sheriff personally served ejectment suits upon several Bennington settlers. Unrelated to those actions, three Albany commissioners and a contingent of surveyors, authorized by a law related to tax collection, also appeared in Bennington immediately after the sheriff's departure. Their presence alarmed the local residents who, headed by local farmer James Brackenridge, threatened the surveyors as dozens of settlers debouched from the woods and fired their guns at them, though without causing injury.⁷² A short truce ensued between the two sides that led to their meeting at a nearby house, which was preceded by one of the Albany commissioners protesting to the settlers against their use of violence in opposition to the established order. This marked a defining moment between the two sides, as he bemoaned the situation, telling them "it was not right . . . to put the Laws in Force at the Mussel [sic] of the Gun." Predictably, at the conclusion of their meeting, the surveyors could only retreat homeward fearing for their lives. The event constituted, as one historian has described, perhaps with a bit of hyperbole, "the first deliberate resistance to the royal authority in the colonies."⁷³

The first set of Ejectment Trials took place on the second floor of the Stadt Huys on June 26, 1770, and resulted in the defendant-settlers suffering huge losses in their claims of ownership to the land.⁷⁴ Upon the conclusion of these trials, the borderland status of the Grants accelerated and began to take on an identity of its own. It was no longer a neutral place where the contestants sought to coexist, but became instead a zone where each side pursued its own binary impressions of right and wrong. The developing outbreak was not confined to a single location, but came to include virtually all of the Grants in one way or another. While the extent of the resulting harm was dependent upon where it took place and who was responsible for it, the overall situation was attributable to the palpable "absence of authority" from any metropolitan center, whether it be Albany, New York City, or Portsmouth.⁷⁵ However, it was not a one-way process as, in turn, the confrontations in courthouses in Cumberland and Gloucester counties on the periphery had their own effects upon these centers of power and influenced how each responded. In the confusion, the Grants inhabitants assumed various roles and identities, not always consistent with each other, as they watched and adapted to the changing "political, social, and personal boundaries" between them being "crossed and re-crossed" before their very eyes.⁷⁶

The losses the settlers suffered in court presented them with the

most difficult decision they had so far confronted in choosing either to abide peacefully by the rule of law or to physically confront its application. A Bennington convention shortly afterwards did not hesitate to choose the latter and promised to utilize “force” because “law and justice were denied them.”⁷⁷ However, by 1772 town officials appear to have questioned that decision and defensively explained they had done so because of the “the Laws of Self, and Family Preservation.”⁷⁸ For Ethan Allen the choice was clear. In 1774, he disingenuously wrote that force was justified not to oppose the law, but, rather, to resist its application by New York magistrates because they were “the tools of those extravagant law-makers.”⁷⁹ This distinction without a difference offered little solace simply because the justices of the peace charged with enforcing the law constituted its very physical manifestation, much in the same way as courthouses and jails.

Terrorism, writes Jeffrey Kaplan, is “a performance art form.”⁸⁰ It is “widely understood to be a political act, a gesture—however immoral or misguided—toward promoting some greater cause,” and “is primarily a spectacular method of communication aimed at audiences far from the target itself.”⁸¹ For those engaged in this activity at the time of the Revolution, it involved the use of mobs made up of the “lowest classes,” which were, in turn, controlled by those of the “better” classes.⁸² That the Grants were ruled by such a better class composed of a close-knit minority (variously called the “Family Compact,” the Allen-Chittenden faction, and the “Arlington junto”) is without question.⁸³ This was the group that guided the course of the Grants dispute and first employed the violence that Ethan Allen sponsored. As he bragged in 1773 while he and his men terrorized the unthreatening, unarmed Scot settlers along the Onion River and burned their homes, he was the “Captain of that Mob and his authority was his arms, pointing to his Gun, that he and his Companions were a Lawless Mob, there Law being Mob Law.”⁸⁴ In 1778, he acknowledged their rejection of the rule of law and taunted in reference to the Ejectment Trials that while New York might have succeeded in its claims under the common law, he and his followers had instead “appealed to club law, and, in this mode of trial,” they beat their opponents as they became “the terror of the government of New York.”⁸⁵ Allen’s desperate resort to the primitive use of arms and equating it with some form of legitimate law is not surprising.⁸⁶ Others had already acknowledged the availability of club law to advance their interests because it served as an alternative way to deal with perceived violations of the common law. Club law, one wrote, was “founded not only on the universal and equitable laws of

nature, but on as ancient and respectable usage as any you will find to support the law of Parliament.”⁸⁷

Coincidentally, the use of club law also presented Allen and his relatives with the prospect of profiting by it when they amassed a huge portfolio of 60,829 acres of northern Grants land valued at a respectable \$297,408.50 as those loyal to New York fled their mayhem.⁸⁸

Terror was a term used repeatedly by Allen, the settlers whom he and his followers harmed, and by New York authorities working to put an end to it.⁸⁹ However, New York never used the vicious hit-and-run tactics that Allen employed as he inflicted his chaos in and about this fugitive, borderland terrain. With the second set of Ejectment Trials scheduled to begin on June 25, 1771, the unrest in the Grants began to have an effect on the area surrounding Albany. In nearby Pownal, frightened and anguished residents petitioned the Court of General Sessions and received permission to appoint additional constables.⁹⁰ Days later, on June 11, settlers’ representatives took some of the most aggressive action to date and struck in an area a full ten miles west of the disputed Twenty-Mile Line outside Bennington and forty-five miles north of Albany. On this occasion, one of Allen’s henchmen, Robert Cochran, led fourteen armed men onto the farms of retired British soldiers and forcibly removed them from their long-held lands.⁹¹ The attack was sufficiently far from the seat of government that the intruders could flee back into the Grants before New York authorities could take action against them, in much the same way that New Hampshire intruders in Cumberland and Gloucester counties were able to return homeward across the Connecticut River.

The display of violence had an impact on the next trials, as only seven of the twenty-four jurors summoned appeared, a situation resolved when the sheriff picked bystanders from the crowd as substitutes. The results of these trials were again a foregone conclusion, as the settlers again failed to defeat the New Yorkers’ superior legal claims of ownership. When the plaintiffs from these proceedings found it impossible to reach peaceful resolutions with the defendants who had lost their cases the prior year, they decided the time for more forceful action was necessary and obtained the necessary papers to allow the sheriff to eject the most recalcitrant of them all, James Brackenridge.⁹²

The second confrontation at the Brackenridge farm, on July 28, 1771, resulted in the New Yorkers having to withdraw once again in the face of a superior force, in yet another display of the law being displaced by “the muzzle of the gun.”⁹³ However, before that occurred Robert Yates, one of the most experienced New York attorneys to handle land

matters and a member of the posse, had a conversation with some of the settlers that provides important insight into how they viewed their legal responsibilities. As Yates recounted, he posed several questions to them and asked

whether they acknowledged at present the New York jurisdiction. They did. Whether they acknowledged themselves loyal subjects to his present majesty, this they also readily acknowledged. Whether it did not flow as a necessary consequence from these principles that they should peacefully acquiesce in the determination of the courts instituted by his majesty for the distribution of justice. To this they gave an evasive answer by observing that they had their grants from New Hampshire and that any controversy about the validity of these grants could only be determined by his majesty. I observed to them the extreme absurdity of such an expectation for that I acknowledged it was in his majesty's power to alter, establish or change the jurisdiction as often as he pleased but that the right of soil when once his majesty had divested himself from the same, and any dispute should arise between subject and subject about that right, it could only be determined by the courts of justice where such controversies arose.⁹⁴

The exchange produced no results, but does reveal the New Yorkers' persistent reliance on the rule of law and their legal institutions to settle disputes.

Examples of the settlers' refusal to accept their legal defeat continued as Allen and others returned to the same area Cochrane invaded earlier and confronted another Scot soldier. They demolished his abode and told the man they "had determined that morning to offer a burnt offering to the gods of this world by burning the logs of that house." They set up four fires to consume their work and told the soldier to "Go and complain to that damned Scoundrel, your governor. God damn your governor, king, council, and Assembly." When he protested their actions, Allen warned further that should any constable pursue them they would kill him, and that if caught and put into jail, their friends would come and free them.⁹⁵

The threats to New York's authority had now become such a full-blown crisis that one Albany official wrote that the "speculators were at their wits end."⁹⁶ Immediately after Cochrane's and Allen's blatant incursions into northern Albany County the assembly took up the matter and on March 12, 1772, created two additional counties, Tryon to the city's west, and Charlotte to the north, extending eastward to the borders of Cumberland and Gloucester counties and to the northern border with Québec.⁹⁷ Officials took particular note that Charlotte County, with a population of 1,115 individuals living in fifteen separate towns, lacked institutional services.⁹⁸ To describe the problems that the resi-

dents faced in their efforts to improve the countryside and further the colony's development, the assembly reported that:

The number of inhabitants and their great distance from each other rendering the administration of justice extremely difficult and burthensome; many people as county officers, jury-men, suitors and witnesses being obliged to travel near two hundred miles to the City of Albany . . . the inhabitants instead of having justice distributed according to our excellent Constitution as it were at their doors, are [instead] exposed to great hardships, and lesser crimes pass unnoticed, and crimes of the most atrocious nature frequently go unpunished for the want of the attendance of witnesses . . . and sheriffs and coroners are discouraged from executing both civil and criminal process and the expense of attending the courts often exceeds the value of the thing in demand and great default of justice is occasioned . . . such a waste of time . . . discourages the settlement of the country.⁹⁹

Notably absent was any provision for a centrally located shiretown in either of the two new counties.

However, a contest broke out almost immediately within Charlotte County with an April 7 petition filed by residents interested in a centrally located county seat on Otter Creek that could attract settlers to the north and hasten the development of the land.¹⁰⁰ It would also be closer to Crown Point and permit easy access by nearby military forces that could respond to and deal with those difficult inhabitants described as "disaffected to this Government, and [who] have been subject to no law." While that petition promised to build the essential courthouse and jail, a second one dated the following day argued for a county seat at Socialborough (Rutland) where, despite their poverty, residents agreed "to raise & pay all the money" needed to allow others to build those structures.¹⁰¹

In Bennington, still within the confines of Albany County, rioters removed two cannon and a mortar from a small nearby fort on the mistaken belief that "a Body of Regulars were on the march against them."¹⁰² It was all, as one Albany politician noted, a dire situation beyond the capability of the authorities to handle, as "the posse comitatus will I humbly conceive by no means answer the purpose."¹⁰³ In the face of such opposition the council determined that the Charlotte County courts had to be located much closer to Albany and ordered them established "at the house of Patrick Smith" in Fort Edward, fifty miles north of the city. The two-story, gambrel-roof building (now called the Old Fort House Museum) sitting several hundred feet east of the Hudson River was of new construction that utilized timbers from the ruins of the nearby abandoned French and Indian War fortification, and later served as the headquarters for both American and British forces during the



Charlotte County courthouse (1772), Fort Edward, New York (current Old Fort House Museum). Photo by the author.

Revolution. Thus, by virtue of placing the courts there, Fort Edward became the de facto county seat and is where the council determined on April 29, 1772, that Philip Schuyler, Philip Skene, and William Durer should serve as judges of only a single court, the court of common pleas responsible for civil matters.¹⁰⁴ While no provisions required that they construct either a proper courthouse or jail, the act that created the county allowed them to house their troublemakers in the Albany jail until they could do so.

By late 1773, the council had become comfortable enough to expand authority in Charlotte County and created the court of general sessions to handle criminal matters.¹⁰⁵ Additionally, several justices of the peace were named between 1772 and 1774.¹⁰⁶ The earliest extant records for those courts date to this period and describe their operations for less than two years, running from October 19, 1773, to their closure at the start of the war days after the Bunker Hill battle, on June 21, 1775.¹⁰⁷ Any notion that these courts were responsible for instilling a period of peace is deceptive, as Ira Allen described where the real authority rested. These justices of the peace and courts, he wrote, were “allowed (by the people) to act when the title of Lands was not concerned, nor riots, nor sending people off the Grants without the concurrence of the Committee of Safety.”¹⁰⁸ Peace came at a significant price and compro-

misled New York's efforts to project its authority onto its periphery, for it was the people who imposed their own limitations on the types of cases they could tolerate, and that definitely did not extend to land titles or other matters their committees did not agree with.

The seizure of Fort Ticonderoga on May 10, 1775, has understandably assumed an elevated position in Vermont's creation story. However, it has effectively overshadowed other important events occurring at the same time within this large fugitive terrain involving persistent settler opposition to the rule of law and to the Charlotte County courts located forty miles to the fort's south. The settlers were not devoted solely to making war against the British, as they also prolonged their opposition against anything that represented New York authority.

Two months earlier, Ethan Allen led a mob that dragged Justice of the Peace Benjamin Hough from his home and placed him before "a mock Tribunal," where he was found "guilty" of attempting to enforce New York laws and then viciously whipped.¹⁰⁹ The violence they fostered penetrated into the courthouses themselves, as confrontations broke out on the east side of the Green Mountains at Westminster in Cumberland County on March 13, resulting in the death of a man. Within forty-eight hours, the intrepid Allen henchman Cochran appeared from the west leading more than forty men to support those rioters.¹¹⁰

Just eight days later, demonstrating the great mobility and extensive impact of these individuals, they traversed westward across the Grants and appeared a hundred miles away at Fort Edward. There, on March 21, Judge Duer presided over the Court of General Sessions at a hearing so raucous that he called upon a nearby company of British soldiers for protection.¹¹¹ The spectators were aroused by the return of indictments from the grand jury charging a number of men with rioting at an unidentified location in Charlotte County. Court records reveal the indictments of nine men who had been present at Westminster, among them Cochran and Seth Warner, who accompanied Allen less than two months later in the seizure of Fort Ticonderoga.¹¹²

In early June, shortly after taking the fort, the west-side rioters were on the move once again, with Cochran in the lead headed back to Fort Edward with the intention of removing New York authority from the region once and for all. As Duer explained the incident to the Provincial Congress on June 5, "a party of the people on the New-Hampshire Grants, strengthened by some persons of desperate fortunes and bad character in the western district, had formed a resolution of abolishing the law," which they deemed the source of their problems.¹¹³ Others agreed, as one of the Ejectment Trial defendants described the rioters as

mostly debtors with a “design to put a period to common law.”¹¹⁴ Fortunately for Duer, the presence of nearby Connecticut soldiers dissuaded the men and they abandoned their effort.

GRANTS IDENTITY: “BY THEIR LAWS SHALL YE KNOW THEM”

This moment in the Grants borderland convulsions provided more than one opportunity to redefine settler identity. It was not based upon their material culture or institutions represented by structures such as courtrooms and jails, but on the very law they imposed upon themselves to maintain order.¹¹⁵ This observation allows us to appreciate how it was applied to both the population at large and to its marginalized members, particularly those resistant to separatists and wishing to maintain their loyalty to New York and the Crown.¹¹⁶

Vermont has had a centuries-long fascination with its identity and its representatives have understandably sought to maintain control of how it was portrayed to both its citizens and the outside world. In 1794, only three years after statehood, Samuel Williams published *The Natural and Civil History of Vermont*, dedicated to its citizenry “as a testimony of respect for their many virtues.”¹¹⁷ However, Williams carefully employed language that did little to identify specifically what constituted those virtues. Rather, he made repeated references to the inhabitants’ difficult shared past and adopted an apologetic, excusatory tone that camouflaged their extra-legal actions taken against the Yorkers and implied that any people in a similar situation would have done the same thing.

Williams’s efforts to exculpate the settlers notwithstanding, they must be viewed carefully, as he was not beyond concealing the true state of things.¹¹⁸ As he confessed to his close confidant Ira Allen in his description of the seedy Haldimand affair involving Allen’s family, he had manipulated the story in such a way “that cannot be construed as unfavorable to any person who was concerned in it.” He had no intention, he reassured Ira, to provide “an unfavorable view of their proceedings,” marking the first clear admitted instance of bias in the withholding of facts describing the true course of events taking place before statehood.¹¹⁹ Ira furthered his own tight control over descriptions of what had occurred and continued with the obfuscation by including glowing tales of the exploits of his brother Ethan and the state’s founders in his 1798 *Natural and Political History of the State of Vermont*. Allen and Williams established a basis that historians of the nineteenth and twentieth centuries expanded upon with their own creative interpretations of what had occurred in those times.¹²⁰

Despite instances of revisionism about the Grants identity, the law the

colonists lived under in their removed North American colonies was invariably consistent with that exercised in their metropolitan center, London. That meant the British constitution (constituting the body of English law as a whole and not a single document) was applicable to all of the colonists. With that authority diluted the further one traveled from London, it became subject to creative interpretation and manipulation. In the far and difficult-to-reach areas of the empire, settlers indulged themselves in ways that afforded them opportunities to adapt the law to their particular needs without fear of retribution. Those efforts, particularly after 1776, were driven not necessarily by an interest in furthering national goals as much as to satisfy their own “land hunger, profit seeking, and eagerness to exploit new resources.”¹²¹ Nevertheless, while the influence of the metropolitan center became less apparent the further away one traveled to the periphery, at their base these settlers were infused with centuries-long, strong legal and constitutional traditions that identified them as Englishmen.¹²²

With the freedom and license this borderland environment afforded them, nothing constrained the Grants settlers from pursuing their own version of legitimacy by aping the efforts undertaken by the thirteen member colonies of the nascent confederacy to create their own declarations of independence and constitutions. This period between 1777 and statehood provided the rich environment that allowed for the next stage of evolution of the Grants identity, providing in the process particular meaning to the maxim that “by their laws shall ye know them.”¹²³

In January 1777, contrary to the Continental Congress’s wishes, the Grants settlers unilaterally announced their formal declaration of independence, focusing their ire on New York and with brief reference to Great Britain. To justify their extraordinary move, they wrote that, despite all that had gone on before in living under that colony’s laws and their reliance on New Hampshire’s authority, they now lived “without law or government,” arguing that they existed “in a state of nature.”¹²⁴ They rejected the sanctity of the New York Supreme Court’s decision in the Ejectment Trials rendered against them on the basis of accepted legal precedent. Instead, they turned to notions of equity and fairness, adopting popular concepts of natural law based upon their own novel interpretations of “self-evident truths” as they turned away from a wealth of evidence that British common and positive law had prevailed in their lives to that point. They had carried that law with them when they first arrived in the Grants and it was not easily discarded. Settlers on the empire’s periphery could refine existing law to meet their particular circumstances (as later confirmed by Parliament), but they did not have the authority to exclude themselves from the established legal sys-

tem applicable to colonists as a whole simply because they disagreed with it.¹²⁵

Wholly absent from the Grants settlers' breathtaking claims to justify their declaration of independence is the acknowledgment that by that time New York had already provided them with a staggering amount of support. By contrast, James Duane's lengthy summary of all the aid and money that New York authorities had expended on their behalf listed: their readiness to accommodate Ethan Allen immediately following the seizure of Fort Ticonderoga in the formation of the Green Mountain Boys to support the war and Allen's thankfulness for their help; the numerous times that representatives from the Grants joined them in convention in New York City to decide important issues relating to the state and the war; the distribution of gunpowder to all three of the counties and resolutions of thanks they received in return; their arranging for the formation of militia companies and repeated advancement of money to each county; the removal of lead from windows in New York City in order to provide ammunition to Cumberland and Charlotte counties; paying for the creation of ranging companies to patrol the counties clamoring for aid; and sending salt to those in need.¹²⁶

Hard-pressed New York officials had also worked with other counties to provide similar aid as their petitions poured in. Yet, they argued, the inhabitants of the Grants had turned a blind eye to their sacrifices:

while she was lavishing her blood and Treasures for the general safety; while she was a principal object of British vengeance, and exposed in a Singular degree to the horrors and calamities of war, when her Capital and her richest Counties had been torn from her or desolated when Fort Washington had been taken [November 16, 1776]; our army retreated and New Jersey been overrun [December 14, 1776], when our devoted State was invaded by Burgoyne from the north and by Clinton from the South; at this alarming period, when her misfortunes and her dangers ought to have excited an earnest solicitude for her safety, did the Leaders of her revolting Citizens take advantage of her distresses, and press forward their project of Independence.¹²⁷

These were among the hardships that New York suffered and which the Grants separatist leaders never acknowledged, but, instead, ignored.

The overall legal context in which Vermont's constitution was created months later, on July 2, 1777, at a convention in Windsor in Cumberland County as Burgoyne marched toward Saratoga, has been largely ignored. Instead, the interest of historians has been focused on its unique provisions concerning suffrage and slavery. Those notable achievements notwithstanding, other aspects of the story deserve attention. One is the continuing angry opposition of the Continental Congress to Vermont's independence as obstructive of and contrary to the overall concerns of

the newly declared nation struggling to assure its security and independence.¹²⁸ Yet the settlers refused to concede to those needs, and, just as they had in ignoring New York's warnings, pushed on and produced their constitution in a very short time while under extreme duress, before rushing out to deal with the life-changing events taking place on their very doorstep. They had every reason for their attention to be diverted as droves of frontier refugees fled south away from Burgoyne, carrying their possessions and driving their livestock before them as Tories lay in ambush to murder them.¹²⁹ In such a hurried atmosphere and in the absence of competent documentation recording exactly what took place in the constitutional convention, it is worth considering whether the attendees actually engaged in deep discussion and reflection of its several provisions, including slavery and suffrage.

Before the assembled men departed, and despite his own concerns over the rushed proceedings, in his opening sermon Rev. Aaron Hutchinson concentrated his remarks on other matters affecting them, particularly the presence of New York's courts as a reason to justify their separatist movement.¹³⁰ Importantly, he never insinuated that the courts' personnel or the decisions that emanated from them were objectionable, but, instead, focused his ire on the procedures they employed. "Is it reasonable? Is it just? Is it for the public weal?" he asked,

[t]hat an infant country after the expense of a court-house and jail, should have four county courts in a year, and to all these three or four times the number of jurymen be summoned, at the nod of a petty deputy-sheriff, that is necessary? And if any, at two days warning, tho' without a horse and cash, do not attend, at the distance of thirty, forty, or fifty miles, and stay the whole week, or till dismissed, upon their own cost, while they have nothing, or next to nothing to do; in a few days almost the only support of their poor families, except bread, must be seized by the officer. Is this justice? Is this to maintain the honor of government?¹³¹

In ending, Hutchinson asked his audience once again to consider the "nonsensical and needless expense in the administration of the public justice."¹³²

The settlers' efforts directed towards independence and creation of a constitution also presented them with a legal conundrum in the subjugation of their neighbors, the problematic Yorker population. If it was acceptable for the separatists to declare themselves independent, then what of those who had not joined them in the effort? As Yorker lawyer Charles Phelps wrote, "The Vermonters never had a right, nor could they by the laws of nature or nations, ever have had any jurisdiction or authority over their neighbors [pledging their allegiance to New York], who never joined in erecting the government—for all men in a

state of nature, are free, and not under the power of any people on earth, until they put themselves under the government by their own free & voluntary consent and agreement.” In short, what right did the dissident settlers have to force their version of law on that portion of the population that believed itself a part of New York? Phelps further observed that the settlers’ claim of independence was contrary to law because the nation’s Declaration of Independence “never was understood, or had in contemplation by any of the thirteen States of America, to give a right to the people of a part of a State, to divide & tear themselves from thence, and without their consent, erect themselves into a separate state; and it is contrary to the established laws of nature and nations.”¹³³

Given the actions of the Grants leaders in the years immediately following the drafting of their constitution, with its stated republican ideals, we must consider the possibility that it was actually intended as a political device, a symbolic gesture to the world to justify their claims of entitlement to statehood.¹³⁴ Ethan Allen himself, at the time of the Haldimand Affair when the leaders’ treasonous actions were becoming known, betrayed a fundamental premise on which they operated and exposed the nimble, undemocratic fluidity of their reasoning. He explained that, “the leading men in Vermont are not sentimentally attached to a republican form of government, yet from political principles are determined to maintain their present mode of it, till they can have a better, and expect to be able to do it, at least, so long as the United States will be able to maintain theirs, or until they can on principles of mutual interest and advantage return to the British government, without war or annoyance from the United States.”¹³⁵ While such words may indicate a desire for “better” government, his easy dismissal of adherence to a republican form in favor of pragmatic, or *realpolitik*, considerations of returning to British domination is revealing. It shows just how much these individuals thought things such as constitutions should control their lives as they engaged in dangerous discussions with the nation’s enemy.

Evidence of the Grants leaders’ abandonment of the lofty principles propounded in the 1777 constitution became apparent almost immediately after its enactment and shows how difficult it was to balance those provisions with the everyday realities they faced. Gone for the foreseeable future was any thought of implementing some of its vaunted provisions, such as: “no man’s property can be justly taken from him, or applied to public uses without his own consent”;¹³⁶ that no seizure of property take place without a warrant;¹³⁷ “that, in controversies respecting property . . . the parties have a right to a trial by jury, which ought to be held sacred”;¹³⁸ that in all criminal prosecutions “a man hath a right

to . . . trial by an impartial jury of the country”;¹³⁹ that “trials shall be by jury”;¹⁴⁰ and that “the declaration of rights . . . ought never to be violated, on any pretense whatsoever.”¹⁴¹ Unashamedly, they brazenly declared that, despite their efforts to become an independent state contrary to the desire of the nation’s leaders, they promised to conduct themselves in a manner “agreeable to the direction of the honorable American Congress.”¹⁴² The discord that followed the creation of the constitution became so notorious that almost immediately thereafter, in 1778, Ejectment Trial attorney James Duane reasonably asked, “Are these people friends to the Revolution and can they answer for their conduct to the United States?”¹⁴³ Similarly, William Slade’s 1823 review of the process the settlers utilized led him to conclude that they considered their constitution but a “mere nullity” as he recited the devastating conclusions of the Council of Censors in 1785-1786 that “flagrant violations of the Constitution” had taken place.¹⁴⁴

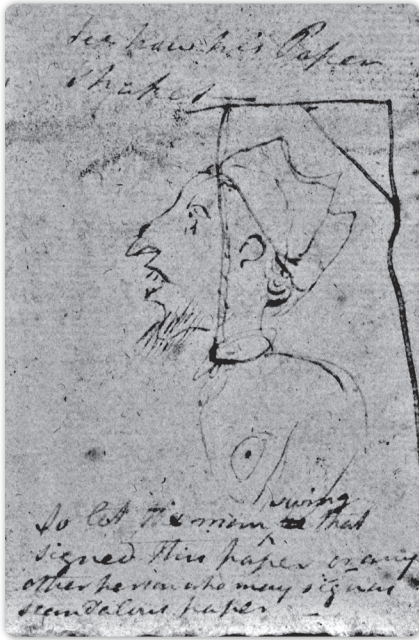
Upon the first convening of the settlers’ assembly in March 1778, after their abandonment of New York law, they immediately adopted “the common law [of England] as the law of this State,” as well as other provisions of Connecticut law.¹⁴⁵ They also created courts to deal with sequestration and confiscation, which resulted in inflicting of egregious decisions of questionable legality on those they believed inimical to the cause. This included banishment and the seizure of their property, which was awarded at discounted prices to favored individuals.¹⁴⁶ In his description of the discriminatory practices put into place, Charles Phelps related that, “The Vermonters wrench the property of the subjects of the New-York State from them, arrest and imprison their bodies to compel the payment of Vermont taxes . . . which taxes have been near double upon New-York state subjects, to those laid on the Vermonters in the same town.” When their property was subject to forced sale, Phelps further complained that “they have gone for not more than the 15th or 20th part of the true value.” All of this, he said, “proves Vermont’s insatiable appetite to lawless domination, founded upon avarice, injustice, tyranny and usurpation.”¹⁴⁷ Land was also sought and granted to special classes of people, including both Grants leaders and national politicians living outside the region, among them John and Samuel Adams, resulting in the virtual looting and squandering of significant amounts of money intended to fight the war.¹⁴⁸

Phelps, who possessed what is believed to have been the largest law library in the Grants at the time and witnessed its seizure and distribution to its lawyers, also made interesting observations about the

practice of law that he witnessed in the nascent courts. “Whether it is through their ignorance of the law, or wickedness in wrestling law,” he wrote, “let the sufferers and speculators of their law-tortured courts tell us.”¹⁴⁹ He clearly had little respect for the judges he observed, decrying their “ascending the pretended magistratical bench, who lift up their hands to heaven, and swear by him that liveth forever and ever, that they will well and truly try and adjudicate in all causes, according to law, which law they are as ignorant of as Nicodemus was of the New Birth.” Forlornly, he asked, “Must New-York subjects be any longer so wickedly abused by ignorant Vermont judges?”¹⁵⁰

The physical punishment threatened or inflicted on the population contrary to the constitution was atrocious. In 1778 British soldier David Redding experienced the ultimate penalty when he was hanged by a raucous group of Bennington residents headed by “state’s attorney” Ethan Allen, in what one historian described as “a discreditable travesty of justice.”¹⁵¹ The assembly itself ordered the banishment of 108 individuals and threatened them with death should they return.¹⁵² In 1779 it passed extraordinary laws that allowed for the infliction of escalating amounts of physical harm on an offender, including having their “right ear nailed to a post, and cut off and branded in the forehead with the capital letter C, on a hot iron,” and the execution of any mother concealing the death of a newborn baby.¹⁵³ Such barbaric provisions did little to advance the Grants leaders’ claims in Congress where New York delegate John Jay noted it had “made an impression greatly to their disadvantage.”¹⁵⁴

The Grants leaders’ willingness to ignore both the spirit and specific provisions of the 1777 constitution continued. In 1778, when several towns protested a voting process that excluded some of them, they entered their objection to the power being exercised by only a few individuals. After detailing their grievances, they complained that “in less than a year after the establishment of the Constitution of this state, on which all our political rights and liberties depend, flagrant and open attempts are made to violate and destroy it, and set up arbitrary power in direct opposition thereto.”¹⁵⁵ The disdain that those in positions of power had for the general population continued into subsequent years. In 1784 several Windsor County towns petitioned the assembly with a list of grievances, arguing that “we find many Infringements on the Constitution & Rights of the People.” Their bold assertions were met with condescension by the legislators, one of whom writing derisively on the face of the petition, “See how his Paper Shakes,” accompanied by the profile of a bearded man hanging from a scaffold. “So let the man swing,” the threatening warning con-



"See how his Paper Shakes . . . So let the man swing." "A Petition of a Number of Towns in the County of Windsor," October 18, 1784 (detail). Vermont State Archives and Records Administration.

tinued, "that signed this paper or any other person who may [sign such] scandalous paper."¹⁵⁶

Ethan Allen also had occasion to demonstrate exactly what he and his fellow leaders thought of their constitution and recently instituted courts. Authorized by Thomas Chittenden to take a large body of soldiers to arrest inimical individuals in Cumberland County, he seized thirty-six of them.¹⁵⁷ As he had done in the past with the Yorkers, witnesses reported that he "heated 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, [and] declared they will establish their state by the sword and fight all who attempt to oppose them."¹⁵⁸ His actions were so

violent that other Yorkers almost rose up in arms against him, but chose instead to write to New York authorities pleading for aid, or "our persons and property must be at the disposal of Ethan Allen, which is more to be dreaded than death with all its terrors."¹⁵⁹

The virtual absence of any intention to enforce the law in accord with the spirit of the 1777 constitution continued and allowed the Grants to descend into a beckoning haven for those fleeing accountability elsewhere. As George Washington described this destination for deserters from his army, "The country is very mountainous, full of defiles, and extremely strong. The inhabitants, for the most part, are a hardy race, composed of that kind of people who are best calculated for soldiers; in truth, who are soldiers; for many, many hundreds of them are deserters from this army, who have acquired property there, would be desperate in the defense of it, well knowing that they were fighting with halters around their necks."¹⁶⁰

Allen agreed with that assessment, and admitted further that “immigration, too, adds to [Vermont’s] strength as the people who come here from the United States do so to obtain land and escape exorbitant taxation and will unite in rejecting every idea of a Confederation; property, not liberty, is their main object.”¹⁶¹ Indeed, a 1780 map of the recently named state proudly proclaimed the manner in which the inhabitants obtained these lands, stating they had done so “by the triple title of honest purchase, of industry in settling; and . . . of conquest.”¹⁶² This was the identity that many outsiders assigned to the Grants inhabitants at the time, a fugitive terrain, defiantly controlled by questionable figures living apart from established law and without accountability. A deeper understanding of that identity allows us to appreciate the adage that “by their laws shall ye know them.”

CONCLUSION

The voices of the protagonists justifying their actions during Vermont’s fractious borderland years have, unfortunately, been conflated over time. This has obscured the important distinctions recognized by the colonists of the availability of legal and equitable processes that has led to misunderstandings by later generations. This confusion came about because the differences in those processes became more obvious at a time and place when application of the antiquated common law was being significantly challenged by those living in Wentworth’s directionless borderland. Whereas New York, through many decades of adherence to the rule of law, understood the contest in that context, the settlers, removed from their own colonies’ legal traditions and ultimately abandoned by those of New Hampshire, had to find alternative explanations. When legally confronted, they became defiant and unrestrained in their resort to primitive “club law” in opposition to New York authority because there was no countering, competent force to bring them into compliance. It must be remembered that they did so not by relying on a recognized legal right, but from a position of overwhelming physical strength in their possession of this fractured land. That position allowed them to both inhibit New York’s attempts to ensure the presence of established law among them through their counties, courts, jails, and personnel, and to assume command of the tenor in which their actions were portrayed to the outside world.

The assertion of Bennington authorities in 1772 that they had obstructed New York after the Ejectment Trials because of “the Laws of Self and Family Preservation” is a decidedly deficient explanation to justify their actions in the context of established law. However, it does reveal the outlines of the alternative argument founded in equity, which

incorporated in its support their strong, centuries-long New England traditions and institutions. Through the adaptation of those precepts to fit their new circumstances, not necessarily in accord with New York's practices, the settlers founded a new identity for themselves that closely aligned with the New England example. Its many attributes are well known and touch all aspects of cultural, political, economic, and religious practices. They include their efforts to create town governments duplicating the personnel and procedures used in their prior habitations, their early reliance on English common law and Connecticut statutes, the eventual adoption of rational methods of land conveyance, and, ironically, the employment of the very procedures used by New York in ejectment matters, upon which they had based their initial decision to separate from that government.

The settlers had carried those important New England precepts with them into the wilds of Albany County, but implemented them in a convoluted manner when called upon to justify themselves legally. They first advanced alternative, but conflicting, positions to explain their actions as they acknowledged their allegiance to the Crown and English law while at the same time denying that New York's law applied to them. When that reasoning began to fail them, they shifted the conversation to claims based in equity and pointed to such abuses—as they saw it—as the injustices they experienced because of the way land patents were awarded to New York landholders. At the same time, however, equity was a two-edged sword, because for each argument the settlers raised, the highly capable New Yorkers could counter with their own justifiable points of view. Unfortunately for the settlers, the existing courts of chancery that resolved equitable disputes did not have the jurisdictional authority to determine the important rights surrounding titles to land. Those were uniquely common law questions that could be determined only in the law courts, as manifested by the Supreme Court rulings during the 1770 and 1771 Ejectment Trials where equity was not in issue.

The settlers' arguments of legitimacy contrary to the law made to the intelligent, well-versed, legally trained members of the Continental Congress further demonstrate the weakness of their position, as those protestations fell on deaf ears. Undissuaded and secure in the knowledge that they could not otherwise be dislodged from their lands, the Grants inhabitants persisted and continued to argue their rights based upon equity. At last, on March 4, 1791, they succeeded in putting the persona of a fugitive terrain behind them, extinguishing the raucous borderland conditions they had suffered under for so long, and turned away from methods of terror to the implementation of a coherent ma-

terial culture based on accepted law. It was only then, after years of separation from the original thirteen states, that they could finally lay lawful claim to the name of “Vermont.”

NOTES

The author is appreciative of the interest and suggestions provided by J. Kevin Graffagnino, Dr. H. Nicholas Muller III, and Michael Sherman, editor.

¹ I. Noel Hume, “Archeology: Handmaiden to History,” *The North Carolina Historical Review* 41 (April 1964): 214-225. Space limitations preclude a full examination of the historical archaeology concepts described herein and the reader is invited to explore them further, as well as those touching on power, politics, ideology, conflict, negotiation, assimilation, landscape, and institutions. See, e.g., Martin Hall and Stephen W. Silliman, eds., *Historical Archaeology* (Malden, MA: Blackwell Publishing, 2006).

² Charles Francis Adams, ed., *The Works of John Adams*, vol. 2 (Boston: Charles C. Little and James Brown, 1850), 254.

³ In 1777 Ira Allen compared the differences between the laws the settlers adopted from the New England states they came from and those of New York and concluded they were irreconcilable. Ira Allen, “Miscellaneous remarks on the proceedings of the State of New York against the State of Vermont, &c.” (Hartford, CT: Hannah Watson, 1777), in *Collections of the Vermont Historical Society*, vol. 1 (Montpelier: J. & J. M. Poland, 1870), 119.

⁴ See, for example, *The Grounds and Rudiments of Law and Equity, Alphabetically Digested* (London, 1751); John Taylor, *Elements of the Civil Law* (Cambridge, England, 1755).

⁵ *Connecticut Journal* (New Haven), 6 April 1770.

⁶ In 1774 Ethan Allen lamented the settlers’ losses at the trials, writing that “Law has been rather used as a Tool (than a Rule of Equity) to cheat us out of the Country” and that the “Rules of Equity and Policy” alone should determine their fate. Ethan Allen, *A Brief Narrative of the Proceedings* (Hartford, CT: E. Watson, 1774), 57, 208. He also misrepresented the practice relating to an appeal of the court’s decisions, alleging it was not permitted because the value of the land did not meet a required monetary minimum. This was incorrect because the Crown had long ignored any limitation on colonists’ appeals because of their failure to meet a colonial government’s imposition of a monetary requirement when titles to land were in issue. See, § 443 Prevent Restraints upon Appeals to England and § 457 Appeals Permitted in Certain Cases of Lands, Leonard W. Labaree, *Royal Instructions to British Colonial Governors 1670-1776*, vol. 1 (New York: D. Appleton-Century Company, 1935), 319, 329. As early as 1717, England’s attorney general expressed the policy that “It is in his Majesty’s power, upon a petition, to allow an appeal in cases of any value where he shall think fit, and such appeals have been often allowed by his Majesty.” Arthur M. Schlesinger, “Colonial Appeals to the Privy Council,” *Political Science Quarterly* 28 (1913): 286.

⁷ Samuel Williams, *The Natural and Civil History of Vermont*, 2d ed., vol. 2 (Burlington, VT: Samuel Mills, 1809), 264-265. Ethan Allen had also complained repeatedly that settlers had suffered at the hands of the law and been forcibly removed from their land. However, as attested to by credible justices of the peace and court judges in 1771, none of them had ever heard of such events taking place. See sworn statements of John Munro, Simon Stevens, Samuel Wells, Oliver Willard, and Ebenezer Cole, E. B. O’Callaghan, *The Documentary History of the State of New-York* (hereafter *DHNY*), vol. 4 (Albany, NY: Weed, Parsons & Co., 1850), 679-703.

⁸ Hiland Hall, *The History of Vermont from Its Discovery to Its Admission into the Union in 1791* (Albany, NY: Joel Munsell, 1868), 119.

⁹ Matt B. Jones, *Vermont in the Making* (Cambridge, MA: Harvard University Press, 1939), ix-x, 204-205. Six years before Jones’s book was published, the United States Supreme Court conclusively ruled in New York’s favor. *Vermont v. New Hampshire*, 289 U.S. 593 (1933). It was an exhaustive decision rendered after eighteen years of litigation that included the review of twenty-eight volumes of extensive documentation, together with numerous maps and photographs, to bring the matter to an end. “Vermont/New Hampshire boundary case, 1915-1936,” Vermont State Archives and Records Administration, Middlesex (hereafter VSARA), <https://www.sec.state.vt.us/archives-records/state-archives/find-records/archival-records/container-content.aspx?seriesId=A-034>. See also, Oscar Handlin, “The Eastern Frontier of New York,” *New York History* 18 (January 1937): 50-75, where he concludes that “legally, there was no doubt of the validity of New York’s title,” 51.

¹⁰ David Graham, *A Treatise on the Organization and Jurisdiction of the Courts of Law and Equity in the State of New-York* (New York: Halsted and Voorhies, 1839), 139. It would not be until 1847 that New York abolished the court of chancery hearing equitable claims and consolidated

them with the law courts. Ibid.; New York State Archives and Records Administration, "*Duely and Constantly Kept*": A History of the New York Supreme Court, 1691-1847 (Albany, NY: New York State Archives and Records Administration, 1991).

¹¹ See, e.g., Michael A. Bellesiles, *Revolutionary Outlaws: Ethan Allen and the Struggle for Independence on the Early American Frontier* (Charlottesville: University Press of Virginia, 1993), 75, alleging that "New York's northeastern courts proved as corrupt and alienating as those in the rest of the province. People associated with [those] courts in any capacity, whether as defendants, plaintiffs, officials, or jury members, found their time wasted and unproductive." Also, Willard S. Randall, *Ethan Allen: His Life and Times* (New York: W.W. Norton & Company, 2011), 224, 239, writing that the colonial judicial system was "essentially fixed" in favor of the landed classes and that the defendants at the Ejectment Trials had received "high-handed treatment."

¹² Philip J. Schwarz, *The Jarring Interests: New York's Boundary Makers, 1664-1776* (Albany: State University of New York Press, 1979), 97.

¹³ Bradley T. Parker, "Toward an Understanding of Borderland Processes," *American Antiquity* 79 (January 2006): 79.

¹⁴ Frederick Jackson Turner, *The Frontier in American History* (New York: Henry Holt and Company, 1921); Herbert E. Bolton, *The Spanish Borderlands: A Chronicle of Old Florida and the Southwest* (New Haven, CT: Yale University Press, 1921).

¹⁵ Jeremy Adelman and Stephen Aron, "From Borderlands to Borders: Empires, Nation-States, and the Peoples in between in North American History," *American Historical Review* 104 (June 1999): 815-816. Contra, Evan Haefeli, "A Note on the Use of Northern American Borderlands," *American Historical Review* 104 (October 1999): 1222-1225.

¹⁶ Magdalena Naum, "Re-emerging Frontiers: Postcolonial Theory and Historical Archaeology of the Borderlands," *Journal of Archaeological Method and Theory* 17 (June 2010): 106.

¹⁷ Pekka Hämmäläinen and Samuel Turett, "On Borderlands," *Journal of American History* 98 (September 2011): 338.

¹⁸ Ethan Allen, "A vindication of the opposition of the inhabitants of Vermont to the government of New York," *Records of the Council of Safety and Governor and Council of the State of Vermont*, vol. 1 (Montpelier: E. P. Walton, 1873), 503. While some members of the settler population claiming rights under Wentworth titles obtained them without understanding their questionable validity, many others knowingly engaged in a form of "adventurism." This included: their willingness to enter into transactions in a system lacking credibility and unlike any other in New England (i.e., no requirements for properly executed documents, no provisions for recording in a central location), being warned not to relocate because of indefensible titles, intentionally entering onto lands they knew were claimed by others, and entering into agreements with sellers not to pay for the land until legal title was obtained, which allowed them to walk away, depriving the sellers of compensation without suffering any loss other than the labor they had expended.

¹⁹ Naum, "Re-emerging Frontiers," 107.

²⁰ Hämmäläinen, "On Borderlands," 348.

²¹ Alexis Mantha, "Shifting Territorialities under the Inka Empire: The Case of the Rapayán Valley in the Central Andean Highlands," *Archaeological Papers of the American Anthropological Association* 22 (2013): 165; Parker Van Valkenburgh, "Home Turf: Archaeology, Territoriality, and Politics," *ibid.*, 9; Seonmin Kim, *Ginseng and Borderland: Territorial Boundaries and Political Relations between Qing China and Chosen Korea, 1636-1912* (Oakland: University of California Press, 2017).

²² Mary L. Dudziak and Leti Volpp, "Legal Borderlands: Law and the Construction of American Borders," *American Quarterly* 57 (September 2005): 594-596. See also Austin Sarat, "At the Boundaries of Law: Executive Clemency, Sovereign Prerogative, and the Dilemma of American Legality," *ibid.*, 611-631; Kevin P. Smith and Andrew Reynolds, "Introduction: The Archaeology of Legal Culture," *World Archaeology* 45 (March 2014): 687-698; Maggie M. Sale, *The Slumbering Volcano: American Slave Ship Revolts and the Production of Rebellious Masculinity* (Durham, NC: Duke University Press, 1997) describing the assignment of forms of identity to revolting slaves based upon the law.

²³ Robert D. Sack, *Human Territoriality: Its Theory and History* (Cambridge: Cambridge University Press, 1986), 19.

²⁴ Naum, "Re-emerging Frontiers," 107.

²⁵ Hämmäläinen, "On Borderlands," 348.

²⁶ Mantha, "Shifting Territorialities," 168.

²⁷ James G. Cusick, "Creolization and the Borderlands," *Historical Archaeology* 34 (2000): 47.

²⁸ Timo Ylimaunu, Paul R. Mullins, and Risto Nurmi, "Borderlands as Spaces: Creating Third Spaces and Fractured Landscapes in Medieval Northern Finland," *Journal of Social Archaeology* 14 (2014): 249.

²⁹ "Proclamation to arrest rioters in the manor of Livingston, July 28, 1753," *DHNY*, 3: 751.

³⁰ To understand the importance that colonial farmers placed on the legal system to ensure the lasting credibility of their deeds, wills, and debtor-creditor relations, see Richard L. Bushman, "Farmers in Court: Orange County, North Carolina, 1750-1776," in Christopher L. Tomlins and Bruce H. Mann, *The Many Legalities of Early America* (Chapel Hill: University of North Carolina Press, 2001), 388.

³¹ Ylimaunu, "Borderlands," 248.

³² *Ibid.*, 259; Mantha, "Shifting Territorialities," 167.

³³ George R. Howell and Jonathan Tenney, eds., *Bi-centennial History of the County of Albany, N.Y., from 1609 to 1886*, vol. 2 (New York: W.W. Munsell & Co., 1886), 70.

³⁴ A justice of the peace's duties included: supervision of churchwardens, constables, coroners, tax collectors and assessors, road commissioners and overseers of the poor, ferriage, militia, fortifications, fencing, roads, traffic, peddling, revenue, maritime matters, Indians, slaves, hunting and game, nuisances, fire, and health and medicine. They were, in short, "rulers of the county." Julius Goebel Jr. and T. Raymond Naughton, *Law Enforcement in Colonial New York: A Study in Criminal Procedure, 1664-1776* (Montclair, NJ: Patterson Smith, 1970), 110.

³⁵ Howell and Tenney, *Bi-centennial History of the County of Albany, N.Y.*, vol. 2: 490. This was also where the two cases involving intrusions by Massachusetts and New Hampshire settlers in 1726 and 1764 were determined. *A State of the Right of the Colony of New York, With Respect to Its Eastern Boundary on Connecticut River, So Far as Concerns the Late Encroachments Under the Government of New Hampshire* (New York: H. Gaine, 1773), 12; Jones, *Vermont in the Making*, 54-55; Sheriff Harmanus Schuyler to Lt. Gov. Cadwallader Colden, August 17, 1764, *DHNY*, vol. 4: 356.

³⁶ Judge Alden Chester, "Historical Address, May 8, 1915," in Alden Chester, *Courts and Lawyers of New York, A History 1609-1925*, vol. 1 (New York: American Historical Society, Inc., 1925), 986.

³⁷ The only evidence of that court's involvement in any Grants settler issue with New York authority following the Ejectment Trials is when Justice Robert R. Livingston made an official appearance in Westminster in July 1774. Hall, *History of Eastern Vermont*, 752. Legislation passed in 1774 specifically allowed for compensation of justices traveling to the colony's counties to fulfill their circuit duties, with the exception of Tryon, Charlotte, Cumberland, and Gloucester, where it was permitted as they "may attend." Charles Z. Lincoln, ed., *The Colonial Laws of New York from the Year 1664 to the Revolution*, vol. 1 (Albany, NY: James B. Lyon, 1894), 681.

³⁸ Petitions dated October 9, 15, and 22, 1765, *DHNY*, 4: 360-362.

³⁹ The Vermont State Archives contain many petitions filed by settlers in the following years seeking the creation of towns with centrally located administrative institutions to allow equal access to all when traveling from distant homesteads to their important courthouses. Edward A. Hoyt, ed., *State Papers of Vermont, General Petitions 1778-1787*, vol. 1 (Burlington, VT: Lane Press, 1952); Mary Greene Nye, *State Papers of Vermont*, vol. 5 (Brattleboro: Vermont Printing Company, 1939).

⁴⁰ G. A. Davis, "History of the County of Cumberland," in Abby M. Hemenway, ed., *Vermont Historical Gazetteer*, vol. 5 (Brandon, VT: Carrie E. H. Page, 1891), 2; Hall, *History of Eastern Vermont*, 765.

⁴¹ Goebel, *Law Enforcement*, 91.

⁴² Hall, *History of Eastern Vermont*, 134.

⁴³ *Ibid.*, 135-136.

⁴⁴ "An Act for Erecting Certain Lands lying on the west side of Connecticut River within this Colony into a Separate County, to be called by the name of the County of Cumberland and for Enabling the Freeholders and Inhabitants thereof to Erect and Build a Court House and Goal in the Said County," Lincoln, ed., *The Colonial Laws of New York*, 903.

⁴⁵ "At a council held at Fort George, New York on Friday the 11th day of July 1766, Collection of Evidence in Vindication of Territorial Rights," *Collections of the New-York Historical Society for the year 1869* (New York: Trow & Smith, 1870), 295.

⁴⁶ Hall, *History of Eastern Vermont*, 763-767.

⁴⁷ Deposition of Simon Stevens, March 2, 1771, *DHNY*, 4: 692; Deposition of Malachi Church, February 2, 1771, Great Britain Secretary of State Original Correspondence, Colonial Office, CO 5-1102, appendix 27, British National Archives, Kew, England.

⁴⁸ Davis, "History of the County of Cumberland," 6.

⁴⁹ *Ibid.*, 9-10; Hall, *History of Eastern Vermont*, 185.

⁵⁰ Hall, *ibid.*, 143.

⁵¹ Record book, Cumberland County, June 19, 1772, 1: 1-2, container WMCC-00010, VSARA.

⁵² Record book, Cumberland County, June 11, 1773, *ibid.*, 1: 60-66.

⁵³ At a Council held at Fort George in the City of New York, February 28, 1770, *Collections of the New-York Historical Society 1869*, 293-294. By 1771, the population of the proposed county had reached 722 individuals, while Cumberland boasted appreciably more with 4,024. Hall, *History of Eastern Vermont*, 745; E. B. O'Callaghan, ed., *Documents Relative to the Colonial History of the State*

of New-York, vol. 8 (Albany, NY: Weed, Parsons and Company, 1857), 457, identifying Cumberland County's population at 3,947.

⁵⁴ At a Council held at Fort George, *Collections*, *ibid.*, 293-294.

⁵⁵ Hall, *History of Eastern Vermont*, 769.

⁵⁶ February 25, 1771 entry, Record and docket book, 1770-1774, Gloucester County, container GCC-00001, VSARA.

⁵⁷ Hall, *History of Eastern Vermont*, 161.

⁵⁸ September 2, 1773 entry, Record and docket book, Gloucester County, VSARA; Frederic P. Wells, *History of Newbury, Vermont, From the Discovery of the Coös Country to Present Time* (St. Johnsbury, VT: The Caledonian Company, 1902), 61-62.

⁵⁹ F. P. Wells, "Dedication of the Marker on the Site of the Old Court House," in *150th Anniversary of the Settlement of Newbury, Vermont* (Groton, VT: Groton Times Print, 1912), 39.

⁶⁰ Howell and Tenney, *Bi-centennial History of the County of Albany, N.Y.*; Arthur J. Weise, *The History of the City of Albany, New York* (Albany, NY: E. H. Bender, 1884).

⁶¹ Jay M. Holbrook, *Vermont 1771 Census* (Oxford, MA: 1982), ii, xiii. This area constituted some 23% of the estimated 7,664 people then living in the Grants (Cumberland County with 53% and Gloucester at 10%), with the remaining numbers taking up residency to the northwest in what later became Charlotte County.

⁶² Zadock Thompson, *History of Vermont, Natural, Civil and Statistical*, Part 3 (Burlington, VT: Stacy & Jameson, 1853), 14.

⁶³ *Ibid.*, Part 2, 224.

⁶⁴ Nathaniel Bouton, ed., *Documents and Records Relating to the Province of New-Hampshire, from 1764 to 1776* (Nashua, NH: Orrin C. Moore, 1873), vol. 7, 154-155, 166-170.

⁶⁵ Pedro Paulo A. Funari, "Conquistadors, Plantations, and Quilombo: Latin America in Historical Archaeological Context," in Hall and Silliman, *Historical Archaeology*, 212.

⁶⁶ Petition, "To the Honorable Assembly," December 20, 1779, Vermont State Papers, SE118-00017, vol. 17, p. 29, VSARA.

⁶⁷ Lewis C. Aldrich, ed., *History of Bennington County, Vermont* (Syracuse, NY: D. Mason & Company, 1889), 128.

⁶⁸ Thompson, *History of Vermont*, Part 3: 14.

⁶⁹ Aldrich, *History of Bennington County*, 59.

⁷⁰ Court of Common Pleas for the City and County of Albany, June 7, 1770, and October 4, 1771, New York State Archives, Albany (hereafter NYSA), microfilm.

⁷¹ Supreme Court of Judicature Civil and Criminal parchments, JN 519, NYSA.

⁷² Depositions of John R. Bleeker, November 7, 1769, appendix 36; Naning Visscher, November 17, 1769, appendix 37; Thomas Hunn, November [illegible], 1769, appendix 38; Peter Lansingh, November 17, 1769, appendix 39; and John R. Bleeker, Peter Lansingh, Thomas Hunn, and Naning Visscher, October 2, 1770, appendix 40, in John Tabor Kempe to John Murray, Fourth Earl of Dunmore, March 7, 1771, Great Britain Secretary of State Original Correspondence, Colonial Office, CO 5-1102, National Archives.

⁷³ Reuben C. Benton, *The Vermont Settlers and the New York Land Speculators* (Minneapolis, MN: Housekeeper Press, 1894), 51.

⁷⁴ Contrary to past accounts identifying June 28 as the date of the trials, the court records establish June 26 as the correct day.

⁷⁵ Thomas D. Hall, "Reflections on Violence in the Spanish Borderlands: A Review Essay on Chiricahua and Janos by Lance R. Blyth," *Cliodynamics* 4 (2013): 174.

⁷⁶ Susan B. Egenolf, "'Our Fellow-Creatures': Women Narrating Political Violence in the 1798 Irish Rebellion," *Eighteenth-Century Studies* 42 (Winter 2009): 218.

⁷⁷ Aldrich, *History of Bennington County*, 44.

⁷⁸ James Duane, *A Narrative of the Proceedings Subsequent to the Royal Adjudication Concerning the Lands to the Westward of the Connecticut River, Lately Usurped by New Hampshire with Remarks on the Claim, Behavior, and Misrepresentations, of the Intruders Under that Government* (New York: John Holt, 1773), 20. Incredulous that such an undefined, imagined reason could ever legally justify their violence, Duane dismissed that effort as "the first Instance in an English Government" when such an argument had ever been made.

⁷⁹ William Slade, *Vermont State Papers* (Middlebury, VT: J. W. Copeland, 1823), 52-54.

⁸⁰ Jeffrey Kaplan, "History and Terrorism," *Journal of American History* 98 (June 2011): 103.

⁸¹ Beverly Gage, "Terrorism and the American Experience: A State of the Field," *ibid.*, 74.

⁸² David C. Rapoport, "Before the Bombs There Were the Mobs: American Experiences with Terror," *Terrorism and Political Violence* 20 (2008): 170.

⁸³ Patricia L. Thomas, "A Study of Familial Ties in Early Vermont Government" (Master's thesis, University of Vermont, 1972).

⁸⁴ James Henderson affidavit, September 28, 1773, *DHNY*, 4: 515-516.

⁸⁵ Ethan Allen, *An Animadversory Address to the Inhabitants of the State of Vermont; With Remarks on a Proclamation, Under the Hand of the Governor of the State of New-York* (Hartford, CT: Watson and Goodwin, 1778).

⁸⁶ Club law was defined at the time as “the law of arms.” D. Bellamy, *New Complete English Dictionary*, Second edition (London, 1761). When one New York landowner learned of Allen’s depredations on the Onion River, he expressed concern that the intruders would “keep the Lands by Club law for their numbers will daily Increase, and then it will be difficult for Government to Subdue them, and this I fear will be the Commencement of a Rebellion in this Country.” Robert Livingston to James Duane, August 28, 1772, quoted in Edward P. Alexander, *A Revolutionary Conservative: James Duane of New York* (New York: Columbia University Press, 1938), 82-83.

⁸⁷ *The North Briton*, vol. 214 (London, 1771), 715.

⁸⁸ James Wilbur, *Ira Allen: Founder of Vermont 1751-1814*, vol. 2 (Boston: Houghton Mifflin Company, 1928), 520-525.

⁸⁹ “Proclamation for the arrest of Ethan Allen and the other leaders of the Bennington Mob,” March 9, 1774, *DHNY*, 4: 871.

⁹⁰ Court of General Sessions of the Peace for the City and County of Albany, June 6, 1771, microfilm, NYSA.

⁹¹ Council minutes, August 21, 1771, *Collections of the New-York Historical Society 1869*, 302-303.

⁹² Spelled alternatively “Breakenridge,” “Brekenridge,” “Breckenridge” or “Brackenridge,” the latter spelling appears in court documents, hence its adoption for this article.

⁹³ Abby M. Hemenway, ed., *Vermont Historical Gazetteer*, vol. 1 (Burlington, VT: A. M. Hemenway, 1867), 151.

⁹⁴ Robert Yates to James Duane, July 28, 1771, Stevens Papers, Ethan Allen, VSARA.

⁹⁵ *History of Washington County, New York* (Philadelphia: Everts & Ensign, 1878), 38.

⁹⁶ Irving Mark, *Agrarian Conflicts in Colonial New York, 1711-1775* (New York: Columbia University Press, 1940), 181.

⁹⁷ *Colonial Laws of New York*, 5: 319.

⁹⁸ Holbrook, *Vermont 1771 Census*, xiv.

⁹⁹ *Colonial Laws of New York*, 5: 319-320.

¹⁰⁰ Col. John Reid to Gov. William Tryon, April 7, 1772, *DHNY*, 4: 469.

¹⁰¹ Petition of the Proprietors of Socialboro &c., April 8, 1772, *ibid.*, 4: 471.

¹⁰² “At a Council held at Fort George in the City of New York on Tuesday the nineteenth day of May 1772,” *Collections of the New-York Historical Society 1869*, 310.

¹⁰³ Peter Yates to James Duane with copy of Bennington advertisement of Ethan Allen and others, 7 April 1772, Stevens Papers, Ethan Allen, VSARA.

¹⁰⁴ Calendar of Council Minutes, 1668-1783, *New York State Library Bulletin* 58 (Albany: University of the State of New York, 1902), 489-490.

¹⁰⁵ September 8, 1773, *ibid.*, 498.

¹⁰⁶ *Ibid.*, 500.

¹⁰⁷ The Charlotte County court records consist of two volumes of the Court of Common Pleas (1773-1798 and 1779-1786) and a single volume of the Court of General Sessions (1773-1800). The actual case files are non-existent, lost when removed to British territory in Canada in 1775. Washington (NY) County Archives, Ft. Edward, NY, conversation with archivist Dennis Lowery, December 18, 2015.

¹⁰⁸ Allen, *Natural and Political History*, 26. In an act of apparent defiance of any limitation on the court’s authority, on the next-to-last day of its operations a single ejectment case was filed in the matter of *James Jackson ex. dem. Moses Harris vs. John Stiles*, June 20, 1775, Charlotte County Court of Common Pleas, vol. 1.

¹⁰⁹ “Outrage committed on the Rev. Benjamin Hough by the Bennington Mob, March 9, 1775,” *DHNY*, 4: 537. As Ira Allen explained, “he was tied to a tree and flogged till he fainted; on recovering he was whipped again until he fainted; he recovered and underwent a third lashing until he fainted; his wounds were then dressed, and he was banished.” Allen, *Natural and Political History*, 27.

¹¹⁰ Hall, *History of Vermont*, 78.

¹¹¹ *History of Washington County*, 40.

¹¹² Charlotte County Minutes of Court of General Sessions, March 21, 1775, VSARA.

¹¹³ William Duer to Peter Van Brugh Livingston, June 5, 1775, *Journals of the Provincial Congress ... of the State of New York*, vol. 2 (Albany, NY: Thurlow Weed, 1842), 29.

¹¹⁴ William Marsh and Samuel Rose to Peter V. B. Livingston, June 28, 1775, *ibid.*, 72.

¹¹⁵ James A. Delle and Patrick Heaton, “The Hector Backbone: A Quiescent Landscape of Conflict,” *Historical Archaeology* 37 (2003): 93-110; Paul A. Shackel, “Archaeology, Memory and Landscapes of Conflict,” *ibid.*, 3-13.

¹¹⁶ D. Ryan Gray, “Incorrigible Vagabonds and Suspicious Spaces in Nineteenth-Century New Orleans,” *Historical Archaeology* 45 (2011): 55-73.

¹¹⁷ Samuel Williams, *The Natural and Civil History of Vermont* (Walpole, NH: Isaiah Thomas and David Carlisle, Jr., 1794), title page.

¹¹⁸ Only a few years earlier in 1788, Williams appears to have engaged in questionable conduct when he suddenly resigned his position at Harvard University after officials charged him with forgery, whereupon he left for Vermont. Papers of Samuel Williams (1752-1794), Harvard University, <http://oasis.lib.harvard.edu/oasis/deliver/~hua05010> (accessed November 4, 2017).

¹¹⁹ Samuel Williams to Ira Allen, July 28, 1794, John J. Duffy, ed., *Ethan Allen and His Kin*, vol. 2 (Hanover, NH: University Press of New England, 1998), 423-424.

¹²⁰ John J. Duffy and H. Nicholas Muller III, *Inventing Ethan Allen* (Hanover, NH: University Press of New England, 2014), *passim*.

¹²¹ Jack P. Greene, "Colonial History and National History: Reflections on a Continuing Problem," *William and Mary Quarterly*, Third Series (April 2007): 247.

¹²² *Ibid.*, 242.

¹²³ Jack P. Greene, "Review: 'By Their Laws Shall Ye Know Them': Law and Identity in Colonial British America," *The Journal of Interdisciplinary History* 33 (Autumn 2002): 247-260.

¹²⁴ Vermont's Declaration of Independence, January 15, 1777, E. P. Walton, ed., *Records of the Council of Safety and Governor and Council of the State of Vermont*, vol. 1 (Montpelier, VT: J & J. M. Poland, 1873), 51.

¹²⁵ William Blackstone, *Commentaries Upon the Laws of England*, vol. 1 (Oxford: Clarendon Press, 1765), 104. James Muldoon, "Discovery, Grant, Charter, Conquest, or Purchase: John Adams on the Legal Basis for English Possession of North America," in Tomlins and Mann, *The Many Legalities of Early America*, 25. At no time did John Locke, the philosopher to whom so many looked to justify their actions in these times, ever advocate defying governmental authority should disputes over titles to land arise. Rather, he, along with later legal scholars leading up to the Revolution, cautioned people to submit to peaceful means of conflict resolution, avoiding the use of violence. John Locke, *An Essay Concerning the True Original Extent and End of Civil Government* (Boston: Edes and Gill, 1773), 118; Emer De Vattel, *The Law of Nations; or, Principles of the Law of Nature Applied to the Conduct and Affairs of Nations and Sovereigns*, (London: G. G. and J. Robinson, 1797), 21. See also, Samuel Pufendorf, *Pufendorf's Law of Nature and Nations: Abridg'd from the Original* (London: T. Varnan and J. Osborne, 1716).

¹²⁶ James Duane, "State of the Evidence and Argument in Support of the Territorial Rights and Jurisdictions of New York against the Government of New Hampshire and the Claimants under it," *Collections of the New-York Historical Society 1869*, 23-30; Hall, *History of Eastern Vermont*, 305. Extensive efforts were also undertaken in the creation of upper and lower regiments within Cumberland County, together with minuteman companies. Hall, *ibid.*, 770-773.

¹²⁷ Duane, "State of the Evidence," 34-35.

¹²⁸ Slade, *Vermont State Papers*, 78-79, writing that the efforts of Dr. Thomas Young in counseling the settlers toward independence was "derogatory to the honor of Congress, are gross misrepresentations of the resolutions of Congress ... and tend to deceive and mislead the people to whom they are addressed."

¹²⁹ One New Hampshire soldier witnessing the events that August recorded a compelling tale and described "Women & Children flying before the Enemy with their affects. women & [children] Crying, sum walking, sum Rideing, the men Joyn our army, the women left to shift for themselves. sum Riding on horses with there Children at there Breasts, sum before, sum behind tyed to there mothers." Michael P. Gabriel, "John Wallace's Journal of the Battle of Bennington, August 16, 1777," *Walloomsack Review* 22 (Bennington Museum, 2018): 6-14.

¹³⁰ Hutchinson had been hurriedly pressed into service to provide his sermon and expressed surprise in having to do so, writing that "I had expected the Convention would not sit at that time, by reason of the dark cloud then coming over us, and which overwhelmed us the week after." Aaron Hutchinson, "A Sermon preached at Windsor, July 2, 1777, before the Representatives of the Towns in the Counties of Charlotte, Cumberland and Gloucester, for the forming the State of Vermont," *Collections of the Vermont Historical Society*, vol. 1, 70.

¹³¹ *Ibid.*, 88.

¹³² *Ibid.*, 98.

¹³³ Charles Phelps, *Vermonters Unmasked: or Some of Their Evil Conduct Made Manifest, from Facts Too Glaring to be Denied, and Many of Them Too Criminal to be Justified* (New York: 1782), 1-3. Phelps was a highly pragmatic, strident, and vociferous individual unafraid to express himself in opposition to Vermont's efforts that he deemed contrary to national interests. As one of the few settlers living in the Grants loyal to New York who recorded his entanglement with the separatists, he provides an important perspective on those times. Because of that steadfast loyalty, Phelps suffered greatly for his beliefs, leaving "his family only the legacy of stubborn, unyielding resistance to the Green Mountain State." J. Kevin Gaffagnino, "'Vermonters Unmasked': Charles Phelps and the Patterns of Dissent in Revolutionary Vermont," *Vermont History* 57 (Summer 1989): 155.

¹³⁴ Gary G. Shattuck, "'A Heathenish Delusion': The Symbolic 1777 Constitution of Vermont," (Master's thesis, American Public University System, Charleston, West Virginia, 2016).

¹³⁵ Ethan Allen to Guy Carleton, First Baron Dorchester, July 16, 1788, Douglas Brymner, *Report on Canadian Archives* (Ottawa: Brown, Chamberlin, 1891), 211.

¹³⁶ Vermont 1777 Constitution, Chapter I, section IX.

¹³⁷ *Ibid.*, section IX.

¹³⁸ *Ibid.*, section XIII.

¹³⁹ *Ibid.*, section X.

¹⁴⁰ *Ibid.*, section XXII.

¹⁴¹ *Ibid.*, section XLIII.

¹⁴² *Ibid.*, Preamble.

¹⁴³ Duane, "State of the Evidence," 34.

¹⁴⁴ Slade, *Vermont State Papers*, 288. He further opines that the government at the time was "in principle, nothing short of despotism," xix-xx. The Council of Censors findings are described at 531-544. Other contemporaries recognized the incongruous actions of the Grants inhabitants when, in 1781, they sought to expand their sovereignty across the Connecticut River and admit thirty-five New Hampshire towns under their control. Stating their opposition to the methods used, one period tract from New Hampshire condemned the action, tellingly stating, "On the other side of the River the authority departing from their Constitution (not for the first time)." Hall, *History of Eastern Vermont*, 751.

¹⁴⁵ *Ibid.*, 264, 267.

¹⁴⁶ Mary Greene Nye, ed., *State Papers of Vermont*, vol. 6 (Montpelier, VT: Secretary of State, 1941); Sarah V. Kalinoski, "Sequestration, Confiscation, and the 'Tory' in the Vermont Revolution," *Vermont History* 45 (Fall 1997): 236-246; and, "Property Confiscation in Vermont during the American Revolution," (Master's thesis, University of Vermont, 1975).

¹⁴⁷ Phelps, *Vermonters Unmasked*.

¹⁴⁸ Petition of Major Salem Town, et. al., for a township, Nye, ed., *State Papers of Vermont*, vol. 5: 254-255.

¹⁴⁹ Phelps, *Vermonters Unmasked*, 4.

¹⁵⁰ *Ibid.*

¹⁵¹ John Spargo, *The Story of David Redding Who was Hanged* (Bennington, VT: Bennington Museum and Art Gallery, 1945), 53.

¹⁵² Walton, *Governor and Council*, 1: 22.

¹⁵³ Slade, *State Papers*, 333, 366, 375, 377, 389-390.

¹⁵⁴ John Jay, President of Congress and Delegate for New York to Gov. George Clinton of New York, undated, Walton, *Governor and Council*, 2: 187. As James Duane recounted further, "our magistrates have been scourged, our peaceable settlers treated as malefactors, whipped, menaced with death, driven from their possessions, and their habitations burned and destroyed, or seized by the New Hampshire Claimants." Duane, "State of the Evidence," 14.

¹⁵⁵ Proceedings of the General Assembly of the State of Vermont, at their sessions in October, A. D. 1778, Walton, *Governor and Council*, 1: 425.

¹⁵⁶ "A Petition of a Number of Towns in the County of Windsor," October 18, 1784, Vermont State Papers, vol. 17, SE 118-00017, VSARA; Edward A. Hoyt, ed., *State Papers of Vermont, General Petitions 1778-1787*, vol. 8 (Burlington, VT: Lane Press, 1952), 102-103.

¹⁵⁷ Hall, *History of Eastern Vermont*, 339.

¹⁵⁸ Samuel Minott Esq. to Gov. George Clinton, May 25, 1779, *DHNY* 4: 581.

¹⁵⁹ Walton, *Governor and Council*, 1: 519.

¹⁶⁰ George Washington to Joseph Jones, February 11, 1783, Walton, *Governor and Council*, 3: 263.

¹⁶¹ Allen to Dorchester, July 16, 1788.

¹⁶² Bernard Romans, "A Chorographical Map of the Northern Department of North-America," (Amsterdam: Covens and Mortier and Covens, Junior, 1780). It is the first cartographic effort utilizing the caption "State of Vermont" to represent the landmass between New York and New Hampshire.

.....