On the People and the "Pretended" State: The Concept of Sovereignty in Vermont, 1750-1791

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ON THE PEOPLE AND THE “PRETENDED” STATE: THE CONCEPT OF SOVEREIGNTY IN VERMONT, 1750-1791

A Thesis Presented

by

Christopher DeMairo

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ABSTRACT

This research project will examine the concept of sovereignty in Vermont for the years 1750-1791. As with most conceptual studies, it is necessary to first examine the history of the concept. I begin with René Descartes (1596-1650), and his re-conceptualization of Man in a natural state. It is my contention that his metaphysical and ontological findings in *Meditations on First Philosophy* (1641) were then adopted by Thomas Hobbes (1588-1679) in *Leviathan* (1651), and John Locke (1632-1704) in *Two Treatises of Government* (1689). Basing their philosophies on Descartes’s “revised” depiction of Man in nature, both Hobbes and Locke envisioned a Man who naturally made both rational and passionate decisions, as communities transitioned, via the process of government formation, from the state of nature into the state of “civil society,” as they termed it. Contemporaneous with this theoretical evolution was the inclusion of “the people” in British governance through the rise of Parliament at the turn of the seventeenth century. Juxtaposed with real events, the philosophers’ reconceptualization demonstrates an evolving concept of sovereignty in the British state. By the time of the American Revolution, the concept of popular sovereignty was born, and “the people” ascended in both political theory and political reality.

Because the eighteenth-century concept of sovereignty was based heavily on the metaphor of the state of nature, I chose the inhabitants of the New Hampshire Grants as a case study. These residents believed they resided in something close to a literal state of nature from 1760-1777, and that they had *lived* the theoretical philosophies of Hobbes, Locke, and other contemporary theorists. Once the theoretical description of a natural state is juxtaposed with the socio-political history of the Grants region, it is clear that inhabitants believed the Colony of New York, the appendage of the British state which claimed authority in the region, did not provide efficient governance for the residents. After the American Revolution broke out, Grants residents claimed it was their natural right to erect a state and systematically replace New York. Once Vermont’s constitution went into effect in 1778, the concept of sovereignty was expressed in response to two simultaneous processes: the first, the geo-political stabilization of the state in the midst of both war and constant challenges to the state’s existence; the second, the Vermont people transforming from a blend of “Yorkers” and “Yankees” into Vermonters. Both of these processes were complete by the mid-1780s as surrounding states and former Yorkers grew to accept the legitimacy of Vermont. By the late 1780s, as the United States Constitutional Convention was underway, Vermont was no longer considered a “pretended state,” and was able to face the convention on its own terms, representing its own sovereign people.
ACKNOWLEDGEMENTS

There are a few people I would like to thank for contributing to the completion of this project. First and foremost was the assistance I received from Dona Brown. Her help throughout the writing process benefitted both my own understanding of this project as well as the final presentation of my ideas. She has been indispensable as an advisor, and the University of Vermont is blessed to have such a caring and approachable graduate director in the history department. I would also like to thank Charlie Briggs and Jacqueline Carr. Charlie Briggs made himself available for numerous conversations covering a variety of topics that aided my ability to comprehend the abstract philosophies found in this thesis. Professor Carr’s erudite supervision was invaluable during the initial stages of this project, and she is certainly to thank for this thesis starting off on the right foot. I would also like to thank the staff at the University of Vermont Special Collections and the Vermont Historical Society. My frequent trips to both locations involved professional and helpful assistance.

In addition to this academic support, I would also like to thank those who have been by my side throughout this project. Firstly, my parents and brother who have stayed by my side supporting my intellectual endeavors with loving care and emotional comfort. Also, my friends, some of whom are members of my academic cohort, who have provided a social outlet to escape the lonesome hours of researching and writing. Without their support, this project would not have been possible.
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INTRODUCTION

As early as the thirteenth century the word “sovereignty” was attached to the notion of ultimate authority, or supreme rule. By the seventeenth century, it was understood that a source must have enough power to enforce its will and establish its position in society as sovereign. This supreme power was not without its own code of ethics, however, and the job taken on by many seventeenth-century political philosophers was to define the sovereign’s duties and terms of engagement with both the people and other sovereign states. The “state of nature” was a metaphorical phrase commonly found in the methodology of political philosophers who believed its usage illuminated features of pure and ideal governments. Thomas Hobbes and John Locke are examples of two prominent political philosophers who wrote (arguably) their most influential works on the natural creation of government. This project will juxtapose the socio-political history of Vermont’s tumultuous infancy within the conceptual framework provided by Leviathan and Two Treatises of Government.

An introduction into the state of nature and its relationship to the creation of a sovereign state, as it was understood in Vermont during the Revolutionary period, is clearest when considering Thomas Jefferson’s remarks on the Green Mountains’ inhabitants. Rather than use the phrase “state of nature” as it was understood metaphorically by Jefferson and his contemporaries (including Hobbes and Locke), the people of Vermont spoke about their literal experience in a “state of nature” as a justification for creating a government.
In his 1783 letter to Edmund Randolph, Jefferson neglected to consider the actual experiences of Vermont residents when discussing Vermont’s relationship to the state of nature metaphor. Jefferson first commented on a “doctrine of the most mischievous tendency” which had appeared in an act passed by the Virginia Assembly in December 1782.\(^1\) The legislation stated that loyalist refugees and merchants who sought to claim debts in Virginia ought not to be allowed to return, even under a flag of truce. The legislation, Jefferson commented, “stands on its best ground…on the reasonableness of a mutual risk in all contests…if we staked everything and they nothing.” But there was more to the resolution, Jefferson continued:

Not content with this they go on to talk of the dissolution of the social contract on a revolution of government, and much other little stuff by which I collect their meaning to have been that on changing the form of our government all our laws were dissolved, and ourselves reduced to a state of nature. This is precisely the Vermont doctrine.

Jefferson believed that the Virginia colonists, like the Vermonters, confused the independence movement with the “dissolution of the social contract.” “The term *social contract*” was itself a theoretical one, he argued, but if “forced into practical use,” the “contract” must apply to the people themselves and every individual law they lived under during the former government. He summarized his argument with a metaphor: “If you and I have a contract of six articles and agree to amend two of them, this does not dissolve the remaining four.” Why, Jefferson asked, would removing British laws such as “the

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\(^1\) Thomas Jefferson to Edmund Randolph, 2/15/1783, National Archives, “Founders Online,” https://founders.archives.gov/documents/Jefferson/, last accessed 2/12/2017. The historians that work on the National Archives “Founders Online” transcriptions include meticulous footnotes that describe and quote the Virginia resolves.
mode of appointing judges” affect “another law which had said that on the death of a father his eldest son shall inherit his lands?” The point here is that Jefferson mistakenly equated the claim advanced in this Virginia legislation--that colonists resided in a theoretical “state of nature”--with a very different use of the term coming from the Green Mountains. Although Jefferson labelled this idea “precisely the Vermont doctrine,” it only partially reflected the Vermont experience.

The “state of nature” phrase was used in similar ways by both Vermonters and the residents of other colonies in the sense that both groups used it to justify their new governments. But as Jefferson argued, the real “state of nature” could only come about if “all our laws were dissolved,” a claim he further justified with his metaphor. To him, a state of nature could exist only in a situation of complete lawlessness, which he argued no colonist experienced in reality. Many residents of the Hampshire Grants, however, did believe they were experiencing a period of complete lawlessness in the sense that state civil institutions were unrealistically distant, protection was hardly protective, and worst of all in the eyes of these inhabitants (thanks to Locke), one’s property was constantly threatened. The concept of sovereignty in Vermont has eluded historians for the past two centuries.

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2 Peter Onuf does consider the “Vermont doctrine” and its appeal to the rhetoric of the colonies. Even Ethan Allen stated that “legally speaking,” Vermont remained under the sovereignty of the British state. But as I mentioned previously, one should not discuss the realm of legality alone when examining the concept of sovereignty. See “State Making in Revolutionary America: Independent Vermont as a Case Study” in The Journal of American History Vol. 67, no. 4 (Mar., 1981), pp. 797-815; 804.
While the use of natural right rhetoric in Vermont during the Revolutionary era has been noted by historians, seldom has it received a specific analysis that places Vermont within a transcontinental intellectual framework. Peter Onuf, a leading scholar of eighteenth-century intellectual thought, performs an erudite legal analysis of early Vermont (called the “Hampshire Grants” before 1777). He spends little time on natural law discourse, however, because he concludes that Vermonters formulated contradictory arguments of natural rights; they spoke as if they were experiencing a “state of nature,” but were at no point really in that state. Instead, Onuf argues, they resided in “extra provisional” land, and within such “crown lands” the king’s authority was still absolute.3 Kevin Graffagnino followed this line of argument a few years later, suggesting that Vermont residents could claim to be “in a state of nature” only after the Green Mountain Boys “dismantled New York’s structure of government east of the Hudson.”4 Graffagnino acknowledges, rightly I believe, that the claim to being in a state of nature in Vermont was related to “New York’s failure to rule effectively with a functioning and responsible court system, representative legislature, and wartime administration,” but does not spend much time on the history of the nature claim.

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Nicholas H. Muller III and Michael Bellesiles have done the most for early Vermont political historiography, but from very different perspectives. Muller was hired as a history professor at the University of Vermont in 1966, and has been largely involved in most of the major historical studies of Vermont since that time. He was in the vanguard of a revisionist movement in Vermont historiography that warned researchers to be careful about exaggerating Ethan Allen’s role in early Vermont. In addition, Muller has also played a major role in re-conceptualizing the political philosophy of Vermont’s founders. Undermining the longstanding belief in Vermont’s democratic egalitarianism is no simple task (and it is certainly not the aim of this study), and Muller has done an impressive job in at least destabilizing it. The complexity of the political and intellectual culture of early Vermont is described in Bellesiles’ monumental work, *Revolutionary Outlaws: Ethan Allen and the Struggle for Independence on the Early American Frontier*. This is a well-researched analysis of politics in early Vermont, but as the title suggests, Bellesiles’s study is primarily on the history of early Vermont from the perspective of one individual, Ethan Allen. Bellesiles makes the provocative claim that “the Revolution placed all Americans in a state of nature,” but does not spend much time exploring the concept in depth. In Vermont historiography, scholars have agreed that Vermonters

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claimed it was their natural right to erect a state; this claim of natural right, and its relationship to the concept of sovereignty in Vermont, is the crux of this study.

Bringing the Vermont experience into the larger discussion of the concept of sovereignty is not only fruitful for Vermont scholarship, but the unique case study also adds to the more general historiography of sovereignty in the eighteenth century. My study looks to build on the understanding of sovereignty put forward by Edmund Morgan’s *Inventing the People: The Rise of Popular Sovereignty in England and America.*\(^7\) Morgan contends that sovereignty was a “myth” necessary to the functioning of government in the British state during the seventeenth and eighteenth centuries. His primary argument—that sovereignty was an abstract ideal, which citizens and governments simultaneously, yet cautiously moved toward—was a significant break from previous scholarship that analyzed the concept of sovereignty primarily from the words of intellectuals. Morgan traced the relationship between the people and government via a thorough analysis of both rhetorical and systematic alterations that influenced ideas of sovereignty in the British empire, ultimately concluding with the *creation* of the American people in 1776. Morgan’s juxtaposition of rhetoric and events is a model for this project.

To perform this juxtaposition, I will examine how the people of Vermont interacted with the *myth* of sovereignty. Such an analysis would not be possible without Christian Fritz’s *American Sovereigns: The People and America’s Constitutional*

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Tradition Before the Civil War. Fritz examines different Euro-American communities to see how “the people” expressed their role as sovereign through interposition, public disorder, and polemics. One community in particular that receives Fritz’s attention is Vermont. His analysis of Vermonters during the period of state formation is based heavily on natural law philosophy, which he asserts thrived in the region during the time of the Revolution. Vermonters’ belief in the “right, if not the duty, to resist tyranny and oppression” was rooted in the long tradition of English constitutionalism; a tradition that was replicated in America. Although American constitutionalism “contained within itself” a potential for instability, it was the sovereign people that formed the “foundation for all of America’s new governments.” This change over time from the sovereignty of the state to the sovereignty of the people is by far the most important theme of this work.

This thesis is divided into three chapters. The first chapter will examine the concept of sovereignty as it evolved both theoretically and systematically in English society. I begin by examining the philosophy of René Descartes (1596-1650). Descartes’s thesis in Meditations on First Philosophy (1641)—that Man was a creature with the divine gift of free will, and that with careful study, humans could use their free will to

8 Christian Fritz, American Sovereigns: The People and America’s Constitutional Tradition Before the Civil War, (Cambridge: Cambridge University Press, 2008). Another analytical study with a nuanced approach to sovereignty is Mark Schmeller, Invisible Sovereign: Imagining Public Opinion from the Revolution to Reconstruction, (Baltimore: Johns Hopkins University Press, 2016), which, although only recently published, has already provided much for the historical analysis of sovereignty in early America.

9 While I acknowledge the scholarship pertaining to all three philosophers’ use of the word “Man,” I was unable to include a discussion of this topic within this thesis. Eighteenth-century notions of masculinity certainly played a significant role in Vermont, but gender relations were beyond the scope of this project.
discover truth without direct assistance from God—was fundamental to his influence on the political philosophy of both Hobbes and Locke. These two political philosophers went a great deal further to understand government as a natural process solely initiated by, and for the benefit of, Man. Both philosophers determined that the state of nature, where they believed Man had no restriction on his will, was undesirable. Thus government, as it was understood by Hobbes and Locke, was a necessary aspect of human society. Both philosophers saw consent and trust as vital to a successful government. Following Morgan’s work, throughout this chapter I point out monumental alterations in the functionality of English government during the seventeenth century. That the state placed the people before all, including God, became an integral part of how British subjects defined a legitimate government. By 1777, however, colonists across America deemed the British state inefficient and unjust, and made the collective decision to systematically replace it. Simply put, their justification was that if government was established for the people, then the people reserved a natural right to abolish the governmental system. This chapter concludes with an analysis of Thomas Jefferson’s notion of the “Vermont doctrine.” His comments, written in 1783, represent a culmination of over a century of philosophers conceptualizing the relationship between sovereignty and the state of nature. It does appear, however, that he did not precisely understand how that notion applied to the Vermont experience.

\[10\] Although there exists an argument that Hobbes did not believe humans had the ability to uncover truth, I do not believe a distinction is necessary in this project between ultimate truth and something very close to it. See James Martel, Subverting the Leviathan: Reading Thomas Hobbes as a Radical Democrat, (New York: Columbia University Press, 2007), 81-2.
Building on my short treatment of Vermont’s “state of nature” in the conclusion of the previous chapter, the second chapter leaves behind the more theoretical perspective and focuses specifically on Vermont’s socio-political environment prior to the American Revolution. The Hampshire Grants, as the territory was initially known, was formally acquired by Great Britain following the French and Indian War. Prior to the siege of Montreal in 1760, the Green Mountains were a rather uninviting location for English colonists: the land was frequented by Native and French scouts and seasonal hunters of Algonquin dialect. To make matters worse, seldom did reports from the scattered British frontier posts provide welcoming news. That all began to change in 1759 as the British military began its push towards Montreal. Located on the western frontier of New Hampshire, the northeastern frontier of New York, and the northern frontier of Massachusetts, Grants inhabitants struggled to develop a society their contemporaries would have considered “civil.” After the crown determined the territory belonged to New York in 1764, inhabitants expected the government to provide the necessary aspects of civil society—a functioning judicial system, the protection of property, and the security of their livelihoods. For some, these expectations were not met, and thus they viewed it as their right to refute and replace the inefficient system. While the majority of inhabitants stood with New York authority, by the early 1770s they could not ignore the growing opposition as it transformed into the Green Mountain Boys: an aggressive, consolidated, and powerful movement, produced by the inefficiency of the New York colony.
And finally, the third chapter discusses the period of the independent Vermont state and its transition out of a perceived state of nature. Shortly after the Revolution began, those who opposed New York’s authority drafted the Vermont constitution in 1777; and by 1778, Vermont participated in the American Revolution as an independent state. The system of government established by the constitution gave a massive amount of power to the freemen of Vermont, with the intention of establishing “the people” as ultimate authority. Determined in their cause, Vermonters worked to remain independent and defended the state’s autonomy against both internal and external threats to their claim of legitimacy. Both grudging Yorkers residing within their claimed territory and commentators from neighboring states referred to Vermont as a “pretended” state for the first few years of independence. By 1785, however, all this had changed, and all who lived within the former Hampshire Grants considered themselves Vermonters. For the first time since the state’s inception in 1777, Vermont possessed the support of all its inhabitants. This domestic transition, one that moved towards the establishment of civil society, enabled Vermont to approach the Constitutional Convention as a sovereign entity.
CHAPTER 1: A PLEA TO THE NATURAL WORLD

Since Aristotle, political theorists have examined the metaphor of the “state of nature” in search of a true and legitimate form of government. Prior to René Descartes (1596-1650), however, this mode of inquiry searched for truth in the nature of a being—i.e. God or an ideal form of Man—that was not universally applicable to all humans. In *Meditations on the First Philosophy* (1641), Descartes argued that he, as a human, had uncovered philosophically and scientifically grounded objective truth about the true nature of all Man, an ability previously thought to be reserved for God(s) only. \(^{11}\) Descartes’s innovative perspective of Man revolutionized the way political theorists understood human society and government.

With this approach, I am following James V. Schall’s claim that “any theoretical explanation of politics depends on attitudes and positions which stem from metaphysics, theology, ethics, or science”—all of which Descartes was well versed in. \(^{12}\)

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\(^{11}\) In 1627 or 1628, after attending a meeting of contemporary skeptics looking to undermine the Scholastic school’s hold on academics, Descartes refused to accept the lecturer’s findings, stating that they still settled for “mere probability.” See Steven Nadler, *The Philosopher, the Priest, and The Painter: A Portrait of Descartes*, (Princeton: Princeton University Press, 2013), 92. For Descartes’s opposition to Galileo’s understanding of nature as “an unintegrated condition and lacking in philosophical foundations,” see James Collins, “Descartes’s Philosophy of Nature” in *American Philosophical Quarterly Monograph Series* no. 5, ed. Nicholas Rescher, (Pittsburgh: Basil Blackwell with the cooperation of the University of Pittsburgh, 1971), 40-41. Peter A. Schouls, *The Imposition of Method: A Study of Descartes and Locke* (Oxford: Clarendon Press, 1980), 6. Schouls states that Man’s ability to be “rational” was defined more broadly by Descartes than had been done previously. For more on Descartes and the scholastics, see Stephen Gaukroger, *Descartes’s System of Natural Philosophy*, (Cambridge: Cambridge University Press, 2002), 35-48.

depiction of nature was abstract and deeply spiritual in its essence, but on the surface he used rationalistic rhetoric. The fundamental component of his metaphysics was his depiction of Man as a creature who made both rational and irrational decisions based on the memory of material experience (even if it was to doubt them). At the same time, Descartes acknowledged that Man was hampered by a material body which naturally desired material things. This materialistic metaphysics provided a detailed blueprint for the wave of empirically-minded political thinkers in the late seventeenth and early eighteenth centuries. The acknowledgement of two distinct worlds, one physical and the other mental, ultimately led Descartes to determine that there existed a mind and body. He believed this dualism to be an irrefutable aspect of reality. Descartes set out in *Meditations* to philosophically justify a secularization of studies pertaining to the natural world.\(^\text{13}\) Hobbes and Locke, and then the American states, appropriated Descartes’s metaphysics for their political ideas.

**Cartesian Nature**

There is a good reason René Descartes is seldom brought up in the discussion of seventeenth-century political philosophers. A recluse by nature, he tried to distance himself from cities, company, and most intellectuals. He was also hesitant to speak

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question and relate the complex significance of nature to the other reflective interpretants of human experience.” Also, Timothy Reiss considers the possibility that Descartes’s metaphysics had lasting effects on other areas of study, including politics. His example is when Jean Le Rond d’Alembert in the eighteenth century considered Descartes a plausible “leader of conspirators who, before anyone else, had the courage to rise against a despotic and arbitrary power.” “Descartes, the Palatine, and the Thirty Years War: Political Theory and Political Practice” in *Yale French Studies*, no. 80, (1991), pp. 108-145; 124.

\(^{13}\) *Descartes’s System of Natural Philosophy*, 77.
openly about government and high politics, and only did so with gentlemanly restraint. In correspondence with Elizabeth of the Palatinate, when Elizabeth requested that they both study Machiavelli’s *Prince*, Descartes respectfully replied, “I deserve to be mocked if I think I might be able to teach something to your Highness in this matter.”\(^\text{14}\) His awkwardness stemmed from his belief that he did not think of himself as a “Prince.” He stated that a Prince is ordained by God to lead, much like a scientist is ordained by God to do science. Princes and sovereigns have different *rules* than he: “For justice between Sovereigns has other limits than between individuals, and it seems that in these encounters God gives the right to those to whom he gives the power.”\(^\text{15}\)

Descartes’s self- proclaimed distance from the realm of politics paved the way for a deferential relationship between the people and state in the Cartesian concept of sovereignty. For Descartes, a government’s sole purpose was to maintain order: “political disorder can interfere with man’s life of thought, even though thought is not essentially subject to material conditions. Therefore, the task of politics [and government] is to guarantee by force a calm and peaceful social and political order.”\(^\text{16}\) As long as individuals possessed their freedom of inquiry, Descartes believed the sovereign was legitimate.\(^\text{17}\) To pay attention to Descartes in a discussion of political history may at first


\(^{15}\) Nye, 103 and 123.

\(^{16}\) Reiss, “Descartes, the Palatine, and the Thirty Years War,” 264.

\(^{17}\) Descartes embodied his political theory in real life as he moved almost freely throughout the European countryside searching for a location in which he saw fit to settle. He first lived in France, then the Netherlands, and ultimately in Sweden, where he died in February, 1650.
seem peculiar, but his philosophy was a foundational element of eighteenth-century political philosophy.

Descartes’s fundamental contribution to political philosophy was his theory of Man. First and most important was Man’s free will. While more politically oriented contemporaries defined “property” or “security” as the most sacred possession of humans, Descartes believed Man’s most prized possession was a God-like free will: “Free will is in itself the noblest thing we have, since it makes us in a way equal to God.”\(^\text{18}\) This position, according to Timothy Reiss, was “wholly different from what could have been thought before.”\(^\text{19}\) Descartes’s free will theory, and perhaps his entire metaphysics, was completely reliant on his dualism.\(^\text{20}\) There was the physical world—full of material objects and occurrences that one could use the senses to detect—and the world of one’s mind and soul—the mental process of understanding the physical. In order to make free will truly free, Descartes determined that the motion of one’s will must be unhindered. As for the physical world, or “body,” it was a necessary aspect of reality because it was Descartes’s belief, as Steven Nadler states, that “there is and can be no truly empty space; matter—extension—is everywhere and the universe is a plenum.”\(^\text{21}\)


\(^\text{19}\) Reiss, “Descartes, the Palatine, and the Thirty Years War,” 127. Reiss defends this compelling statement by arguing that the concept is not found in Montaigne, and that prior to Descartes, human free will was always considered subordinate to God’s, thus never relatable.

\(^\text{20}\) For a discussion of Descartes’s notion of free will as it relates to metaphysics, see Nye, *Princess and the Philosopher*, 74.

Within this world, Man experienced only “physical things and minds or souls capable of knowing those things.”

A deeper understanding of the mind and body’s ability in Man is necessary in order to locate the influence of Descartes in the political philosophy of Locke and Hobbes. On the ability of the mind, one must look to the human relationship between God, Man, and truth, which Descartes explored in his first three Meditations. He began by doubting the existence of “all things, and especially of material objects” in his First Meditation. Using a “skeptically driven epistemology to systematically strip down the world,” Descartes reduced his thought to a state where no previously held notion existed—his nature. By searching for an ounce of reality in his Second Meditation, Descartes concluded that beyond reasonable doubt, he himself did, in truth, exist. From this first principle (that he existed) he was then able to confront the existence of God, the “sovereign being,” in his third Meditation.

Descartes had to first argue against the skeptic’s argument that human subjectivity created God, and that God did not pre-exist. He did this by arguing that because the reality of truth is undeniable, a realm of perfection must infinitely exist (“Yet,

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22 Princess and the Philosopher, 12.
24 Descartes’s System of Natural Philosophy, 28.
25 At the moment Descartes concludes that he exists, there is a moment of doubt. He considers the possibility that he was being deceived by some sort of evil demon, but refutes that notion by stating, “he will never bring it about that I am nothing so long as I think that I am something.” For a brief and clear description of this doubt see Nadler, 101-2. For Descartes’s surety about his existence, see Descartes’s System of Natural Philosophy, 74.
on looking more closely into the matter, I discover that this cannot be...although there were potentially in my nature much that was not as yet actually in it, still all these excellences make not the slightest approach to the idea I have of the Deity, in whom there is no perfection merely potentially [but all actually] existent.”

Descartes supported the existence of God with the following statement: “I could not possibly be of such a nature as I am, and yet have in my mind the idea of a God, if God did not in reality exist.” The “slight conception” of God and his existence, “though incomparably less perfect,” was based on Man’s ability to discover truth. For Descartes, God was but an entity composed of unlimited truth.

Descartes’s belief in the potential of Man to uncover truth was a large break from contemporary philosophy. Within European intellectual thought, the Protestant Reformation, which promoted the idea that individuals ought to have an active personal relationship with God, had only occurred in the previous century; the idea that everyone possessed an aspect of God’s power was radical. If Man possessed a God-like free will

26 Meditations, 47.
28 Meditations, 52.
29 For more on the Aristotelians and their understanding of the ability to access Truth, see Jorge Secada, Cartesian Metaphysics: The Late Scholastic Origins of Modern Philosophy, (Cambridge: Cambridge University Press, 2000), 35. And for his separation from St. Bonaventure and St. Augustine, see Ibid., 46. Schall states: “Aristotle was willing to admit the importance and necessity of sense knowledge as a bridge to reality[…] but even though Aristotle recognized the need and validity of sensory knowledge as a conduit to reality, he still remained at one with Plato in acknowledging the primacy of theoretic knowledge, the knowledge of things ‘that cannot be otherwise,’” see “Cartesianism and Political Theory,” 265. Also, The Imposition of Method, 12, discusses “transitional figures” during the seventeenth century that did not necessarily adopt fully “modern” thinking. This point greatly expands the potential for scholarship to properly identify thinkers and mindsets during this period.
along with the ability to discover truth, how could Man not be God? God, according to Descartes, did not have a dualistic nature, he was one with the world. Man, on the other hand, is only connected to the physical world by the mind experiencing it. The natural reality of the human condition, something philosophers had confronted for ages, was not seen as a disadvantage by Descartes; it was simply an aspect of reality.

Though the infinite possibility of truth is within Man, there existed the potential that one could “lose the rights it gives us through timidity.” Timidity was the influence on Man of any forces (including passion) that opposed reason during the thinking process. Rather than denounce the tendency, Descartes suggested that some may simply not “know how to use that good sense [reason] properly.” With his philosophy, Descartes believed himself to have found truth that did not depend on support from “elements furnished by faith.” Truths of the physical world would become self-evident, he argued, once one adopted his Method—the precursor of theoretical sciences.

Descartes’s separation of mind and body ushered in a nuanced approach to political society. If Man’s mind had divine attributes, according to Descartes, then the human understanding of the world must possess at least some knowledge of the general direction of truth. Government, as it was understood by both Hobbes and Locke, is an

30a “Descartes, the Palatine, and the Thirty Years War,” 126-7.
31 Schouls does an impressive job analyzing Descartes’s concept of reason; see Imposition of Method, 30-52.
32 “Descartes, the Palatine, and the Thirty Years War,” 125.
33 Imposition of Method, 41.
aspect of the physical world so fundamentally necessary to human society that only an occurrence of divine rationality could have produced it. Thus, to best understand government, these philosophers examined the existence of Man during the state of nature to search for “efficient causation” of government.\(^{34}\) In other words, these philosophers did not look to the state of nature as a source for practical governance, rather, they looked to the state of nature to find the rationalistic essence of government.

International and domestic warfare persisted throughout seventeenth-century Europe as armies defended individual monarchs’ divine right to rule. But in England, “duty toward God gave way to the rights of men,” and thus “a new ideology, a new rationale, a new set of fictions was necessary to justify a government in which the authority of kings stood below that of the people or their representatives.”\(^{35}\) Individuals saw that the king was not “absolute in fact as in theory.”\(^{36}\) It became accepted as a British truism that the practical authority of the king, sanctioned by God Himself, was now below the authority of the people. The English Revolution (1642-1649), which occurred almost exactly between the publication of Descartes’s Meditations and that of Hobbes’s Leviathan, left political rhetoric in turmoil as divine right was challenged not by others who claimed the position, but by an increasing number of people who doubted the reality of the divine right of monarchs. The king’s divine right had been challenged by the Parliamentarians, and now,

\(^{34}\) The Philosopher, The Priest, 115.
\(^{35}\) Inventing the People, 56. Morgan does admit that the “idea” of popular sovereignty was not “wholly novel… but the change of emphasis [towards people] was crucial.”
\(^{36}\) Politics and the Passions, 50.
as Edmund Morgan has argued, there existed a void to be filled. Who fulfilled the divine purpose of government if not the monarch? Could the people, mere peasants even, technically have more “divine right” than the king? The concept of popular sovereignty in western governance was born: “the people are the governed; they are also, at least fictionally, the governors, at once subjects and rulers.”

**Thomas Hobbes: The Sovereign and State**

As Hobbes stated in *Leviathan*, “the skill of making, and maintaining commonwealths, consisteth in certain rules, as doth arithmetic and geometry; not (as tennis-play) in practice only: which rules, neither poor men have the leisure, nor men that have had the leisure, have hitherto had the curiosity, or the method [sic] to find out.” Hobbes, like Descartes, set out to perfect what he considered the shortcomings of previous political philosophers. Descartes created the first rational and, for all intents and purposes, relatively clear description of Man “in nature”; Hobbes was simply among the first philosophers to find out what this new depiction of Man meant for political inquiry.

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37 Ibid., 38-9.
38 *Leviathan*, 139.
39 Hobbes “expressed a low estimate of the way previous moral philosophers had dealt with natural law and disparaged them for their erroneous opinions on the nature of right and wrong and for their endless disputes on moral questions in which they contradicted both one another and themselves.” Victoria Kahn, Neil Saccamano, and Daniela Coli eds., *Politics and the Passions*, (Princeton: Princeton University Press, 2006), 38-9; for more on this topic see *Politics and the Passions*, 47, 128.
Hobbes looked to the natural human world for truth without simultaneously denying the existence of God, similar to Descartes.\textsuperscript{41} Timothy Reiss, in his semi-philosophical article on history and Descartes, stated that after Descartes’s work was published in the 1640s, Hobbes stated

like the spirit of God moving over the deep in the second verse of Genesis, the true philosopher must let his ‘reason move upon the deep of his [own] cogitations and experience…’ It was almost as if the very processes of reason had been hypostatized into their object of study: here the object was the state and civil society.\textsuperscript{42}

This was merely the metaphysics behind Hobbes’s political treatise, however—his starting point. Descartes directly influenced the history of ontological and metaphysical philosophy, but his work seldom went beyond the self. Hobbes’s Leviathan picked up where Meditations left off by considering the natural state of human interaction.

Following Descartes, Hobbes saw little difference in the nature of individual humans: “the difference between Man, and Man, is not so considerable, as that one Man can thereupon claim to himself any benefit, to which another may not pretend, as well as he.”\textsuperscript{43} The free will that humans naturally possessed, according Hobbes, must originally have produced a perpetual violent war “of all men, against all men.” The equality of free will in nature allowed Man to do whatever he felt was necessary, and thus no one could be safe when “the way of one competitor, to the attaining of his desire, is to kill, subdue,

\textsuperscript{41} For this history of disputes pertaining to the question of God in the natural world during the sixteenth and seventeenth century, see Descartes’s System of Natural Philosophy, 76.
\textsuperscript{42} “Descartes, the Palatine, and the Thirty Years War,” 127.
\textsuperscript{43} Leviathan, 82. Quentin Skinner, Hobbes and Republican Liberty, (Cambridge: Cambridge University Press, 2008), 34-6. For more on Hobbes’s state of nature as a state of war, see The Quest for Power, 53.
supplant, or repel the other.”

For Hobbes, it was specifically for the purpose of security that political communities were created. Determining that this original life was unacceptable for the human’s mind and body, Hobbes argued that a transition must have occurred in society when individuals began to cooperate. Both the natural reason and passion of Man played a pivotal role in bringing these original communities out of that natural state: human passion left one searching for peace, and human reason then guided individuals to agreements establishing the peace. Cooperation, however, was only the first step to creating civil society, the end goal of all government to Hobbes.

Hobbes’s definition of civil society is perhaps the most abstract aspect of *Leviathan*, but it did rest on his clear and concise description of the laws of nature. Hobbes believed natural laws were “properly called laws” because they were “delivered in the word of God, that by right commandeth all things.” As well, natural law differed from natural right: “right” was Man’s ability to do “any thing, which in his own judgment, and reason, he shall conceive to be the aptest means” of surviving. A law of nature, in contrast, was a “precept, or general rule, found out by reason” that was opposed to Man’s natural right. In other words, in the state of nature, natural right was simply the god-like free will all humans possess—to act as they see fit; the laws of nature,

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44 *Leviathan*, 66.
45 *Leviathan*, 86. Although Zagorin does not go into detail on page 33, this is an obvious example of Hobbes’s concurrence with Descartes’s dualism. “He denied that the passions are inherently wicked or prove that men are evil by nature” and simply understood it as an aspect of the human condition. See *Hobbes and the Law of Nature*, 33. *Quest for Power*, 22-3, 43-2.
46 *Leviathan* 106.
47 Ibid., 86.
however, were innate to the human condition, similar to passion, but uniform and objective throughout humanity.⁴⁸

To Hobbes, the fundamental law of nature was that man “ought to endeavor peace.”⁴⁹ In nature, humans hesitate to work with one another due to the fear that one may be deceived because of another’s natural right to do as they pleased: where “everyman has a Right to everything,” and thus everyone lived in a state of perpetual war, it would be a “general rule of Reason...to seek Peace, and follow it.” But for Hobbes, natural laws were “but conclusions, or theorems concerning what conduceth to the conservation and defense of [Man]”; there was nothing aside from Man’s desire for peace and to preserve his own life that caused the use of natural law. Thus the second Law—“That a man be willing, when others are so too, as farre-forth, as for Peace, and defence of himselfe he shall think it necessary, to lay down this right to [Freedom]; and be contended with so much liberty against other men, as he would allow other men against himselfe”—resolved the problem of how to seek peace in nature. It was derived from Hobbes’s belief that only by individuals working together could a society be taken out of nature. Similar to the Golden Rule, in Hobbes’s description of civil society, individuals actually ‘do to others as they wish done to them.’⁵⁰ But in order for this to

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⁴⁹ Hobbes describes the two following laws in Leviathan, 87.
occur, and for natural laws to transform into civil laws, Hobbes suggested that there must exist “trust.”

“Trust” was crucial to the process by which a society rose out of nature. He did not use the word “trust” differently from the twenty-first century definition: *Webster’s Dictionary* defines trust as “firm belief in the honesty, reliability, etc. of another; faith.”  
Hobbes simply extended the definition to include human interaction in nature: “In the condition of meer nature…upon any reasonable suspition, [trust] is Voyd.” Without trust, no social circumstance “where there is [no] feare of not performance on either part” could theoretically exist. “In a civil estate,” however, “where there is a Power set to constrain those that would otherwise violate their faith, that feare is no more reasonable.” In following the logic of Hobbes’s concept of trust, no legitimate civil society could occur without it. While humans may trust their own subjective relationship to the laws of nature, they cannot trust that of others. Therefore, in order to initiate some form of civility, a situation must have occurred in which “a multitude of Men, are made one person, when they are by one Man, or one person, represented.” Behold Hobbes’s vision of how a commonwealth comes to be. That it was deemed necessary by Hobbes to mention the moment when a plurality of voices were reduced “unto one will: which is as much as to say, to appoint one man, or assembly of men, to bear their person,”

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52 *Leviathan*, 91.
53 Ibid., 95.
54 Ibid., 91.
55 Ibid., 109.
demonstrated a new phase of confidence in the universality of political discourse. Once all voices are combined into a single will, the singular voice of a people is possible. The society Hobbes imagines is ideal, to him, because it removes “the feare of not performance.” But it could only appear once “there is a Power” to restrain Man’s unlimited free will.

The entity that possessed the “Power set to constrain” was Hobbes’ sovereign. Man could not have a peaceful coexistence if everyone possessed unlimited right: How could humans expect to work reasonably with one another if trust did not bind their obligations? Hobbes’s sovereign possessed the necessary power to perform the task of ensuring peace. The sovereign, as “either one, or more, or all,” of course, did not naturally have this amount of power, however. The creation of sovereignty required a voluntary sacrifice of Man’s free will. Only after humans “confer all their power and strength upon one man,” could sovereignty emerge. The relationship between the sovereign and people is clear: “he that carrieth this [Power], is called Sovereign…and everyone besides, his Subject.” In the final section of Chapter XVIII, Hobbes confronts those who may object to his philosophy and argue “that the condition of subjects is very miserable.” He replies that the power of sovereigns is similar in all kinds of

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57 Ibid., 114.
58 Ibid., 123. The full quote is stated after he explains the three forms of government—Aristocracy, Monarchy, and Democracy—and reads, “Other kind of commonwealth there can be none: for either one, or more, or all, must have the sovereign power (which I have shown to be indivisible) entire.”
59 Ibid., 114-115.
60 Ibid., 122.
governmental systems, not just monarchy: “if they be perfect enough to protect [their constituents], [power] is the same.” The system must receive the faith and free will of each individual it presides over to provide this perfect protection.

Does Hobbes then assert that the role of Man was that of blind submission to authority? Not quite. The subject of Hobbes’s commonwealth is “free,” by which he meant free of opposition from “external impediments of motion.” The only thing that prevented subjects from freely moving throughout the world was confrontation with “some external body,” that is another commonwealth. Within the dominion of their own commonwealth, they were free to move and live life freely according to the “artificial chains, called civil laws.” When discussing the power balance of subjects and these artificial chains, Hobbes argued that there exists something called the “true liberty of a subject.” These “true liberties” are similar to the claim in the American Declaration of Independence that all Men have the right to “life” and “liberty.” A Man may justly oppose a sovereign who asks an individual to “kill, wound, or maim himself”; nor can the sovereign expect one to confess to a crime one has committed, and thus willingly dispose of his “liberty.” “The obligation of subject to the sovereign, is understood to last as long, and no longer” than the sovereign protects the lives of subjects. These events only concerned specific occasions, however, and would not dissolve the entire sovereign entity.

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61 Ibid., 139.
62 Ibid., 141.
63 Ibid., 144.
Hobbes understood government as an organic event: “For by [Nature] is created that great Leviathan called a Commonwealth, or a State, which is but an Artificial Man [sic]” with many parts: “Sovereignty...an artificial soul,” officials are “artificial joints,” “reward and punishment....the nerves,” “wealth and riches....strength,” “counsellors...the memory,” “equity and laws...artificial reason and will,” and finally, “the pacts and covenants...first made, set together, and united, resemble [God’s creation of Man].”\(^64\) Sovereignty, the “soul,” was the most divine part of Hobbes’s state, but how could one’s individual soul be accounted for in a system of governance?\(^65\) For Hobbes, the monarchical system of government simplified this predicament: sovereignty resided in the monarch’s soul, the divine appendage of his or her body.

A counter position emerged amongst Hobbes’ contemporaries, however, who argued it was the people’s soul which is sovereign. The increasing faith in the reasoning faculty of Man during the seventeenth century came to fruition in English governance through the ascendency of Parliament. The king was interpreted as the earthly representation of God:

Like God he was omnipresent, for in himself he constituted the “body politic” over which he ruled. But like the son whom God sent to redeem mankind, he was man as well as God; he had a “body natural” as well as his body politic, and the two were inseparable like the persons of the Trinity.\(^66\)

\(^{64}\) Ibid., 7. The kind of commonwealth varied among three choices for Hobbes. His particular choice of State was “Monarchy,” but he does concede “Democracy” and “Aristocracy” to have their worth as well. According to Hobbes, monarchy was the best because it had the capability to best “produce the peace, and the security of the people.

\(^{65}\) For the opinion that the “soul” is “depicted here as being idolatrous,” see Subverting the Leviathan, 132.

\(^{66}\) Inventing the People, 17.
But just as God was slowly being replaced by Man’s insurgence as the only arbiter of truth, monarchs began to lose their place as the ultimate source of state authority after the English Civil War. By time of the Glorious Revolution in England later in the seventeenth century, the throne’s authority became dependent on Parliament as James II was replaced by William and Mary in 1689. Not only did Parliament’s symbolic power increase—signified by their action of “hiring” the king—but their systematic power grew as well, in that “the freedom of speech and debates of proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.”

By the late seventeenth century, “the legislature” became “the fundamental power in society…the supreme power of the commonwealth.”

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67 Specifically, “And whereas…his Highness the prince of Orange (whom it hath pleased Almighty God to make the glorious instrument of delivering this kingdom from popery and arbitrary) …caused letters to be written to the Lords Spiritual and Temporal being Protestants, and other letters to the several counties, cities, universities, boroughs and cinque ports, for the choosing of such persons to represent them…being now assembled in a full and free representative of this nation…” “English Bill of Rights 1689,” The Avalon Project, avalon.law.yale.edu/17th_century/England, last accessed 3/7/2017.

68 J. R. Pole, Political Representation in England and the Origins of the American Republic, (Berkley: University of California Press, 1966), 18. This quotation is actually from two different sentences on the same page, but because they both related to the legislature I found it acceptable that they be conjoined. The first one describes Locke’s endorsement of a Whig government: “He saw his primary task as that of establishing beyond question the right of the majority to originate the legislative power, the fundamental power in society.” The next describes Locke’s Second Treatise: “When he arrives at the appropriate point he is ready to make a full and extreme assertion: the legislative power is the supreme power of the commonwealth.”
defining exactly who the people were or how they expressed their power was problematic, even for John Locke.69

John Locke: The People and State

Hobbes envisioned a rationalistic scenario in which humans created the sovereign; John Locke’s theory of government used an empirical approach to attempt to ensure that the trust between Man and sovereign was sustained. Locke, like Descartes, was a successful epistemological philosopher.70 Descartes’s “unlimited trust in natural reason” had a great influence on Locke’s basic understanding of human intellect, which stemmed from his faith in reason as the umpire of truth.71 Locke “repeatedly taunt[ed] the upholders of orthodoxy for their lack of confidence in the truth of their doctrines, challenging them to put their doctrines to the test of reason.”72 For Locke, reason is God’s

69 Ibid., 19. Pole considers a brief history of the location of legislative power. “The Levellers had lodged it with the economically self-supporting section of the population whom they defined as ‘the people’…Harrington divided it carefully, giving popular assembly only the right to resolve, not initiate or debate.”
70 Seldom do Locke scholars consider the influence Descartes had on Locke, although scholars have confronted the task. Peter Myers argues: “Taken in itself, [Descartes’s] account of a radically individualistic native consciousness could not support Locke’s descriptions of a social and contentious state of nature.” I disagree and instead read Descartes more as a metaphysician laying out the groundwork prior to social circumstance. Meyers allows for my insertion when he later states: “The specific character of the Lockean state of nature is not fully manifest or actual in the beginning, but instead emerges in a natural necessary process of development.” Therefore, Descartes could still influence Locke’s thoughts on the beginning; see “Between Divine and Human Sovereignty: The State of Nature and the Basis of Locke’s Political Thought, Polity, Vol. 27, No. 4 (Summer, 1995), pp. 629-649; 634-5. For more on a pre-social Locke, see Ruth Grant, “John Locke on Custom’s Power and Reason’s Authority” in The Review of Politics, Vol. 74, No. 4 (Fall 2012), pp.607-629; 608. Perhaps the most extensive work has been done by Peter Schouls. His Imposition of Method is an outstanding example of Descartes’s influence on Locke.
71 Imposition of Method, 8.
72 “Custom’s Power and Reason’s Authority,” 614. John Locke, Two Treatises on Government, (London: Printed for R. Butler, 1821), 209: “God, who hath given the world to men in common, hath also given them reason to make use of it to the best advantage of life, and convenience.”
most sacred gift to mankind; reason is “itself a moral obligation and only by employing [it] can we reach a proper understanding of both duty and faith.”

Although commonalities in the essential function of reason are found in all three philosophers, Locke’s faith in the universality of reason had a more extreme influence on his theory of government. His depiction of the state of nature ultimately produced a political philosophy that favored an individual-oriented concept of sovereignty, rather than the state-oriented version conceived by Hobbes.

On the actual concept of “sovereignty,” Locke was relatively quiet. Peter Meyers asserts that Locke’s hesitancy to discuss the topic of sovereignty was a result of the philosopher’s rational understanding of Man. Meyers notes: “the principle of pure human sovereignty requires that we refuse to submit to any rule not of our own making[.]” A government that does not provide a systematic role for the people “delegitimates the governance of reason itself, which aims at discovering, not making, the rules to which we are properly subject.”

Building on Meyers’ point, since Locke considered a

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73 “Custom’s Power and Reason’s Authority”, 620. Recently John William Tate, in “Locke, God, and Civil Society: Response to Stanton,” refutes Timothy Stanton’s opinion that God is the central piece of Locke’s entire political theory. Instead, Tate argues Locke sought to remove God from the actions of Man. I consider Locke as secular as possible for an educated seventeenth-century intellectual. God’s existence was described in terms of such omnipresence that it was both impossible and possible. For Tate’s response, see “Locke, God, and Civil Society: Response to Stanton” in *Political Theory*, Vol. 40, No. 2 (April 2012), pp. 222-228 (New York: Sage Publications, Inc., 2012). For more on theology and how it related to Locke’s theory of government, see Roland Marden, “’Who Shall Be Judge:’ John Locke’s Two Treatises of Government and the Problem of Sovereignty,” *Contribution to the History of Concepts*, Vol. 2, No.1 (March 2006), pp.59-81; 72.

74 “Between Divine and Human Sovereignty,” 646.
government to be legitimate only if it gained the consent of the people, the essence of Locke’s political theory is to define a systematic role for the people:

people...have a right to reinstate their legislative in the exercise of their power...they should exercise the power of making laws, either at certain set times, or when there is need of it, when they are hindered by any force from what is so necessary to the society, and wherein the safety and preservation of the people consists, the people have a right to remove it by force.75

“Revoluntary logic”—that legitimate states could be established, and dissolved, only by the people themselves—is the creation of Locke.

Locke’s initial description of the state of nature was quite similar to Hobbes’s; unlimited free will was a fundamental truth of the human condition, according to both philosophers. Locke introduced nature in Two Treatises as “what state all men are naturally in, and that is, a state of perfect freedom to order their actions, and dispose of their possessions and persons, as they think fit.”76 Similar to Hobbes, Locke argued that the “only way whereby any one divests himself of his natural liberty, and puts on the bonds of civil society, is by agreeing with other men to join [together]...for their comfortable, safe and peaceable living amongst another.”77 Locke went a step further than Hobbes, however, in replacing the former’s focus on the preservation of life with a new emphasis on property, and the preservation thereof, as the “chief end” of civil society.78 Once this community was formed, “every man, by consenting with

75 Two Treatises, 322.
76 Two Treatises, 189.
77 Ibid., 269.
78 Ibid., 258.
others…puts himself under an obligation to every one of that society, to submit to the
determination of the majority.” Whereas Hobbes looked to an individual (the sovereign)
to embody the will of the whole, Locke argued that Man ought to only submit his
unlimited free will to the will of the majority.

Locke was rather critical of a pure monarchical system—one in which individuals
sacrificed their own will to that of a single Man. Monarchy, Locke considered, was the
“most obvious and simple” of the ways government could be formed.79 In earlier periods
of the state of nature, there had not yet been much complexity to life—it was one
individual’s will versus another’s. In such small communities,

The equality of a simple poor way of living, confining their desires within the
narrow bounds of each man’s small property, made few controversies, and so no
need of many laws to decide them, or variety of officers to superintend the
process, or look after the execution of justice, where there were but few
trespasses, and few offenders.80

Locke suggested that if it had not been for this first simple monarchical political
organization, “young societies could not have subsisted.”81 Without such leaders to
conduct these infant commonwealths, and “without such nursing fathers tender and
careful of the public weal [well-being], all governments would have sunk under the
weakness of infirmities of their infancy.” But that was a different age from today, said
Locke; once princes learned “to have distinct and separate interests from their people,”

79 Ibid., 279.
80 Ibid., 280-1.
81 Ibid., 284.
it became necessary to formulate a new government and *evolve* the system—an evolution Hobbes had not considered.

In chapter XI, “Of the Extent of the Legislative Power,” Locke exposed the true colors of his philosophy. It is here, in the first chapter after Locke established the “Forms of a Commonwealth,” that he explained his concept of “supreme authority.” Chapter XI begins with Locke stating that (as described in his previous chapter) the “first and fundamental positive law of all commonwealths is the establishing of the legislative power.”82 The legislature’s purpose was none other than the “preservation of the society,” and it acted as the land’s “supreme power.” Locke defined supreme power as the ultimate creator of “law” within a given community, an ability no entity could have without consent from the society. It was “ridiculous” to Locke for a state to create laws without that consent.83 Chapter XI thus set out to explain how a legislature is to act as the agent of the consenting society.

Locke made a significant leap from his contemporaries in this chapter by equating supreme state authority with the people. But he admitted that this system was paradoxical in its essence: “though it be the supreme power in every commonwealth,” the legislative is not “absolutely arbitrary over the lives and fortunes of the people.”84 The government was supreme *until* it threatened the “lives and fortunes of the people.” Locke then spent the most time in this chapter defining what he meant by “fortunes.” He

82 *Two Treatises*, 302.
83 Ibid., 303.
84 Ibid., 303.
stated that no legislative power could take the property of its subjects without their consent: “And to let us see, that even absolute power, where it is necessary, is not arbitrary by being absolute.”

The state’s ultimate power, the legislative, ought to be absolute, but not arbitrary—which he equated with “despotic power.”

A despot is one who holds absolute power, but according to Locke, despotism could exist only in two cases. The more obvious case that Locke spent little time discussing was the master and slave relationship: a slave from a “just war” was a slave until “he be once allowed to be master of his own life,” at which time “the despotical, arbitrary power of his master ceases.” The other case concerned subjects within a political society who allowed a despotic government to establish itself: “it is the effect only of forfeiture…for [only by] having quitted reason, which God hath given to be the rule betwixt man and man…and having renounced the way of peace” could mankind allow such a government to exist. As Locke concluded Chapter XI, he stated four simple rules that a state’s supreme authority ought to follow: it should govern by laws that are established without the interest of particular subjects; the laws established should be designed “for no other end ultimately, but the good of the people”; it should only raise taxes (take property) through consent; and it cannot relieve itself of its duties and place its power anywhere “but where the people have” already placed it.

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85 Ibid., 310.
86 Ibid., 338; the full quote reads as follows: “Despotical power is an absolute, arbitrary power one man has over another, to take his life, whenever he pleases.”
87 Ibid., 313.
In conclusion, for Locke, the prerogative of the government should be one with the prerogative of its subjects; and if this is not so, “the people under [t]his government are not a society of rational creatures, entered into a community for their mutual good.”\(^8\) Although Locke’s work has since been praised for his general inclusion of property, it became increasingly unclear in the century that followed *Two Treatises*’ publication precisely how the prerogative of “rational creatures” ought to be calculated into governance.\(^9\)

If the “state of nature” metaphor was to yield any practical lessons, political theorists must first understand the Man who experienced it. Descartes was most influential in developing the concept of Man as a thinking creature who had the ability to attain perfect truth. Through an analysis of both the mind’s and the body’s experiences in nature, both Locke and Hobbes logically concluded that the state of nature was undesirable for Man. To protect individuals from an unending chaos, both philosophers determined there must have been a *natural* and *rational* formation of a powerful entity to bring mankind out of the undesirable natural state—and that entity was government. For all three philosophers, government was a natural aspect of human society—part of the physical world—and thus possessed truth for the human mind to observe.

But there was more to *Leviathan* and *Two Treatises* than these foundational agreements, and the discrepancies found in their discourse went on to produce two ends

\(^8\) *Two Treatises*, 331.
of the conceptual spectrum of political sovereignty. The disagreement concerned who the sovereign actually is. Hobbes was clear about this: Man created government, and that government was the sovereign. Whether it be a legislature or a king, the government created out of nature was the sovereign state. Writing from the Whig perspective during the Glorious Revolution in England, Locke was more skeptical of tyrannical sovereigns. Since it was Man that ultimately held the positions in government, an involved citizenry assured that a state would not usurp its power and act in too disconnected of a manner from the people. Locke’s desire to include the people shows two things: first, that Locke ultimately did accept the government’s composite power as sovereign. And second, that the theoretical power of the people had grown exponentially since Hobbes’ work.

Less than a century after Locke’s death, at the time of Vermont’s tumultuous infancy, the discourse of a “sovereign people” emerged.

“Whether in the Wild Woods and Uncultivated Waste of America”

As with much of the writing that comes from the pens of intellectuals, there was a slow percolation of these philosophical ideas into the common framework of thought in the colonies. Political excerpts from the newspapers of New England, where many of the future inhabitants of Vermont were born, provide an overview of the contemporary popular concept of sovereignty. The abstract metaphor of the state of nature, used by

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90 In New England, for example, the literacy rate rose to a nearly universal rate by the end of the eighteenth century. For men, those who possessed political power, it is estimated nearly 85 percent were literate by 1760. In addition, by 1770, spelling books had become “an indispensable text” in the region, and by 1771, both genders, regardless of wealth, had access to reading and writing instruction under Massachusetts Poor Laws. For male percentage see Carol Sue Humphrey, “This Popular Engine”: New England Newspapers during the American Revolution
Hobbes and Locke, played a crucial role in the discussion of sovereignty in eighteenth-century British-American newspapers. Through a revived interest in original charters, and a print community that disseminated political tracts of Lockean and Hobbesian ideology, the state of nature settled into its place as a trope of British-American political discourse. But the “state of nature” is only mentioned in this literature as a theoretical state, not one that can be experienced in reality.

In the *Boston Evening Post*, for example, an anonymous writer identified as “Your Lordship’s most obedient humble Servant” explained how charters were fundamental to understanding ultimate political authority.91 According to “Servant,” charters had been established in the Americas to lift the migrants out of the state of nature. The charters—established by “those whose forefathers fled into the wilderness to avoid the intolerable oppression and arbitrary power of the faithless Stuarts”—Servant considered “sacred.” Once in the wilderness of America, there was “no civil government but what they form’d themselves.” By selecting “agents” to represent them, Servant’s forefathers became bound and protected by a greater power (Great Britain) under these charters. By 1765, however, the state’s increase in taxation to replace costs from the French and Indian War caused Servant to question the treatment of subjects on behalf of the state. New England, Servant argued, had “during the course of the [French and Indian War] furnish’d a reasonable quota both of men & money, [and] exerted themselves to

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91 *The Boston Evening-Post*, “Supplement to the Boston Evening-Post” 12/30/1765, 1.

the utmost.” Britain sending troops overseas and then expecting the colonies to pay for it “violat[ed colonial] charters,” which guaranteed protection under the British sovereign state. Not only was the government’s action unnecessary, Servant argued, but the decision hindered colonial progress:

[sending troops] creat[ed] a large expence, to carry and support a useless, nay I am sorry to say, a dissolute set of men, to live in idleness among them, and deprave the manners of the people, which is of no small importance in infant colonies, when the utmost industry is necessary to their own well-being, and their utility to their mother country.

That the taxation was done without colonial consent was the final point made by Servant: “If at any time there is a necessity of raising money from the colonies, let it be intimated by the several Governors to their respective Assemblies.” While the author explained that the systematic event of representation would prevent future controversy, Servant concluded with an abstract gesture. The author requested the Ministry to act in “his majesty’s interest, to rule in the hearts of a free people in America as well as in England.” The Ministry was expected always to act in the interest of the king, which Servant now argued was synonymous with the “hearts” of the people. The wills of the people and sovereign state were expected to be one, according to Servant, although authority remained strictly with the state.

As colonists paid close attention to the political crisis of the late 1760s and early 1770s, a sense of disconnection from government left the people wondering how to act. To clarify the proper procedures in 1771, “Mutius Scaevola” followed the methodology used by philosophers to imagine the circumstances that had required charters for his
ancestors in the first place. Scaevola argued in the Boston Gazette that charters had been formed out of “necessity [by] the several legislative bodies of Great-Britain, Ireland and the British Colonies.” All colonies were “perfectly distinct, and entirely independent upon each other,” yet “connected only by their allegiance to their common sovereign, whose common interest is their common prosperity, and whose supreme duty and constant inclination is their common and indiscriminate protection.” This position, he defended, “stands in fact & must stand firm, having the law of nature for its foundation.”

Drawing on both Hobbesian and Lockean theory, Scaevola argued that to bring people out of nature was directly intertwined with their own consent: “there is an essential difference between, requesting and demanding; the former is perfectly consistent with liberty, the other, altogether destructive of it.” Any “alteration of the established government…without the consent of the people…our gallant ancestors would have waded thro’ seas of blood to combat.” Scaevola argued that once a government arbitrarily alters the terms of governance, it “reduces the subject again to a state of nature, which being a state of war.”

By 1774, it appeared increasingly evident throughout the British empire that the thirteen American colonies would revolt. The outcry of the colonists during the previous decade had fallen on deaf ears, and had now developed into a crisis of sovereignty. An excerpt “offered to the Consideration of thinking Men” in the New-Hampshire Gazette

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noted just how powerful the authority of the people was. According to this author, the public was in an uproar due to the British “Legislators [who] endeavor to take away and destroy the property of the People, or to reduce them to Slavery under arbitrary Power.” The power of the people in British thought was now so immense that if “ill treated, and contrary to right, [they] will be ready on any Occasion to ease themselves of a Burden that fit heavy upon them.” According to an increasing number of colonists, the legislatures of the British system, whom Locke expected to be responsible for relieving the disconnect between state and people, were in practice legitimated strictly by the title of their office and not the merit of their actions. The author did not consider colonists the rebels: “those, whoever they be, who by Force break through and by Force justify their Violation…are truly and properly Rebels.” Once it was made clear to the colonists that George III was but a man who “by Force justify their Violation,” his sovereign power was dissolved.

The people individually could not govern the colonies, for that would be chaos; and Great Britain could no longer rule, since that was now defined as political slavery. Although the creation of a new sovereign state—the United States—had begun, it was not completed until nearly fifteen years later. Between 1775 and 1783, British America (and much of Europe for that matter) was in a state of war; the question of sovereignty was in suspense as individuals grasped whatever authority they felt best secured their

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93 The New-Hampshire Gazette, 10/21/1774, 1. The author mentions in his introduction that the “venerable name of Locke carries so much Weight and Authority, that on every Subject relative to Politics or Government, his Arguments seem irresistibly persuasive.”
lives. There was, however, a new truth of governance that was found in nearly every state constitution: “the people have a right, by common consent, to change [government], and take such measures as to them may appear necessary to promote their safety and happiness.”⁹⁴

CHAPTER 2: THE STATE OF NATURE IN THE HAMPSHIRE GRANTS

As demonstrated in the previous chapter, the “state of nature” became a common trope well before the revolutionary-era discussion of sovereignty in British America. The physical surroundings of authors who wrote about the relationship between nature and sovereignty, however, seldom resembled a truly natural environment. Instead, authors and philosophers were forced to envision an ideal natural state. Some, like the pseudonymous author “Servant,” recalled their “forefathers [who] fled into the wilderness;” others, such as the commentator “Mutius Scaevola,” grounded their arguments in “the law of nature.”

As the relationship between Britain and the colonies deteriorated, colonists felt that the empire was literally casting them back into a state of nature. Yet, there still existed a “Civill Power erected over the [people],” as Hobbes defined it, throughout major cities where newspapers and common knowledge flourished.95 Benjamin Franklin noted a differentiation between American civil order and Native American society, which, as he believed, contained “no force…no prisons…no officers to compel obedience, or inflict punishment.”96 His comments express the current understanding of

95 This passage is part of Hobbes’s discussion of mutual trust in nature. The original text reads “parties” instead of “people.” Without a civil power, he wrote, “there is the question whether it be against reason, that is, against the benefit of the other to perform, or not.” Without civil powers one has only oneself to answer to when deciding right from wrong. See Leviathan, Part. 1, Ch. 15, pg. 97.
civil society: it was only possible through a present and consistent relationship between the people and authority. According to this definition, Jefferson asserted that a civil power still existed in American cities, even without British control. Residents of frontier communities, however, both because of their physical surroundings in “nature” and because of their distance from civil authority, viewed themselves as actually living in a real “state of nature.”

Residents in the Green Mountains offer an excellent case study of a settlement zone that operated quite close to the state of nature theorists envisioned.

After the French and Indian War, the future Vermont territory was commandeered by Britain and annexed to the province of New York. Governor Benning Wentworth of New Hampshire saw the possibility of the annexation working in his favor, however, and began granting acres of land by the thousands. Migrants—predominantly from New England colonies—flooded the region. The population grew at a faster rate than any courts, churches, or practical civil authority could be established. Migrants quickly became aware the land was full of promise only if there were a power to protect it from the remaining native population, thieves, and individuals who looked to take advantage of the lack of state authority. Establishing a single entity as sovereign in this

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97 This project is not an effort to discredit by any means the work done in Vermont Native American history. From the perspective of most colonists, however, natives were at the very best seen as a separate nation but were most likely considered a more primitive or natural race. Therefore, a native population would not have affected the Euro-American perception of the region as “natural.” For more on this historiography, see “The Original Vermonters,” William A. Haviland and Marjory W. Power in In a State of Nature: Readings in Vermont History edited by H. Nicholas Muller, III and Samuel B. Hand, (Montpelier, Vermont Historical Society, 1982), 21-26.

98 Chilton Williamson, Vermont in Quandary: 1763-1825 (Montpelier: Vermont Historical Society, 1949), 7. Williamson estimates that Wentworth had granted nearly 3,000,000 acres and retained 100,000 for himself by 1763.
region from 1763 to the eve of the American Revolution was complex because, legally speaking, all colonial governments and subjects existed under the sovereign authority of King George III. Colonists moved with this in mind, expecting the king and his provincial governments to provide the necessary characteristics of British civil society to ensure a stable community. As the population grew during the 1760s, the inability of the British state to erect a commanding presence in the region left residents to fend for themselves at every turn. The consequence of this event led inhabitants to ponder who truly possessed ultimate authority in the region: was it the state, or the people?

The Creation of a “State of Nature”

As early as June 6, 1750, Governor George Clinton of New York wrote to Governor Wentworth that he expected him to retract the grants he had conferred in this territory in 1749, unless Wentworth desired Clinton “to Send a Representation of the Matter…before his Majesty.”99 It has been argued that Wentworth’s actual legal claim—that New Hampshire’s boundary extended as far West as Massachusetts Bay’s and Connecticut’s—was secondary to his more practical judgment that if he were able to provide the region with actual settlers, the Board of Trade would conclude the matter in his favor.100 But his original motivation mattered little since colonists were mostly uninterested in a region with such a negative reputation.

100 Raymond discusses Wentworth’s motivations in “Benning Wentworth’s Claims,” In a State of Nature, 45-47.
A contemporary map clearly labels the land directly east and west of Lake Champlain and Lac du Saint-Sacrement (Lake George) as an area contested by French and Natives. Although this particular map does not label Abenaki territory, the Green Mountains were occupied primarily by that group. The Abenakis, a branch of the
Algonquin people, were organized as a rather dispersed republic composed of scattered kin and hunting groups throughout the Champlain and Connecticut River Valleys. They solidified their stronghold on the region due to their knowledge of the land and a persistent presence that no European had yet matched. Colin Callaway has determined that the village at Missisquoi (present day northwestern Vermont) was “the best-known and most enduring settlement.”\footnote{For a well-researched attempt at identifying and distinguishing the lineage of northern native tribes, see Colin G. Calloway, \textit{The Western Abenakis of Vermont, 1600-1800: War, Migration, and the Survival of an Indian People} (Norman: University of Oklahoma Press, 1990), 8-9. Calloway does confess, however, that “in reality, there was flexibility and movement between groups.”} A European visitor would be quickly reminded of the native presence, which could be seen “passing and repassing [the] frontiers into heart of country.”\footnote{\textit{The Western Abenakis}, 140-141.} Before the French and Indian War, English settlers viewed the Green Mountains as “both a forbidding wilderness and an Indian stronghold.”\footnote{\textit{The Western Abenakis}, 17.} To those residing in the more densely populated communities of British America, the region symbolized a purgatory between British civilization and the French enemy in Montreal, populated by “hostile” Natives.

Although the French were a greater threat to the British empire as a whole, the native presence was perhaps the feature of the conflict that potential settlers feared most. Like most native communities of eastern America, the Abenakis were forced to adapt to fluctuating numbers caused by the northward migration of southern tribes, disease, and European expansion. For strategic reasons, they alternated between concentrating in
large central settlements and dispersing into widely scattered groups.\textsuperscript{104} This produced two outcomes. First, it preserved the natural environment far better than the British-American mode of constant dense settlement.\textsuperscript{105} They maintained a nearly pristine ecosystem (aside from disturbances caused by the fur trade) with minimal cultivation. And secondly, it meant that natives were experienced navigators in the region—able to retreat and attack with ease using the natural landscape to their advantage.

Before the end of the imperial wars in 1763, colonists showed little interest in settling this native stronghold, for the entire area—the northern frontier of Massachusetts, the northeastern frontier of New York, and the western frontier of New Hampshire—was, in perception and reality, a constant theater of war. In March 1747, for example, the Champlain Valley became the setting of a massive battle when Abenakis, Iroquois, and French, as well as representatives from other native allies such as the Ottawas, Nipissings, Winnebagoes, and Hurons, met in Montreal to discuss war against the Mohawk enemy who were located to the west of Lake Champlain. The French inhabitants abandoned their settlement at St. Frederic (Crown Point) for Montreal, while those who remained prepared for war. By April, English garrisons along the New Hampshire frontier experienced the impact of those decisions made a month prior in Montreal. Number Four (Charleston, New Hampshire), a British frontier garrison intended to intercept Green Mountain war parties, was attacked by French and Native

\textsuperscript{104} The Western Abenakis, 32.
\textsuperscript{105} I acknowledge the French fur trade most likely had a significant impact on the natural environment, but I would argue British urbanization in American was more detrimental to the preservation of entire ecosystems than was French trade.
soldiers. Captain Phineas Stevens reported the horrors: “they seemed every Minute as though they were going to swallow us up, using all the threatening Language they could possibly invent, with shouting & firing as if the heavens & earth were coming together.”\(^{106}\) In the events that followed, a military unit marched towards Lake Champlain seeking retribution. They were then surrounded and ambushed, and only narrowly escaped to Fort Dummer during their retreat from the unsuccessful effort. It is not surprising, then, that potential settlers viewed the Green Mountains as full of danger.\(^{107}\)

The ease with which enemy parties moved throughout the Green Mountains continued to strike fear into the minds of English settlers. A few years later, during the French and Indian War, it was noted that the French, along with their native allies, had established forts around the Green Mountains and Lake Champlain where “they may send out their Parties to kill and scalp the Inhabitants, and ruin the Frontier Counties.” According to this particular tract, however, the Franco-Native alliance was not strictly a northern concern. Britain’s enemies sought to take advantage of the “present disunited State of the British Colonies, and the extreme Difficulty of bringing so many different Governments and Assemblies to agree in any speedy and effectual measures for common Defense and Security.” So long as colonial efforts against a common threat remained divided, an enemy could “murder and scalp our Farmers, with their Wives and Children,

\(^{106}\) *The Western Abenakis*, 155.

\(^{107}\) *The Western Abenaki*, 158.
and take an easy Possession of such Parts of the British Territory.”\textsuperscript{108} The efforts to unite the colonies did not prevent the war from occurring, however, and the stories told by those who had actually been to the Green Mountains further deteriorated any motivation within others to migrate.

During the early years of the war, the imagery associated with the Green Mountains was gruesome to say the least. One article reported a forty-day scouting mission conducted by “Lieut. Kennedy (of the Regulars) …with some of the Mohawks and Highlanders.” The story’s setting stretched from St. John’s River (Saint-Jean-sur-Richelieu) down the Champlain coast, where they encountered sights of burnt taverns, enemy checkpoints, and human scalps.\textsuperscript{109} In another grisly story, a group of carpenters accompanied by fifteen soldiers departed Fort Edward, New York, in the summer of 1757, and were ambushed. After a partially successful pursuit, the remaining enemies escaped into the wilderness never to be seen again.\textsuperscript{110} While tales from frontier scouts often used hyperbolic and brutal language, the feeling of insecurity that Englishmen felt in the woods surrounding Lake Champlain could not be overstated. Without contrasting stories of success, the perception of the region remained gloomy.

As the British advanced north towards the end of the war, however, victory carried with it a new understanding of the Green Mountains for provincial governors and colonists alike. The British chose the Champlain region as the location for a successful

\textsuperscript{109} Boston Evening Post, 10/4/1756, 1.
\textsuperscript{110} New York Mercury, 6/27/1757, 2.
two-pronged attack in 1759: one on land “to proceed by Lake Champlain,” and the other by water from Nova Scotia, “are to go up the River St. Lawrence.”¹¹¹ As it became evident that the British empire now possessed “all their [enemy’s] Navigation upon Lake Champlain,” the perception of the region changed.¹¹² The royal proclamation of 1763 granted the entire territory to the British crown. French residents of the region either returned to Europe, immersed themselves in Native cultures, or awaited their new lives under the domain of Britain.¹¹³ The Abenaki were severely weakened both in numbers and morale without their French allies for assistance; those that remained now lived in “a changing world in which the immediate presence of British settlers governed their opinions and actions.”¹¹⁴

The future of the Green Mountains was altered forever as dangerous tales of the American wilderness were suddenly replaced by the promise of industry and civilization. Benning Wentworth was perhaps the most important figure to seize the opportunity afforded by the Green Mountain annexation. Although his understanding of the situation will be discussed later, his aggressive granting of cheap land to willing purchasers profoundly and rapidly affected the demographics of the Green Mountains during the early 1760s. Also, the people themselves experienced a sudden newfound faith in the

¹¹⁴ The Western Abenakis, 188. For a short summary of French and Native relations in Canadian territory see Making of the Mosaic, 27-36.
region. Cheap land free of French and Indian aggression was enticing, but an even greater attraction was that the land lay virtually untouched from their perspective. Some saw the obstacle of cultivating and clearing land in its natural state as an expensive hindrance, but others found the region’s untouched nature particularly inviting.

![Map of the middle British colonies, 1755](https://www.loc.gov/item/98428668/)

**Fig. 2 From “A general map of the middle British colonies, in America; viz Virginia, Maryland, Delaware, Pensilvania, New-Jersey, New-York, Connecticut, and Rhode Island: of Aquanishuonigy, the country of the confederate Indian...” by Lewis Evans, 1755, Library of Congress, Maps Division, www.loc.gov/item**

“It is Plain the World Never Was, Nor Ever Will Be, Without Numbers of Men in That State”

Settlements in the Green Mountains prior to 1763 were few and far between. Those who settled beyond frontier garrisons pursued a life of economic uncertainty, war, and little security beyond his or her own personal abilities. After the war, however, both
New York and New Hampshire adopted their own distinct approaches to populating the region. New York’s method was slow-paced and essentially feudalistic, relying on wealthy individuals to populate, cultivate, and guide the land towards prosperity. This system naturally obstructed any hope for a speedy settlement of the region, and the pace was slowed even further with six different New York governors holding the office between 1763 and 1775. New Hampshire, on the other hand, experienced only two: Benning Wentworth (1741-1767) and his nephew John Wentworth (1766-1775). Under their direction, New Hampshire practiced a polar opposite strategy: they granted smaller tracts of land for a cheap price, and assumed that individuals would purchase the amount of land they were able to cultivate and improve. Under these circumstances, migrants with what would be known as “Hampshire Grants” had settled the region in the hundreds by March, 1764, when New York received word from the crown that the region was within their jurisdiction. New York’s inability to establish an effective civil presence, at a time of such rapid settlement, undermined its own authority in the region.

115 Williamson notes that New York did not attempt to set up the same manorial system that it practiced in the Hudson Valley. In the Grants region, New York “turned over the proprietorship of the towns to its own speculators rather than to Yankee speculators or settlers.” Vermont in Quandary, 9.
117 The “Grant Controversy” dates back to the late 1740s, but not until the King-in-Council proclaimed on July 20, 1764 that “accordingly hereby Order and Declare the Western Banks of the River Connecticut…to be the Boundary Line between the said two Provinces of New Hampshire and New York,” was it legally over. In a State of Nature, 43-53.
In 1763, the New York government received interesting news from Alexander McLeans, a merchant of that colony. On his trip back from Canada he made a short stay at Crown Point:

and there saw a considerable number of persons about five or six among which were two Gentlemen said to be principal men in New Hampshire Government, and representatives in that General Assembly and Justices of the Peace that the rest of the Persons with them were also (as was said) of that Colony, that these Persons declared that they came thither to Lay out Lands, and a man that appeared to be a principal person among them Declared that Crown Point was in their Government.\textsuperscript{118}

In response, later that year New York governor Cadwallader Colden issued a “Proclamation Declaring the Connecticut River the East Bounds of the Province of New York.”\textsuperscript{119} The proclamation notified all “Judges, Justices, and other Civil Officers” in the County of Albany—which encompassed the entire region up to the 45\textsuperscript{th} parallel—to continue their work under the authority of New York.

New York was forced to deal with these migrants who settled within their jurisdiction under grants signed by a New Hampshire governor. Governor Colden asked Sheriff Hermanus Schuyler to provide him with “the Names of all and every Person and Persons, who under the Grants of the Government of New-Hampshire, do or shall hold the Possession of any Lands Westward of Connecticut River.”\textsuperscript{120} While Schuyler worked

\textsuperscript{118} Documentary History of New York, 558.
\textsuperscript{119} Ibid.
to achieve his orders, Governor Colden wrote to the British Board of Trade in April 1764 that Wentworth had granted “160 Townships, of six miles square each” west of the Connecticut River. Furthermore, he reported stories of “[men] in appearance no better than a Pedlar” throughout New York and New Jersey, “hawking and selling his pretended Rights of 30 Townships” in the region.\textsuperscript{121} Colden concluded by urging the Board of Trade to consider an expedient response to the “perhaps [mischievous]” state of society in the Grants region, “which may happen by the different claims of Jurisdiction.”\textsuperscript{122} In the meantime, New York chose to fight fire with fire.

Philip Skene was a typical New York land owner in that he received large tracts of land which he was expected to successfully settle and cultivate. By 1765, Philip Skene had acquired a little over 20,000 acres east of Lake George, and had just returned from Europe convincing “60 other persons” to settle there, engaging “100 families more to come from.”\textsuperscript{123} New York’s effort is epitomized by a 1765 newspaper advertisement submitted by Skene himself in promotion of Skenesborough. The advertisement stated that potential settlers could acquire goods from the town of St. John’s, where “Fish and Venison…[are] to be had in Plenty.” As well, “all Kinds of Provisions…will be sold reasonably by the present Inhabitants to new Settlers.”\textsuperscript{124}

\textsuperscript{121} Documentary History of New York, 567.
\textsuperscript{122} Documentary History of New York, 574.
\textsuperscript{123} Doris Morton, Philip Skene of Skenesborough (Granville: Ms.Cellaneous Enterprises, 1995; originally published, Granville: Grastorf Press, 1959), 33. Philip Skene epitomized New York’s manorial land-granting system. As discussed above, however, the system was not directly implemented in the Grants. It seems appropriate to assume that New York proprietors were handed the role of Skene in their respective towns, with much of the populating and clearing already done by existing settlers.
\textsuperscript{124} The Pennsylvania Gazette, 4/4/1765, 3.
While New York relied on men like Philip Skene and his advertisements to attract migrants, New Hampshire’s strategy to populate the region was in full swing. Already having obtained an ample number of settlers under New Hampshire titles, Governor Wentworth reassured his grantees in March 1764 that they could ignore the increasingly aggressive claims that Hampshire residents would lose their land to New York. He stated that Governor Colden was mistaken in his judgment and that New Hampshire “may legally extend her western Boundary as far as the Massachusetts claim reaches.” Current inhabitants “may not be intimidated, or any way hindered or obstructed in the Improvement of the Land so granted”; they were “to be industrious in clearing and cultivating their Lands agreeable to their respective grants,” ignoring New York’s “pretended right of Jurisdiction.”

In July 1764, after a royal order confirmed that the disputed territory belonged to New York, establishing civil society in the region became solely New York’s responsibility. It was a colonial government’s duty to ensure a community’s prosperity and civil stability. The key players in the controversy were certainly familiar with the work of Hobbes and Locke, and with the current concepts of what governments owed their people. As described in the previous chapter, civil society was believed to eradicate the fear of mistrust, ensure that unjust actions were met with just responses, and that

126 After the proclamation of 1764, Governor Colden began issuing land patents by the thousands. Many acres were understood as land “formerly granted under the Province of New Hampshire.” See Robert Shalhope, Bennington and the Green Mountain Boys: The Emergence of Liberal Democracy in Vermont, 1760-1850, (Baltimore: The Johns Hopkins University Press, 1996), 62-63.
one’s property was secured. Locke and Hobbes argued that the role of the state was to enforce this stability within communities. If no state was able to provide an efficiently stable civil society, there remained a void left to be filled. Colden was a graduate of Edinburgh University and Wentworth a graduate of Harvard, but for the average migrant, these concepts may not have been so clear. Many simply thought of their role in society as being far removed from political decisions pertaining to the colony as a whole. There were others, however, often individuals who had invested much of their wealth in obtaining land grants, who were particularly determined to involve themselves in the development of civil society.

The Calm Before the Storm

In August 1764, Massachusetts residents John Horsfoot and Isaac Charles requested justice of the peace Samuel Robinson to defend the New Hampshire land titles by evicting three settlers who had settled on land in Pownal under New York grants. Robinson’s decision to do so was perhaps as much influenced by his personal interest in New Hampshire grants as by his obedience to his duties as justice of the peace. The Robinsons—Samuel and his sons Leonard, Samuel Jr., and Moses—were all heavily involved with land speculation in the region, owning thousands of acres of land under New Hampshire titles in Bennington, Shaftsbury, Rupert, Somerset, Castleton, and

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Pownal. To accept New York’s claim on his neighbor’s property would undermine the legitimacy of the right to his own land.

After Robinson did his duty of clearing Hans Jurry Creiger, Peter Voss, and Bastiane Deale from the contested land, Sheriff Schuyler in turn obeyed his governor’s orders to “preserve the Peace” within New York’s jurisdiction by pursuing the “New Hampshire people” who harassed the Dutch settlers. Schuyler seized Robinson, Samuel Ashley, Horsfoot, and Charles (“the two last, pretended owners” of the land in Pownal) and brought them to the jail in Albany. This event demonstrates that inhabitants believed that securing one’s land and administering justice directly correlated with an established civil society. As of 1764, it was legally New York’s responsibility to perform these tasks, but their inability to legalize all grants held by actual settlers prolonged the conflict. It was the settlers themselves who first determined that the territory was simply too vast and the settlers too dispersed for Albany alone to govern properly.

Many inhabitants in 1765 believed if counties could be established by New York, civil order would follow. Three petitions to the New York government led by a future advocate of the Vermont cause, Thomas Chandler, called for the creation of legitimate counties as “necessary for the better administration of Justice.” The first two petitions, of October 9 and 15, outlined a plan for creating five separate counties in the Green Mountains. The third petition, however, was less concerned with the logistics of

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128 Moses Robinson, 19.
130 Documentary History of New York, 578-583.
establishing counties and instead highlighted the unfortunate state of the inhabitants’ (un-governed) communities. Building on the two previous petitions, new counties would make sure that “offenders be Brought to Justice, and Creditors may Recover their Just Dues.” With language similar to that formerly employed to describe the undesirable state of nature, the petitioners lamented that their current situation made it possible for “everyone to do what is Right in their own Eyes.” Protection was their foremost concern: protection of their property, but even more vital, the protection of their lives. These particular petitioners had lived “Now near Six months…without Law,” and had “made application to be protected, but as yet [were] not answered.” The conclusion of this petition took a dark turn when it stated that at least one murder and one kidnapping had occurred, and if nothing was done soon, “the Land will be filled with Nothing, but Villins and Murders.”

The inhabitants, many of whom were willing to work with New York out of respect for the crown’s judgment, considered direct involvement from New York as the only way their community could succeed.

Henry Moore, Colden’s replacement as governor, responded with a more proactive approach to the controversy upon his arrival to New York in 1765. A royal committee met and responded to the three petitions that although the entire region up to the forty-fifth parallel was not settled enough to establish counties, “a competent Number of fit persons for the Conservation of the Peace and administration of Justice” ought to be appointed. Hoping for a better relationship with the residents (as well as making

131 Documentary History of New York, 582.
132 Documentary History of New York, 584.
sure New York’s frontier could be properly protected), the new governor then asked for a complete list of able-bodied men, to which Samuel Robinson and Thomas Chandler responded in late 1765 and early 1766 respectively. In an attempt to cool the growing tensions and hinder any further confusion, New York created Cumberland County, ending nearly a half-decade of “lawlessness” in the southeastern portion of the Green Mountains. New York also granted a court of common pleas and a court of general sessions of the peace, and for the first time received from the inhabitants their “Nomination[s] of the Civil Authority for the County of Cumberland.” Recalling these events, Governor Moore wrote in 1767 that by establishing the county of Cumberland he hoped to begin consistently settling the region, and that once the other areas had attained “a sufficient number of Inhabitants,” they would also receive county status.

Moore’s objective was to legitimize the land claims of actual settlers under New Hampshire grants while simultaneously calming the New York proprietors angry that their lands were inhabited by people with “pretended” titles. At the time of Moore’s arrival in New York, the entire colony was in dismay due to the passage of the highly controversial Stamp Act. No land grants were processed at this time; for Moore “was determined not to issue any papers except such as were stamped and the people here refused to take them on that condition.” At the same time, Moore complained that

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133 Documentary History of New York, 584-586. The total number of residents fit for militia service was approximately 900.
134 Documentary History of New York, 587-8
135 Documentary History of New York, 595.
136 Although he confessed to Shelburne that his committee had spent “some hours of examination” on certain grants without being able to trace the original proprietors, most lands
because the Wentworth grants were so inexpensive, entire townships “have bought and sold, conveyed and reconveyed” to the extent that the original owners were unidentifiable. In this situation, Governor Moore found two actions necessary. First, to provide an opportunity for actual settlers—some of whom had “expended the whole and others the greatest part of what they were with in purchasing the said Grants”—to receive new patents from New York; and second, to appropriate land “on which no Improvements had been made” to New York, and grant that land to military officers as prescribed in the Proclamation of 1763. But Moore made these decisions unaware that some of the most aggressive Yankee speculators had just arrived in the Green Mountains with patents to land they planned on keeping without paying another pence.

**Authority and its Relationship to the Concept of Sovereignty in the Grants Region**

If the events of the early- and mid-1760s were a pot of water being filled and put on low heat, in the late 1760s the heat was turned up. As surveyor contracts were being signed by the dozens in New York, New England settlers who purchased New Hampshire titles were simultaneously moving their families to the exact same lands. The result of these contemporaneous events was the infamous “ejectment trials” of the 1770s. In January 1770, Colden, who had returned as governor, explained to colonial Secretary of State Lord Hillsborough how the grant controversy reached this boiling point. During

\[\text{had been so recently purchased under New Hampshire’s seal that no actual settlement had occurred. His perspective can be found in a letter to Lord Shelburne, 9 June 1767, Documentary History of New York, 590-605.}\]

\[\text{Documentary History of New York, 602-3.}\]
Colden’s term earlier in the decade, he wrote, he had “resolved on measures respected these Lands which I was then assured would give entire satisfaction to [the settlers].” Understanding that New York’s quit-rent prices were perhaps out of reach for the average settler who had already bought Hampshire grants, Colden provided settlers with New York “Grants and [left] it to themselves to pay me such proportion of my fees as they could conveniently do…this was so agreeable [they] immediately proceeded to take the necessary steps, for obtaining the new Grants.” Colden blamed his replacement, Governor Moore, for the controversy’s continued existence because Moore “refused to pass any [grants] without his full Fees [being] paid. This gave great disgust to the people, and occasioned those applications which have since been made to the King on this subject.” The situation was still not resolved by the end of the 1760s, and the grants population had increased by the thousands by the time Colden was reassigned to the governorship in 1769.

By the early 1770s, hardy settlers were determined to both create a prosperous community and receive lands in the Green Mountains. The same wilderness that had struck fear in potential settlers only a decade before was now seen as full of potential. Economic opportunity was plentiful; recently annexed Quebec, full of French-Canadians and Natives, was, from an English point of view, an untapped trade market awaiting His Majesty’s subjects. North-flowing Lake Champlain provided easy access to the St. Lawrence waterway for those west of the mountains, and eastern residents had access to

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138 Documentary History of New York, 618.
the southern-flowing Connecticut River that led directly to Boston. Many envisioned the Champlain Valley’s destiny as a flourishing port providing lumber, assorted ashes, and furs to either the north or south, in return receiving finished luxuries from major cities. Protecting this territory became a life-or-death matter as the Grant controversy boiled over.

New York’s effort to establish a more fixed presence in the region coincided with the New Hampshire authorities stepping away. Although the jurisdictional dispute between New Hampshire and New York had been settled in 1764, settlers and speculators continued to purchase New Hampshire titles for mere “pennies an acre” throughout the remaining years of the 1760s. By the 1770s, the legal confusion caused by the grants led to violent conflict as New York authorities were confronted by radicalized settlers who were willing to use physical force to defend their property.

One example of how this confusion intensified the conflict was when in January 1770, New Hampshire governor John Wentworth wrote to New York governor Colden that as “Survey General of His Majesty’s Woods,” he reserved the right to administer grants distributed before 1764, when New York officially received the territory. Wentworth was specifically concerned in this letter with three family members—William Deane, William Deane Jr., and Willard Deane—who had all received New Hampshire...
titles before 1764. All three had now been forcibly removed from their property by New York authorities, in a move that Wentworth called unjust harassment and persecution. This event demonstrates how royal governors were confronted by newly radicalized Grants settlers who were willing to use violence to defend their property.

The story began in August 1769, when Benjamin Whiting received from both Richard Maurice, the New York judge of the Court of Vice Admiralty, and Thomas Ludlow, the Provost Marshall of New York, the “full power to execute” several writs against the Deanes for “destroying White Pine Timber within the County of Cumberland.” After detaining both William Deane Jr. and Willard Deane, Whiting was confronted on multiple occasions by interested neighbors who “desired to know which way [whiting] determined to Travell with the said Deanes to New York.” While Whiting and his prisoners rested for the night in Marlborough (Vermont region), he encountered “Riotous men from Brattleboro and Guilford who behaved in a Very hostile manner and swore they would have the prisoners or pull down the house, they Tarried all night and Dispersed the Next day.” Increasingly, residents of the Grants were unwilling to allow any intrusion on the preservation of their property. Similar social networks such as the one involved in intimidating Whiting mobilized groups of residents to protect each other from the increasing numbers of Yorkers and Yorker-surveyors arriving in the early 1770s.

140 Benjamin Whiting’s testimony can be found in Documentary History of New York, 626-628. A more detailed account of this event can be found in Moses Robinson, 40-42.
By 1770, many Grants settlers had spent an extended period of time without a formal hierarchical government structure (some at least a decade), and in response, they formed localized political units based on popular support, persuasion, and force, intended to defend their constituents’ livelihoods and property. An event that occurred in May 1770, one of the precipitating events for the infamous ejectment trials, displays how far Grants settlers were willing to go. Daniel Whipple, High Sheriff of Cumberland, had assembled a posse to re-capture “Joseph Wait and others who had escaped out of his Custody” by neighbors who had come to their defense.\textsuperscript{141} Whipple’s posse of approximately fifteen men was met by roughly forty “approaching in a Riotous manner…who were armed with Guns, Swords, Pistols, and Clubs.” Whipple “made Proclamation aloud in form of Law for them to Disperse,” but to no avail. John Grout, a local resident and member of the New-York posse testified that he was “was put in fear and Dread of his Life.” Residents who violently opposed New York authority equated their land with their life; opposing a threat to one’s own livelihood, as both Locke and Hobbes noted, was absolutely natural. It had been more than five years since New York had been granted the territory, and many were skeptical about whether New York had the concerns of actual settlers foremost. The decisions made by these residents was not to refute New York authority, but to replace it; authority in the region was no longer reserved for government officials, but belonged to the people themselves.

\textsuperscript{141} \textit{Documentary History of New York}, 638.
Affidavits from the ensuing ejectment trials in Albany display how a group such as the Green Mountain Boys was able to unify and flourish. The Green Mountain Boys required a solid constituency that sought their protection, and finding such a group was not difficult. Ebenezer Cole explained in his affidavit that since his arrival in 1764, there had been at least a five-fold increase of settlers.\textsuperscript{142} Most of these new settlers had purchased lands from original New Hampshire grantees, and their land was safe, since the governor of New York had been ordered not to molest any current inhabitants, nor grant any more land in the region.\textsuperscript{143} Although most migrations had occurred after the land was officially declared New York’s, settlers still possessed legal grants signed by a royal governor. Some of these purchasers initially acquired new legitimate titles from New York proprietors, but for whatever reason—perhaps the high price of New York titles or the prevention of the New York governor from signing—“they in general changed their minds, and declared the New York Proprietors dared not to serve them.” Once that decision had been made, “and from the common and public conversation…it was manifest...they had confederated to support each other by Force of Arms.”\textsuperscript{144} Observed by Ethan Allen, leader of the Green Mountain Boys, resistance to New York

\textsuperscript{142} \textit{Documentary History of New York}, 679. Ibid., John Munro agreed with Cole in determining the settlers had increased “five Fold,” 685. \\
\textsuperscript{143} Lord Shelburne commanded Governor Moore “that you make no new Grants of these Lands and that you do not molest any person...who can produce good and valid Deeds for such Grant under the Seal of the Province of New Hampshire,” \textit{Documentary History of New York}, 589. \\
\textsuperscript{144} \textit{Documentary History of New York}, 683.
authorities was absolutely necessary for the defense of all settlers on land held under New Hampshire titles.\footnote{Inventing Ethan Allen, 32-36. Muller examines the conflicting stories about the intentions of Ethan Allen after the ejectment trials. Ultimately, it appears that in order to provide time to mobilize a resistance, Ethan Allen led New York authorities to believe that Hampshire Grant settlers would cooperate.} The Green Mountain Boys had found their constituency.

The Green Mountain Boys also needed to work within a system their neighbors would consider legitimate, however. According to Shaftsbury Justice of the Peace John Munro, the Green Mountain Boys “regulated themselves by the Laws of New Hampshire, and the Charters.”\footnote{Documentary History of New York, 686.} Simon Stevens added “that by the Law of New Hampshire every Township chooses annually select men, and a variety of other public officers, and are authorized to hold Town meets.”\footnote{Documentary History of New York, 694.} Thus the Green Mountain Boys organized into traditional New England governmental structures, but by the authority of the people, and not of the state. With the colony of New Hampshire having released its hold on this territory, the Green Mountain Boys became the unofficial “select men” of Grant title holders by the early 1770s. As a functioning military and governmental entity, the Green Mountain Boys sought to replace New York authority. They justified their action with the will of the people they served, along with their right to the land they purchased.

A conversation reported by Judge Samuel Wells of Brattleboro suggests the extent to which the Green Mountain Boys were operating to replace New York’s authority. Wells called upon Nathan Stone, a leader of the Green Mountain Boys, to accompany him on a trip into town during May 1770. They discussed the increasing
presence of New York law agents attempting to seize Grant residents, and how the residents “opposed and threatened” the agents in response. Stone, presumably speaking on behalf of the Boys, declared that “the making [of Cumberland] County was a sham and not a Reality…that it was never intended that these Courts should Act in Trying Causes, that there was no Justice to be obtained in the County.”

Wells countered by attempting “to Convince the said Stone of the danger of opposing the Execution of the Laws”—that outspoken and violent opposition to the government damaged the prospect of a amicable relationship between the people and state, which hindered the potential more efficient (formal) avenues had for voicing duress. Perhaps the most threatening comment from Stone came towards the end of their conversation, when Stone stated that his opinion was not a recent resolution, but “had been fixed at least five or six months before, and that while he had life he would oppose the Sheriff, and that the people of [Windsor] and some other places would joine…to the last drop of their blood.” Not everyone agreed with Stone, of course; as the continued flow of petitions to the government of New York demonstrates, residents remained divided about New York’s authority in the early 1770s. New York authority still warranted respect as an appendage of Britain’s empire, but the power of both provincial governments, and the crown, was waning.

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148 Documentary History of New York, 641.
“That a Commonwealth, Without Sovereign Power, is But a Word, Without Substance”

The King’s sovereignty stood on two pillars in the grants region prior to the American Revolution. First was the New York provincial government. By 1772 the entire region was composed of New York counties (Gloucester was created in 1770 and Charlotte in 1772). The second power executing the King’s sovereignty was the Green Mountain Boys. Constant encouragement for the Green Mountain Boys came from those in favor of defending the Hampshire titles; one inhabitant, Simon Stevens, believed “that had it not been for those Encouragements all opposition to the Government of New York would long since have been at an End.”\(^{149}\) In the beginning, the Green Mountain Boys offered only an immediate defense against New York agents, but the group evolved in the early 1770s from a pseudo-military to a pseudo-governmental organization virtually replacing any provincial charter of governance. By the time of the American Revolution, it had become a generally accepted truth among Grants colonists that a sovereign’s fundamental existence stemmed only from its ability to bring the people out of nature. It was the people who decided whether or not a state was properly functioning, and subjects were now the final arbiter of governmental truth. Legitimacy was completely reliant on the consent of subjects.

\(^{149}\) Documentary History of New York, 695.
By the early 1770s, it had become evident that a significant portion of residents in the Green Mountains were not willing to give in to New York’s authority. Networks of agitators were able to organize rapid responses of support from neighbors and nearby residents who had similar politics. When John Munro wrote to James Duane in early November 1772, he complained that members of the Green Mountain Boys “are settling the land all over in full confidence that they will hold it forever…do you think our king
will pardon the...murderers?" Only a few weeks later Munro complained to New York Governor William Tyron, “what can a Justice do when the whole Country combines against him?” Munro had recently captured counterfeiters John Searles of Arlington and Comfort Carpenter of Shaftsbury, but as he reported, they escaped with ease. Furthermore, local inhabitants had “destroyed one of my Pot ash works,” and he concluded that even if he were to send constables out to apprehend individuals, “the constables will not be faithful for they are its my opinion less or more concerned [with the counterfeiting].”

Munro was not alone, however; there were still many settlers who desired a more proactive and accommodating approach from New York. A solution for settlers who remained faithful to the king’s orders of 1764 was to strengthen the relationship between their region and the government of New York. Back in 1767, Governor Moore had explained to Lord Shelburne that “[Cumberland County] was neither populous enough to require such a Privilege [of assembly members], and the expence of paying their Members which is constantly practised in this part of the world would have been burthensome to them so that they themselves for these reasons alone declined it.” But Cumberland County’s circumstances changed by December 1772, when 151 residents signed a petition to send representatives to the General Assembly—to “[establish] that firm and lasting connection which [the petitioners] are desirous should ever subsist

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150 John Munro to James Duane, 12 November 1772; Box 2-83, Allen Family Papers, Special Collections, University of Vermont Library.  
151 Documentary History of New York, 801.
between them and the Government to which it is their happiness to belong and will enable
the more readily to accomplish the good purposes of Government."152 In February 1773,
roughly 300 residents of Skenesborough, now within the limits of the newly established
Charlotte County, petitioned as well for a more solid connection with New York
government.153

Although by 1773, all residents in the Green Mountains legally lived within the
borders of one New York county or another, many possessed (and continued to purchase)
land grants signed under the New Hampshire seal. Inhabitants still waiting to legitimize
their land titles from Gloucester and Cumberland Counties provided the government of
New York with a clear description of their anxieties in February 1773:

That the inhabitants of [Gloucester and Cumberland] whose Titles remain
unconfirmed suffer the greatest Inconveniences on that Account. That they
cannot carry on their Improvements with spirit and vigour from the uncertainty
whether they may not be finally deprived of them and loose their Labour. That
they are not entitled to the Rights and Privileges of Freeholders from the Defects
of their present Charters, nor can they for the same Reason support any Action
for their Landed Property when it is injured or withheld from them. That while
these distressing Circumstances fall heavy on Individuals they at the same Time
obstruct the Growth and further Cultivation of these New Counties impede the
equal Administration of Justice.

The petition expressed both psychological and systematic setbacks to their situation.
Psychologically, they could not continue working in fear that all that they had worked
for could be taken away from them at any moment--either by a New York proprietor or
by a particularly aggressive neighbor. The inefficient court and justice system in their

152 Documentary History of New York, 815.
153 Documentary History of New York, 818.
respective counties made seeking justice impossible. While the Gloucester County Court was established by New York in March 1770, for example, Judge Taplin heard only eight cases in its first year of existence. In February, 1771, the officers were unable to conduct court in Kingsland due to “there Being No Road and Snow very Deep.” They “concluded we ware farr in the woods we Did not Expect to See any House” so court was adjourned.\textsuperscript{154} Without efficient execution of the judicial process, many would increasingly turn to the alternative method of violent, yet to many justifiable, opposition.

Authority in the Green Mountains was hotly contested. Many waited anxiously for the validation of their grants by New York, an event that often never came. Others took matters into their own hands. Individuals and families continued to purchase, settle, and cultivate land northward up to the 45\textsuperscript{th} Parallel, a territory virtually untouched by Europeans before the 1770s. The Grants region still faced many obstacles in the way of establishing a civil society, however, as the animosity between Great Britain and her colonies increased in the mid 1770s. While some looked towards New York—and thus the crown—as the source of legitimate sovereignty, others pursued the path of colonial rebellion, arguing against the legitimacy of New York and ultimately also of Great Britain’s government. (Some in the Grants argued against the legitimacy of New York and for the legitimacy of Great Britain, but that is another story.)

CHAPTER 3: “JUSTICE BETWEEN SOVEREIGNS”

As I showed in the first chapter, Thomas Hobbes and John Locke both demonstrated that the experiences of Man in nature would have a significant impact on the erection of a state. Hobbes and Locked also argued that people must sacrifice their will to the state in order for a state to function efficiently; without that sacrifice, the state’s laws would be mere suggestions. Inhabitants do not immediately transition from a state of nature to civil society once a state has been created. They relinquish their free will to the state as it proves efficient in bringing them out of nature thus increasing the state’s authority. This chapter will examine the transition of the Hampshire Grants from a state of nature into a civil society.

Two simultaneous processes occurred in Vermont between 1777 and 1791 that relate directly to the concept of sovereignty. The first was the process of the Vermont state forming and stabilizing in the midst of the American Revolution. During the struggles in the early 1770s, the Green Mountain Boys often presented themselves as defending the cause of the “common people” against “gentlemen, with all their pretensions.”\textsuperscript{155} When the time came for the leaders of the Hampshire Grants to design a state, an event many former leaders of the Boys participated in, it was essential that the people’s ultimate authority be systematically represented in the new constitution. Once the document was framed, the leaders became spokesmen for Vermont as they justified its existence to both Continental and British representatives. These Vermonters held firm

\textsuperscript{155} Bennington and the Green Mountain Boys, 96.
to the position that their new state was independent and autonomous on all accounts. As leaders worked to perfect their art of governance, the Grants residents were forced to make a decision: do they join Vermont?

The second process this chapter will discuss is the formation of a self-conscious group of people who considered themselves Vermonters. Although the birth of Vermont may be said to have occurred when the constitution was drafted in 1777, not all people inhabiting the Hampshire Grants were “Vermonters” at that time. Many people living on the east side of the Green Mountains—in what they considered to be Cumberland County, New York—continued to petition New York’s representatives in the Continental Congress, even after Vermont’s first General Assembly met in 1778. By 1785, however, this uncertainty had ended: Vermont’s territorial claims had become one with its geographic boundaries. By 1787, when talk of the United States constitution was in full swing, the people of the Grants region now considered themselves Vermonters.

The Birth of Vermont

The leaders of the movement to defend the Hampshire Grants from New York’s control were not erudite political theorists, they were opportunists—fairly creative and self-reflective, but still opportunists. By 1775 the Allen brothers had acquired nearly 65,000 acres of land in the northwest territory of the Grants.\textsuperscript{156} Selling and buying land continued in the region as residents purchased land—much of it from the Allens and their Onion River Land Company—throughout the previously unsettled (by Europeans) areas

\textsuperscript{156} Inventing Ethan Allen, 50.
of the north. Before the Revolution, the Green Mountain Boys were merely the vanguard of a grassroots movement concerned with the protection and security of frontier settlers. That all changed once the war broke out in 1775.

At that point, the magnitude of the Hampshire Grants controversy expanded exponentially. Only a few months after the Green Mountain Boys captured Fort Ticonderoga in May, 1775, their movement had become a concern for New York’s newly organized Committee of Correspondence. The Albany Committee of Safety reported in 1775 that inhabitants of the Grants were hesitant to sign “the general Association” under the authority of New York as part of the Continental Congress. In September, the Committee of Safety acknowledged there were “Doubts and Uneasiness” amongst Grants residents who were “apprehensive that they may…be disquieted in their Possessions and Claims” should they join the Association. The Committee promised that if the Grants residents joined New York, they would not be subjected to “any Controversey respecting their Claim or Title.” Grants residents were thus provided with their first opportunity to have their lands legitimated by New York free of charge. Still, skeptics in the Grants region--especially those residing in New York’s Charlotte County on the west side of the mountains--did not trust the Committee’s promise. Although some residents of the Green Mountains wanted to join the New York patriots in their struggle against Great Britain, many saw the struggle against Great Britain and New York as one and the same.

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158 Moses Robinson, 69.
In January of 1776, representatives from eighteen towns on the west side of the
grants met in Dorset to discuss the bargain offered to them by New York’s Committee.\textsuperscript{159} The January convention resolved to “represent the particular case of the inhabitants of
the N. Hampshire Grants to the honorable Continental Congress by Remonstrance and
petition.”\textsuperscript{160} In charge of drafting this petition were James Breckenridge, Heman Allen,
Jonas Fay, William Marsh, and Thomas Rowley. All of these men were involved with
the Green Mountain Boys movement, and James Breckenridge, the only man from this
list not in the formal ranks of the Boys, had been evicted from his land by New York
officials in 1770.\textsuperscript{161} The “Remonstrance” certainly represented a specific demographic,
and was submitted to the Continental Congress by Heman Allen in May. While the
residents waited for Allen response, in June, 1776, a “warrant” was distributed to “the
several Inhabitants of the N. Hampshire Grants” asking for representatives to come to
Dorset in the following month “to receive the report of Capt. Heman Allen,” and consider
the status of the Grants region in the Continental Congress.\textsuperscript{162} Allen had received an
unfavorable response from the Continental Congress, and returned home with the news
just before the July convention.\textsuperscript{163}

\textsuperscript{159} Melo states this was a meeting initially intended to be composed of “committees of safety on
the west side of the Green Mountains,” but it would require a thorough analysis of those present
to verify the official title of each representative. See Moses Robinson, 69.
\textsuperscript{160} Fred Howland, ed., \textit{Vermont Legislative Directory}, (Montpelier: Vermont Watchman, 1898),
87.
\textsuperscript{161} Moses Robinson, 44.
\textsuperscript{162} Legislative Directory, 88.
\textsuperscript{163} Moses Robinson, 70.
The July convention to which Allen presented this report consisted of new representatives from west-side towns such as Cornwall, Jericho, and Monkton, but also included representatives from Townshend, the first town that was considered “east side;” all in all, forty-eight members representing thirty-two towns met to discuss the fate of the Hampshire Grants.

It was this convention, in July of 1776, that initiated the process of transforming the resistance movement against New York into an American state. The first duty of the July convention was to read the petition submitted to the Continental Congress. The “Remonstrance” Allen presented did not waste much time on Britain’s “efforts to bring the inhabitants…of America, into base and servile subjection to Arbitrary Power.” Rather, it brought attention to the “peculiar situation” which the petitioners “have for a series of years been exercised, and are still struggling under.”

As the petition stated:

[We] are entirely willing to do all in our Power in the General Cause, under the Continental Congress[…] but are not willing to put ourselves under the honorable provincial Congress of New York in such manner as might in future be detrimental to our private property.

The petitioners emphasized that they wished to “engage in the Glorious Cause, without fear of giving our opponents [New York] any advantage in the said Land dispute.” The petition concluded by stating that their “Continental service” would be “as inhabitants of said New Hampshire Grants, and not as inhabitants of the province of New York.”

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164 The Remonstrance is found in *Legislative Directory*, 91-94.
The July convention marked an official separation of the Grants residents into a distinct community. The Remonstrance from May had only stated the Grants position in reference to New York, without systematically replacing its authority. In July, they initiated the systematic transition from New York to Grants control: the convention resolved unanimously that “any person or persons, inhabitants of the New Hampshire Grants” who chose to “subscribe and return an Association to any Committee or Committees of Safety for either of the Counties in the province of N. York. or to the provincial Congress thereof,” would be considered “enemies to the Common Cause of the N. Hampshire Grants.”

Although the previous chapter demonstrates that Grants residents had a variety of responses to New York, the July convention was the first effort to establish a “Common Cause” for all residents in the distinct territory.

In late 1776 and early 1777, delegates from the territory met to legitimate their separatist agenda. In a meeting in September 1776, fifty-six delegates represented thirty-six towns “on the east and west side of the range of Green Mountains.” The minutes of the September convention open with a statement of the official cause for the meeting: although “for a series of years” the main topic of concern had been the “disingenuous conduct of the former Colony (now the State of) New York,” they were no longer interested in mending past grievances. At this convention, they agreed to form the Hampshire Grants “into a separate and distinct” state. At the same time, all members, “being legally delegated and authorized to transact the public and political affairs of the

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165 Legislative Directory, 96.
166 Legislative Directory, 98-100.
aforesaid District of Lands,” also agreed they would only conduct business “that shall not be repugnant to the resolves of the honorable Continental Congress.” A meeting was called for October, at Westminster Court House, a convention that would (the representatives hoped) include ample representation from the New York-leaning east-side towns. After a poor showing at that October convention (missing notables like Martin Chittenden and key representatives from Windsor and Woodstock), the group adjourned until January of 1777. The group met in Westminster in January, but this time included representatives of sixteen towns167 from both the east and west sides of the Green Mountains. On January 16, the convention voted “that the district of land commonly called and known by the name of New Hampshire Grants, be a new and separate state; and for the future conduct themselves as such.” The convention set up a committee composed of Nathan Clark, Ebenezer Hoisington, John Burnham, Jacob Burton, and Thomas Chittenden to draft a formal “declaration, for a new and separate state.”168

The purpose of the declaration was to demonstrate “the right of the inhabitants” to establish a separate state. By establishing two natural rights, the Grants declaration made the case that it was against human nature for the residents to remain under New York. The stated rights were a negative description of what Hobbes and Locke believed were the purposes of government. First, the declaration asserted that “whenever

167 Pomfret, Barnard, and Royalton were represented “By a letter from said town voting for a new state.” Legislative Directory, 101-104.
168 Legislative directory 100-104.
protection is withheld, no allegiance is due, or can of right be demanded.”\textsuperscript{169} As Hobbes wrote: “The obligation of subjects to the sovereign, is understood to last as long, and no longer, than the power lasteth, by which he is able to protect them.”\textsuperscript{170} The second resolution in the declaration echoed Locke’s belief in the government’s essential duty to protect one’s property:

That whenever the lives and properties of a part of a community have been manifestly aimed at by either the legislative or executive authority of such community, necessity requires a separation.

Here, the authors imitated Locke’s language in \textit{Two Treatises}: “Hence it is a mistake to think, that the \textit{supreme or legislative power} of any common-wealth, can do what it will, and dispose of the estates of the subject[.].”\textsuperscript{171} As a third argument, the Vermont declaration asserted that their decision to erect a state was a response to Congress’s May 1776, recommendation that “the respective assemblies and conventions of the United Colonies, where no government, sufficient to the exigencies of their affairs has been, heretofore, established, to adopt such government as shall[...] best conduce to the happiness and safety of their constituents in particular, and of Americans in general.” In conclusion, Vermonters believed “that a just right exists in this people to adopt measures for their security,” which applied not only against the government of Great Britain, “but also against that of New York.”

\textsuperscript{169} \textit{Legislative Directory}, 102.
\textsuperscript{170} \textit{Leviathan}, 147.
\textsuperscript{171} \textit{Two Treatises}, 73.
With this declaration, the Vermont state was created, but not yet the system of governance. At Windsor on June 4, 1777, seventy-two delegates representing twenty-two west-side towns and twenty-six east-side towns met to discuss the government of the Grants—an overwhelming representation compared to the twenty-two men who had met in January. At this convention, representatives named their state, which “shall hereafter be called and known by the name of Vermont.” Since the declaration of separation in January, the convention declared, “no government sufficient to the exigencies of our affairs has been hitherto established.” It was therefore the “opinion of the representatives of the people of [Vermont]” to “make and publish the recommendation for the express purpose of taking up government.” The following month, in July, the first constitution of Vermont was drafted at a convention assembled in Windsor. Thomas Chittenden was encouraging towns early the following year to submit their ratifications; the first Vermont General Assembly was to meet in March, 1778.

The Constitution of 1777

It is my contention that Vermont ultimately survived the Revolution as an independent state because the 1777 Constitution provided both the people, and the state, an immense amount of power. This was done through a system of governance that allowed the positions of the executive branch—“A Governor, Lieutenant-Governor, and twelve persons”—to maintain tremendous power over the day-to-day operations of

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172 Legislative Directory 107-110; Vermont Becomes a State, 14.
governance, while simultaneously providing the people with the ultimate authority to decide who held these positions. The people’s constitutional power to vote was their expression of ultimate authority, and as the historian J.R Pole noted, by the Revolution it was believed “a constitution ought to bear some sort of direct authorization that would place it beyond the power of government to change.” The 1777 Constitution provided the executive with enough power to make important decisions immediately, and without check; but Vermont’s founders believed the true power was ultimately in the hands of the people, and provided them with frequent and free elections to those powerful positions.

For Vermont framers, the most important part of the process of designing a people-oriented government was to identify the rights of the state’s inhabitants, and although the delineation of these natural rights was somewhat abstract, they were at least deeply rooted in the experience of the Grants controversy. (New York’s 1776 constitution, in contrast, contained no Bill of Rights.) “Men were born equally free and independent,” the framers wrote. Drawing on the idea of Man’s unlimited free will, or unlimited right, in nature, there were “certain natural, [and] inherent[… rights] that no state could act against.” Vermonters thus agreed to have the original and comprehensive

174 Chapter II, Section XVII; “ever member of the Council shall be a Justice of the Peace of the Peace for the whole State, by virtue of his office.” John N. Shaeffer, “A Comparison of the First Constitutions of Vermont and Pennsylvania,” in In A State of Nature. Shaeffer states that “the institutional structure created by the constitution…served to delay the emergence of a faction to rival the entrenched oligarchy.” 62.
175 Inventing the People, 257.
right replaced with just a few “unalienable” ones. The constitution defined these rights as “the enjoying and defending of life and liberty; acquiring, possessing, and protecting property, and pursuing and obtaining happiness and safety.” They added the right to acquire, possess, and protect one’s property to the Declaration of Independence’s “life, liberty and the pursuit of happiness”—after all, it was the protection of property acquired and possessed that had caused Grants inhabitants to oppose New York authority in the first place. These were rights the 1777 Constitution provided all “inhabitants of the state of Vermont.”

To some inhabitants, however, more rights were granted. The “freemen” of Vermont received systematic inclusion on behalf of the sovereign people in the process of governance. Any male at least 21 years old, who had lived in Vermont for a minimum of one year before elections, of “quiet and peaceable behavior,” was eligible to vote in Vermont’s annual elections. Before actually participating in the elections, however, those eligible were required to take an oath swearing their allegiance to the duty of voting—“as established by the constitution.” Voters consented to the system of governance by taking the oath, and then actively participated in their role. Hobbes discussed oaths in his chapter “On the Liberty of Subjects.” By consenting to the

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178 “Constitution of Vermont,” Chapter II, Section VI.

179 The freeman’s oath requires a voter to place the best interests of the Vermont state above the “fear or favor of any man.” Such a requirement may appear to be at odds with an individual’s natural right to possess, acquire, and protect property, since the constitution seems to require the “freemen of Vermont” to place the Vermont state before the “favor of” themselves.
sovereign state, “I authorize, or take upon me, all his actions.” Locke went a bit deeper in describing an individual’s ability to authorize the state’s power. It was first necessary to establish the “capacity” for an individual to know the laws of their land. The individual is no longer under his guardian’s protection, “the father and son are equally free…equally subjects of the same law together.” The requisites set for one to take the oath in Vermont (age of 21, etc.) established what the state deemed was the standard of a “freeman.” Once the freemen had voted, however, the elected representatives assumed every bit of the people’s sovereign power.

The constitution gave the executive control over nearly all aspects of authority. After voting, the people theoretically retained their “undubitable, unalienable and indefeasible right, to reform, alter or abolish government,” but doing so now ran the risk of being labelled treason. Although, as Locke would have approved, the “supreme legislative power” was given to the legislature, the supreme executive power—including the right to correct the final draft of any future legislation—was reserved for the “Governor and Council.” Just to name a few additional powers, the executive had the rights to “supply every vacancy in any office” on the occasion of “death, resignation, removal or disqualification,” to “correspond with other States,” and to “lay embargoes.”

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180 *Leviathan*, 144.
181 *Two Treatises*, 235-37.
182 “Constitution of Vermont,” Chapter I, Section VI.
183 Chapter II, Section XIV reads: “To the end that laws, before they are enacted, may be more maturely considered, and the inconveniency of hasty determination as much as possible prevented, all bills of public nature, shall be first laid before the Governor and Council, for their perusal and proposals of amendment, and shall be printed for the consideration of the people, before they are read in General Assembly, for the last time of debate and amendment.”
The executive’s responsibility, in other words, was one big elastic clause established so that paternalistic “spokesmen” could make decisions they viewed as necessary and proper on behalf of every Vermonter. All final decisions, including those that concerned legislation, were made by these fourteen individuals annually elected.

Within its historical context, the voting power each “freeman” received was immense and unusually progressive. The Vermont definition of a freeman, contemporarily speaking, reserved a profound acknowledgement of the voter’s ability to reason. Compared to the Pennsylvania constitution, which comes closest to the democratic egalitarianism of Vermont’s, the voters of Vermont had considerably more power.\(^\text{185}\) In Vermont, voters received fourteen distinct opportunities each year to vote for positions that possessed an immense amount of decision-making power; Pennsylvanians only elected three or four representatives (depending on their district) every two or three years.\(^\text{186}\) The system was traditional in the sense that government officials often possessed a significant amount of landed interest in the future success of the state, but was progressive in that once a year those individuals willingly accepted an opportunity for the people to strip them of their power.\(^\text{187}\)

\(^\text{185}\) Although the Vermont constitution is (almost comically) plagiarized from the Pennsylvania Constitution, it does differ in many important ways. These differences suggest that the drafters only kept pieces they agreed with completely. See Michael Sherman, Gene Sessions, and P. Jeffrey Potash, Freedom and Unity: A History of Vermont, (Montpelier: Vermont Historical Society, 2004), 103-7, for a classic comparison of the two documents. In addition, one cannot overlook a similarly impressive examination by John N. Shaeffer in In a State of Nature, 54-62.

\(^\text{186}\) Shaeffer acknowledges the discrepancy between the egalitarian rhetoric and the concentration of power in the executive, but does not question the Constitution’s overall egalitarianism. In a State of Nature, 56.

\(^\text{187}\) On the ideology of representatives having a stake in political society, see Political Representation, 196.
“Justice Between Sovereigns”: The Haldimand Negotiations

The Haldimand Negotiations provide a case study to illuminate the relationship between the executive and the people. Geo-political interests split the state during this period, which created what historian Peter Onuf has described as “a highly interested and calculated species of “loyalism.””\textsuperscript{188} By the early 1780s, west-side residents, a handful of whom had purchased lands under New Hampshire titles from the Allens, were increasingly involved with Canadian (and thus British) commerce. This group took the opportunity to acquire cheap land in the north, extending Vermont’s actual settlement boundaries to its proclaimed political ones at the 45\textsuperscript{th} Parallel. The promise of establishing a foreign port on the lake in the north, similar to those in New York and Boston, could not be realized without friendly relations with Quebec, whose location in the St. Lawrence trade system extended from Lake Superior through the Great Lakes and into the St. Lawrence River, ultimately leading to Atlantic ports in Canada. Not all Vermonters benefitted from the proposed development of the north, however. While the center of the struggle for Vermont had always been located roughly in the vicinity of the Allens in the south- and mid-western part of the state, the Vermont state inherited territory on both sides of the Green Mountains after the union in 1777. Along the Connecticut River, economic interests were invested in the port of Boston.

The Haldimand negotiations themselves were a series of communications between Frederick Haldimand, governor of the province of Quebec, and Vermont

executive members Martin Chittenden (Williston), Jonas Fay (Bennington), and Ira Allen (Colchester), with the assistance of their hired messenger, Ethan Allen. As members of the executive, the elected officials possessed the power to correspond with other states as representatives of the entire Vermont state. The language employed by Vermont’s leaders in general during the time period when the negotiations were underway frequently emphasized the independent status of the state. They reminded representatives of both Great Britain and the United States that they had no political ties to either. In the Continental Congress, Vermont’s right to exist was continually challenged by the still annoyed New York officials. Britain, on the other hand, was willing to offer Vermont the status of a sovereign colony in her American empire, should Vermont support British war efforts. Given this context, the Vermont executive successfully fulfilled its duty to Vermonters by protecting the existence of Vermont through negotiations with the British. Just as Descartes noted to Elizabeth in 1646 that there existed a distinct code of ethics reserved for states and their leaders, Vermont executives acted on a distinct “justice between Sovereigns” during the Haldimand negotiations.

Although he was not a member of the Vermont executive, Ethan Allen was extra-legally involved with the Haldimand negotiations as a messenger and assigned representative. In his correspondence with both the Continental and British states, he was

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190 Chapter II, Section XVIII: “[The Executive] are to correspond with other States, and transact business with officers of government, civil and military; and to prepare such business as may appear necessary [sic] to lay before the General Assembly.”
191 “State Making in Revolutionary America,” 798-799.
192 Ibid., 804-805.
careful to uphold Vermont’s state sovereignty. He reminded Major Christopher Carleton, who had led a force of natives and British regulars “on a mission of destruction” in the Champlain Valley in 1778, that any deal between the Vermont executive and Frederick Haldimand “respects Vermont, exclusive of any Connections whatever with the United States, with whom this state are wholly unconnected, and who are, and for a long Time have been in a Spirited Controversy with the State of New York.” Allen’s ability to speak on behalf of the Vermont state was extra-legal, but his language represents the contemporary understanding of independence that radiated from Vermont.

The negotiations intensified in the fall of 1780, when Ethan Allen was approached by Beverley Robinson, a representative of the British state who had been confused, but delighted, when the Vermont militia, led by General Allen, allowed a British convoy to march south from Canada without interference. Speaking on behalf of the British state, Beverley supposed Vermont was joining the British cause after all:

I have never had an answer from you; but the frequent Accounts we have had for 3 Months past from your part of the Country Confirms me in the Opinion I had of yr inclination to join the Kings Cause and to assist in Restoring America to her former peacible & happy Constitution.

Ethan Allen received this letter from Robinson in February 1781. In the text above, Robinson refers to a letter he made sure was hand delivered in July 1780, to which there had been no response. The lack of response was because Allen had “immediately

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194 Revolutionary Outlaws, 196-7.
brought” the letter to a “secret discussion” with the Vermont executive. The executive, in turn, kept the letter secret from both the Continental Congress and the people of Vermont for nearly eight months.

During those eight months, the Vermont executive deliberated about whether they might best protect Vermont’s independence by allying with Britain or with the colonies. In the letter from Robinson, who spoke for the British authorities, Allen was assured that if Vermont were to assist “in unit[ing] America again to Great Britain, & restoring that happy Constitution we have So wantonly & unadvisedly Destroyed,” the state would be recognized as an independent province. Referring to himself as an “American,” Robinson stressed the detrimental effects of the war on “peace & that mild & good government” guaranteed by British rule. Robinson intended their correspondence to remain strictly private, and asked Allen to “Send a friend of yr own here with proposals to the General [Haldimand].” There is no evidence that Allen ever responded to Robinson’s questions about Vermont’s allegiance, but when Allen submitted these letters to the Continental Congress almost a year later in March, 1781, he did remind Samuel Huntington, a representative from Connecticut, that Vermont had “an Indubitable Right to agree on terms of Cessation of Hostilities with Great Briton Provided the United States Persist in Rejecting her Application for a Union with them.” States, as an “artificiall Man,” according to Hobbes, possessed the freedom to act on their own will.

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197 See note 58.
Throughout the negotiations members of the executive did not forget it was the people who possessed ultimate authority in the Vermont state. Ira Allen made this point clear to Frederick Haldimand in July, 1781, after their correspondence had “become the topick of Discourse Through the United States.”\(^{198}\) He explained that although Vermont planned to send representatives to the Continental Congress, it seemed apparent that Congress intended “Nothing more than to Keep this State in Suspense to the End of the war and then Divide her territory amongst the Claiming States (which is Doubtless the intention of many).” Allen supposed that once “another denial from Congress” was made public, the “popular bodies” in Vermont would turn against Congress, guaranteeing the re-election of the current pro-Canadian executive. This would “make a Revolution So long wished for by many.”\(^{200}\) The “Revolution” Allen referred to was not political or military, but social. If the freemen of Vermont knew that Congress had rejected a request for statehood, Allen believed they would turn against the prospects of union with the new United States. The strategy pursued during the negotiations rested on the belief that neither New York nor the Continental Congress would go on the offensive against a territory Britain recognized as a legitimate ally. The policy, ideally, would permit

\(^{198}\) Ira Allen to Frederick Haldimand 7/10/1781, in *Ethan Allen and His Kin*, vol. 1, 118-119.  
\(^{200}\) Ira Allen’s title during the Negotiations was Deputy Governor of Vermont, as well as Surveyor General. The revisions to the Constitution in 1786 did away with an individual’s ability to hold two public offices at once.
Vermont to “remain a Reasonable Time in a State of Nutrality,” allowing the development of civil society.\(^{201}\)

The Haldimand negotiations were deemed a necessity for the Vermont state’s survival. In early 1782, most likely in anticipation of the Haldimand Negotiations going public, Jonas Fay, Ira Allen, and Abel Curtis asked *The Freeman’s Journal* of Philadelphia to publish a copy of a remonstrance submitted to the Continental Congress back in 1780. They desired newspaper readers as far away as Philadelphia to learn that the course Congress was pursuing in regard to Vermont deviated from “every principle of the law of nature or nations.”\(^{202}\) Vermont, according to the remonstrance, deserved a fair hearing for their case:

> For if the dispute is between the states claiming on the one part, and the state of Vermont on the other, whether the latter be a state de jure, or an independent jurisdiction de facto, they ought to be so considered in the course of the dispute, till the power interposing have determined whether the latter be an independent jurisdiction de jure.\(^{203}\)

The Vermont state was not willing to give up the “men and money we have expended,” and they were not willing to be considered “in the specious pretext of rioters tortuously assuming government.” The representatives of Vermont felt “they [could] no longer sit as idle spectators without betraying the trust reposed in them.” If they willingly accepted Congress’ decision to deny Vermont’s existence, Vermont would essentially be “denying

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\(^{201}\) Ira Allen to Frederick Haldimand 7/10/1781. I believe the words “reasonable time” had no correlation to a planned date when Vermont would look to revoke its independent status, but rather it was a colloquialism equivalent to “until further notice.”

\(^{202}\) *The Freeman’s Journal*, 3/6/1782, 1.

\(^{203}\) For more on Vermont’s “de facto” and “de jure” jurisdiction, see *Vermont Becomes a State*, ix.
itself”—something according to Descartes no human could do, and according to Locke and Hobbes no state entrusted with the preservation of a people could do.

Perhaps the most significant aspect of the conclusion to the Haldimand negotiations was that Vermonters remained overwhelmingly supportive of the concept of a Vermont state. New York’s continuous refusal to effectively answer local grievances during the early years of the Vermont state—including a rather solemn-toned proclamation from its government in 1781 that will be discussed below—coincided with
the political fervor in Vermont produced when the Haldimand negotiations became public knowledge. Rather than cause Vermonters to turn against the Vermont system, the Haldimand negotiations caused an increasing amount of involvement in Vermont governance. This was catalyzed partly by a second wave of east-siders formerly loyal to New York.

The Conclusion of the Grants Controversy

In order to be a fully independent state, it was vital that Vermont remove all ties between its inhabitants and the government of New York. There were still two different kinds of people living in the state after the state conventions of 1777: those who supported the new Vermont state, and those who resided in the territory claimed by Vermont, yet remaining loyal to New York. Even after the state conventions of 1777 had gone far toward creating an independent state, New York still attempted to hold on to the loyalties of residents in the Hampshire Grants. Inhabitants did what they considered necessary for survival as they granted either New York or Vermont their individual sovereignty.

The Resolutions of the Council of Safety of New York show that New York officers first became aware “that many people in the Eastern district of this State are endeavoring to erect the same into a separate & independent State” in July, 1777.205

204 The resulting political fervor in the Vermont state is discussed in Robinson, 178.
205 Documentary. History of New York, Vol. 4, 943. New York’s awareness was most likely caused by Heman Allen’s presentation of the Remonstrance to the Continental Congress in May.
Exactly how many people were “endeavoring” to do that is difficult to say, but one can assume from the sheer panic expressed by both the New York government and its loyal inhabitants in the Grants that it was an overwhelming number. The severity of the situation was such that New York governor George Clinton issued a radical declaration in early 1778. Governor Clinton was fairly objective in his analysis of the origins of the current situation in the Grants. The “contest,” he wrote, had been the fault of the provincial governments from both New Hampshire and New York: New York’s higher quit-rent was unwelcome to those with “original grants under New-Hampshire or Massachusetts Bay,” and to defend their property, residents had resorted to violence. In response to the growing “disaffection,” Clinton wrote, “the legislature of the late Colony of New York,” on March 9, 1774, had passed “An Act for preventing tumultuous and riotous assemblies.” Now, Clinton offered “an absolute and unconditional discharge, and remission of all prosecutions, penalties and forfeitures” initiated under the 1774 Act. In return, he asked that inhabitants accept the following measures:

1st. That all persons actually possessing and improving lands…under New Hampshire or Massachusetts-Bay…be confirmed.

2nd. All persons actually possessing and improving lands, not granted by either of the three governments, shall be confirmed…together with such additional quantity of vacant land, lying contiguous to each respective possession, as may be necessary to form the same into a convenient farm[.]

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The following six articles involved taxes and rents still to be paid upon a grantee’s confirmation of their land, however. New York was still not willing to freely give up a territory that would have been an advantageous boost to their economy during the war. Clinton concluded his declaration by directing residents to revoke any allegiance they have offered to Vermont, and instead direct their allegiance to New York, which by “law and of right they owe to this state.” Ultimately Clinton’s offer was the same one Grants residents had heard for years: their land deeds would be confirmed, but they had to pay.

The response to the governor’s declaration was not marked with the “obedience and allegiance” the governor had hoped for. Residents from Durham, in the southern tip of Charlotte County, New York, for example, immediately petitioned the government respecting the complexity of their situation. They stated that in the past, their New York titles had been deemed worthless by separatists, and in consequence they were “compelled to purchase the New Hampshire title to their Lands under Penalty of being turned out of their possessions by a Mob.” Some of the petitioners had been banished by “Col Ethan Allen,” and then prevented from returning to their lands when “Mr. Thomas Chittenden (the Governor of the said pretended State)” labeled them “old Yorker[s].” The patience of these residents loyal to New York was disintegrating:

Your Petitioners therefore most humbly pray that this honorable House will take into their serious Consideration the unfortunate & distressed Situation of your Petitioners and others who continue loyal to the State of New York, & take measures for effectually defending the Persons and Property of your subjects.

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208 Ibid., 957.
This petition was then followed by another of similar content from Cumberland County in May of 1779. The increased anxiety in the documents appears to be due to the fact that upon his return from British capture, Ethan Allen was appointed judge of Bennington County in 1778, and immediately got to work on a (perhaps personal) vendetta against loyalist landowners. Seventy parcels of confiscated land were sold in Vermont in less than a year between March 1778 and February 1779.  

An answer to the Yorker petitions was provided in June from the Continental Congress. In fear that inhabitants would not serve in frontier militias under the new Vermont state, Congress requested that individuals take their “Turn of Militia Duty for the Defence of the frontiers,” even if it was demanded by the “Authority of the State of Vermont.” These residents loyal to New York were then assured “by interposition of Congress a happy Accommodation of all Differences in a short Time.” In an effort to ease the tensions, Congress reported to the petitioners that they had received an assurance from “Governor Chittenden that [Yorkers] shall not be molested.” Congress’s final request was for inhabitants to behave “quietly and orderly while the measures for

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209 For a discussion of Allen’s return and land confiscation, see Inventing Ethan Allen, 235, note 34; Freedom and Unity, 110; Revolutionary Outlaws, 167. It is important to note that Vermont by 1779 included towns from the former Cumberland County. The confiscation of “the Property of the loyal Subjects of [New York]” coincides almost exactly with the moment when the state, led by Ethan Allen, obeyed Congress’s orders to confiscate and then sell the lands of British loyalists. An economic and territorial boost for the Vermont state no doubt, but it seems reasonable to assume that the language of “confiscating loyalist property” produced wider support for the Vermont state’s actions against those loyal to New York. For an examination of the land confiscated during this period see Mary Greene Nye, “Loyalists and Their Property,” in Proceedings of the Vermont Historical Society, Vol. X, No. 1, pg. 36-44 (Montpelier: Vermont Historical Society, 1942), 40.

Pacification are on foot.” An authority asking for patience was something inhabitants were probably all too acquainted with.

In addition to obtaining the promise from Chittenden, Congress assigned John Atlee and John Witherspoon to look into the Grants controversy. Atlee and Witherspoon submitted eleven questions to Thomas Chittenden, titled “Queries of the Committee of Congress,” in an effort to better understand the perspective of the Vermont state and its supporters. The general theme of Chittenden’s response was that Vermon ters had acted with a sincere concern that New York could not effectively provide for the residents. Chittenden stated that Vermon ters were as “unwilling to be under the Jurisdiction of New York as we can conceive America would be to revert back under the Power of Great Britain.” “Experience” had taught Vermon ters that “it would greatly impede the settlement of this Country to have it affixed to New York.” The response Chittenden provided on behalf of Vermont was clear: Vermont was to be independent no matter what.

In the early 1780s, petitions from Vermont flooded the New York government in a way that resembled the period of the late 1760s and early 1770s. No longer were petitions submitted under the title of counties: they came at an accelerated rate from the

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211 “Gov. Chittenden’s Promise” can be found in Documentary History of New York, Vol. 4, 978: “I would recommend while [inhabitants] continue to do their proportion in the present War, the suspending of all prosecutions in the Law against those who acknowledge themselves Subjects of the State of New York (except Capitol Offences) until Congress make a final Determination in the Matter.”

212 Chittenden’s response may be found in Documentary History of New York, Vol. 4, 979-81.
individual towns—a trend that deserves further analysis. A petition from Danville, New York, dated March 1782, claimed that there were “Numbers of familys now among us who have scarce one Bushel of Grain.”

This distressed situation the petitioners blamed on a political cause: “the Insenuation of Artfull and Designing men [that] your Petitioners were Seduced to Swerve…allegiance” away from New York. The swerve of allegiance was necessary to keep their livelihoods. As a petition from White Creek, New York, stated, they had “swerved” their allegiance but remained “allways in rediness to oppose our Enemy”—the Vermont state. These loyal towns were only doing as Governor Clinton wished: they conducted themselves “with Prudence towards the Revolters,” and only submitted “where there [was] no alternative left between submission & invitable Ruin.”

Governor Clinton addressed the inhabitants of Cumberland County in 1782 for the last time. With a regretful tone, he asked his subjects to “persevere in the peaceable Line of Conduct.” The towns gave up submitting their grievances to the New York government. By 1781, as Vermont divided two into five counties, a newly established court system was able to serve the people who had been deprived of such efficient civil services under New York. The Vermont legal system gained significant support from individuals who were actively using the institution. In the single year of 1781,
Bennington and Windham Counties alone saw 176 cases, and over one-tenth of male adults were seen in court the following year when 250 cases were brought before the same counties.\textsuperscript{218}

After Clinton’s address in 1782, the final document recorded in the “Papers Relating to the Difficulties Between New York and New Hampshire” was from “Vermont Sufferers” who sought retribution in 1786. Their appeal summarized the lives of Grants inhabitants who were loyal to the New York government after the Vermont state was established. They had “sacrificed their all, suffered such exquisite Tortures, Banishments, Imprisonments in loathsome Gaols, half starved, and threatened with being put to Ignominious Deaths[.]”\textsuperscript{219} It is beyond the extent of this thesis to verify whether or not all of the 1786 petitioners were properly compensated when the Vermont state completed payment of its debt to New York in 1799.\textsuperscript{220}

\textbf{The Council of Censors}

In October of 1783, only a month after the Revolutionary War came to an official end, the Vermont legislature moved forward with plans “to begin the settlement of new lands, that have been prevented by the late war between Great-Britain and America.”\textsuperscript{221}

\begin{footnotes}
\item[219] \textit{Documentary History of New York}, 4, 1016.
\end{footnotes}
For those still not ready to take the oath of loyalty to Vermont, a taste of Yorkers’ old medicine was practiced in October when Vermont declared that if any inhabitant remained in opposition to Vermont authority, like those “of Windham, to the greater disturbance of the peace, [that] have banded together,” a precedent was now in full effect to station “able” and “Effective men” to “assist the officers of government” in executing Vermont law. That there is an apparent disappearance of Yorkers by the end of the war suggests that these inhabitants either kept quiet in fear of punishment by the state, were forcefully evicted, or accepted Vermont and focused their political energy towards its government. By 1785, when the Council of Censors was up for election, the Vermont state was functioning effectively and it appears that inhabitants were unable to ignore this fact.

The Council of Censors is described in the final article of the 1777 Constitution. So “the freedom of this Commonwealth may be preserved inviolate, forever,” the article mandated that in the year 1785, and every seven years after, “thirteen persons, who shall be chosen in the same manner the council is chosen—except that they shall not be out of the Council or General Assembly,” were to convene and discuss three topics pertaining to the functioning of the Vermont state: to assess the conduct of the executive and legislative branches; to investigate the civil administration of justice, e.g., to ascertain that “taxes have been justly laid and collected”; and to make sure the laws have been “duly executed.”222 In addition to these duties, the Council of Censors had the ability to

222 1777 Constitution, Section XLIV.
“meet within two years after their sitting” and decide whether or not the constitution “has been preserved inviolate in every part.”

The *Vermont Gazette* published an act of legislation in late 1784 requiring constables to announce to the towns at least “twelve days before the last Wednesday in March next” the election of the Censors. It was further enacted by the General Assembly that the elected Censors were to meet in Norwich, Vermont, an east-side town along the Connecticut River. By the end of 1785, the Censors had already ordered the publication and distribution of three hundred copies of a set of proposed constitutional revisions. These would be brought to the legislature for revision and adoption. Two newspapers were now being published in the state, a luxury not available in 1777, so the proposed revisions to the constitution could be widely distributed. In January 1786, the revisions were published in *The Vermont Gazette*. The Censors then ordered that “one thousand Copies of the Draft…be printed for the Perusal and consideration of the

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224 *Vermont Gazette*, 12/20/1784.

225 In June, Benjamin Carpenter, Jonathan Hunt, and Micah Townshend were resolved to “examine the constitution of this State,” *Council of Censors*, 23. Only a few years earlier, in 1780, Micah Townshend had submitted a petition “on behalf of…the Inhabitants of [Cumberland County]” concerning the “pretended State of Vermont.” *Documentary History of New York*, 1003. Benjamin Carpenter’s name is listed as a petitioner to the New York government in a petition from 2/5/1773, see *Ibid.*, 824.

226 *Council of Censors*, 34.

227 *Vermont Gazette*, 1/16/1786, 2.
People;” copies were available at the printing offices of *The Vermont Journal* by March.228

The records and revisions of the Council of Censors demonstrate a primary concern with the apparent arbitrariness of the Vermont state under the 1777 constitution. Of the fifteen resolutions made by the Council, nine were involved with the “severity” of punishments, or the imbalance of state powers.229 One legislative act of February 1779, entitled “An act to prevent riots, disorders, and contempt of authority within this State,” was deemed by the Censors to be “unjust and impolitic,” as well as “prejudicial to the peace of society.”230 The Censors also proposed to restrict the power of the freemen’s vote. No longer would elections to the executive council be made at large, but “chosen from each county in the State, by freemen residing in the same county.”231 In addition to election alterations, the revised constitution frequently included the words “in a legal way” following the enumerated powers of the people. For example, in the 1777 Constitution, Article V of the Rights of Inhabitants stated that “all power being originally inherent in, and consequently, derived from the people...therefore, all officers of

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228 Council of Censors, 36.
229 Ibid., 37-42.
230 Ibid., 37.
government” were “at all times accountable to them.” The revised article stated that officers were “at all times, in a legal way, accountable to them.”

The polemics surrounding promissory notes and the Vermont legal system serve as a fitting anecdote to illuminate the significance of the Censors’ work for Vermonters. The exchange in kind and notes was well established in the state by 1784. For example, William Blodget advertised an assortment of goods in November 1784, for which he was willing to receive:

Public securities of all kinds, of the states of Massachusetts and Rhode Island, Peirce’s and Imlay’s Notes, Furs of all sorts, Cash, Flour, Wheat, Rye, Oats, Corn, Butter, Cheese, Pot Ash, Beans, Peas, Flax Seed and Ginsang if very dry and good.

The promissory notes that belonged to Peirce and Imlay above were a common form of exchange. A typical note would involve one party’s promise to pay the other, signed, dated, and usually witnessed. During the early years of Vermont, these promissory notes grounded the state’s economy, but according to a commentary in Spooner’s Vermont Journal, the promissory system had been corrupted by May of 1785.

From Hartford, the author wrote that it was “very fashionable” for inhabitants to be “forging and selling private notes of hand.” The report provided an example: “five or six of these forged notes have been brought to a gentleman in Middletown, who has not a note against him.

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232 For more on “the legal way” insertions, articles VI, XX, and XXII, see Council of Censors, xii.
233 Vermont Gazette, 11/15/1784. Another good example is the advertisement of “Benj.G. William” found in Vermont Gazette, 3/7/1785, 3.
234 For an eighteenth-century analysis of promissory notes, in which the author noticed (of course) that promissory notes are based “in the infancy of mankind,” see Stewart Kyd, Treatise on the Law of Bills of Exchange and Promissory Notes (London, 1790).
on earth.” Trust amongst the Vermont people was disintegrating, and it was perhaps for this reason that polemics surrounding the Censors’ actions most notably concerned the empowerment of the Vermont state. Supporters of the revisions to the Constitution wanted a tightening of the Vermont system, but the last thing many debtors or counterfeiters would have liked, since they were already in a vulnerable legal position, was for the Censors to initiate a systematic strengthening of the state.

Public creditors were one group that was particularly enthusiastic about the Censors’ proposed constitutional revisions. “Observer,” clearly of the crediting class, lamented that “the numberless actions that are bro’t before the courts on promissory notes, clear and evidently binding, is one great source of poverty to our state.”

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Fig. 5 “Cambridge Nov 5, 1788. For value received I promise to pay Mrs. Margaret Emery on Order, Nine pounds, six shillings & two pence [?] on demand, with interest till paid,” Williams, Samuel, "Promissory note to Margaret Emery," 11/5/1778, Samuel Williams Papers, 2-24, Special Collections, University of Vermont Library.

236 Vermont Gazette, 1/3/1785, 2.
G. Schmeller in *Invisible Sovereign* has demonstrated that the concept of credit in early America was closely related to the “public opinion” about trust. Economic relationships are ones where “the debtor is beholden to the creditor, but the creditor is interested in the debtor’s financial prospects.” Observer’s fundamental complaint about the current Vermont state was that its crediting system was inadequate, a problem many early governments struggled with. A clear connection with Hobbes’s notion of trust is evident in Observer’s complaint that Vermonters were “evading the just compliance of their contract with each other.” Public creditors in Vermont, like Observer, whose “vested interests fostered an attentive yet cautious political attitude,” instilled an amount of faith in their fellow Vermonters that was certainly not present in the late 1770s.

The concluding remarks of the Censors signified a new era of political feeling in Vermont. After the Censors had finished setting out the proposed revisions of the function and system of the state, they gave thanks the initial founders. It was these “husbandmen, unexperienced in the arts of governing” who were responsible for Vermont’s existence. And although the Censors were “obliged to check” the system these men erected, they confessed:

> [Vermont] is much indebted, even for its present existence as a separate community, to that undaunted firmness, and prudent vigilance for the public safety...At open war with the most potent nation in Europe;--frequently threatened with invasions from a sister State, and, by her insidious arts, a powerful disaffection fomented within the bowels of this commonwealth.

237 Schmeller goes on to incorporate John Maynard Keynes’s “third-degree thinking.” See *Invisible Sovereigns*, 44.

238 Ibid., 47.

239 The “sister State” was of course New York, and the “powerful disaffection” was those who attempted to maintain relations with the New York government.
The success of the Council of Censors signified a new epoch in Vermont’s existence as an independent republic. The Vermont state, along with its people, had survived one constitutional cycle as established by the 1777 constitution. Inhabitants of the Green Mountains were thankful for their state: public toasts published by the *Vermont Gazette* for the 1786 New Year celebrated not only the tenth year of “Independence of the United States,” but also “the Ninth of the Sovereignty and Independence of Vermont.”

**Vermonters and the Revised Constitution**

For the pseudonymous author Observer, there was hope in the Council of Censors. It was the Censors who could alter “the countenance which the laws give to this baneful evil,” but only if the Censors’ work was better “calculated to the nature of the people, and our situation.” Observer’s perspective is most likely that of a former Yorker, one who had only recently altered his political allegiance from New York to Vermont. This author’s approval of the Censors’ work to straighten out credit problems would not be shared by debtors who relied on small-scale commercial exchange and promissory notes for their livelihood.

The burgeoning newspaper culture offered a setting for polemical political discourse. The publishers of the *Vermont Gazette*, for example, announced their distress at hearing “from Poultney” that inhabitants “were burning the Constitution, as revised by the Council of Censors.”

It was left to the readers to decide who was ultimately

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240 *The Vermont Gazette,* 1/9/1786, 4.
241 *Vermont Gazette,* 4/3/1786, 3. One of the printers was Anthony Haswell, who had only arrived in Bennington from Connecticut in 1783.
responsible for the disrespect paid to “the unfortunate pamphlet.” The publishers of the Gazette did suggest, however, that it was perhaps an act of the “first Magistrates,” who they suggested opposed the “article limit[ing] the time for which any particular person may be eligible as governor.”  

Similarly, correspondent “K. L.” wished to remind readers of Spooner’s Vermont Journal that unless the new revisions were adopted,

> we shall discover to the neighbouring States, and to the whole world, that we have lost, not only the sight of one eye, but have shut the other against that improvement which was designed, and will contribute to the benefit and importance of the State of Vermont.

The loss of the “sight of one eye” was undoubtedly a reference to Vermont’s recent failure to gain admission to the Union, and the shutting of “the other” described what would happen if the people did not support the revision of Vermont’s constitution. According to the publishers of the Vermont Gazette—one of two contemporary Vermont newspapers—the efficiency of the constitution, and thus the governing system of the Vermont state, was dependent on the acceptance of the Council of Censors’ revision.

Although newspapers were at the disposal of residents who had both political and geographic access to the printers, other residents resorted to more colorful and more violent methods to have their voice heard. Jeffrey L. Parsley has noted that in Massachusetts during the 1780s there existed an “older political paradigm that incorporated physical resistance to government as a live option for democratic expression.” This “older political paradigm” could certainly be found in the Green

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242 Vermont Gazette, 4/3/1786, 3.
Mountain Boys during the 1770s. It emerged yet again in Vermont shortly after the 1786 revisions were passed into law, when on October 31, a mob interposed at the Windsor courthouse.244

A month later, on November 21, soon after the daily adjournment at 2:00 p.m, “several persons, who called themselves a committee from the people, waited on the judges of the court, with a petition requesting” that they adjourn until further notice.245 Having not received the response they were hoping for, “with an armed force they took possession of the court-house, [and] sent dispatches for a reinforcement of their party.” Although they retreated, the mob was said to have been led by Captain Benjamin Cooley of Pittsford, who served under Ethan Allen and Seth Warner during the Revolutionary war, and Thomas Lee, who had also spent time under Warner’s command. The evidence suggests that some members of the former Green Mountain Boys saw their authority waning, and acted in a manner that had served them well a decade earlier.

Although it was true that former Yorkers were developing a new faith in Vermont at the time of the Council of Censors, the political voice of east-siders in the Vermont state was not yet fully represented. That Vermont approached the United States Constitutional Convention as a unified Vermont state, composed entirely of Vermonters, is shown by the systematic participation and ascendancy of east-siders after 1785.

244 Freedom and Unity, 120-2. For more background of these events, see Bennington and the Green Mountain Boys, 188-190.
245 Vermont Gazette, 11/27/1786, 2.
Although violent and polemic modes of disapproval sprouted after the revised constitution was published, a critical aspect of the effective instalment of a state was attained by Vermont after 1785: the systematic representation of all eligible freemen. The insurgence of political opposition— “based on a combination of conviction and interest, led by Isaac Tichenor and Nathaniel Chipman” —against the west-side dominance of Vermont governance had begun to emerge as early as 1785.246 Before the 1785 elections, the only east-side representatives in the executive branch were Deputy Governor (Hartland) and Councilors from Townshend, Pomfret, Woodstock and Norwich, four towns since their land was claimed by Vermont (under the Hampshire Grants title) eight years prior. After the 1785 election, however, there was a proliferation of representation from the east side. Members from West Fairlee, Addison, Vernon, Newbury, and Newfane were elected to Councilor positions between 1785 and 1789. Finally, in 1789, Thomas Chittenden, who had held the position of Governor since 1778, was replaced.

Chittenden’s replacement signified that the wedge which had begun to destabilize the west-side hegemony in 1785 had finally reached the top.247 At this point the Vermont state had systematically, and in practice, enfranchised the entire freemen populace. Although by no means a perfect and harmonious relationship, the state and the freemen of Vermont were from then on considered one; Vermont was no longer a “pretended” state. This complete form of sovereignty in Vermont was established just in time to

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246 *In a State of Nature*, 84.
confront the United States Constitutional Convention—when the concept of sovereignty in western thought was systematically changed in ways that truly expanded the concept in innovative, but not necessarily progressive, directions.
Conclusion

Using a case study to draw local concepts of sovereignty into larger discussions of human nature is simply an alternative perspective on the same events Vermont historians have examined for the past two centuries. In the case of Vermont, the notions that humans have free will, and that individuals are their own sovereigns, were fundamental to systematically defining the state’s authority. It was a fundamental belief of the creators of the state that humans will naturally rise against anything that hinders their desires—\textit{whatever} those may be. This was the standard of its government, and its representatives stood firm in their position on sovereignty against internal and external threats.

The Constitution of the United States brought a different kind of threat to Vermont sovereignty. The inherent hierarchical structure necessary for the federal government to have any authority threatened the aggregate power of the Vermont constitution. The United States government, by the nature of its institution, was an elite governing system erected so that the common causes of the American states—as defined by the U.S Constitution—could be defended within their territories. Admission into the United States initiated a new epoch in the history of the concept of sovereignty in Vermont, but the United States’ system, in its totality, also marked the dawn of a new epoch for the concept of sovereignty in universal thought.\footnote{Forrest McDonald, \textit{Novus Ordo Seclorum: The Intellectual Origins of the Constitution} (Lawrence: University Press of Kansas, 1985), 164-66.}
After the first Congress in June 1791, Thomas Jefferson and James Madison vacationed in the northern territory, which included a trip to the recently admitted fourteenth state, Vermont. Having only entered the Union a few months prior in March, Vermonters were hopeful that this visit would symbolize unity and a tight-knit relationship between the federal government and its states. *Spooner’s Vermont Journal* explained the political importance of such a trip, hoping that “the President of the United States…obtains useful knowledge, perhaps otherwise unobtainable, and while he enriches his mind, secures the affections of his people.”249 The president, via his officials Jefferson and Madison, was expected to actively secure “the affections of his people.” Supreme authority was no longer found in the titles of office, but in the souls of individuals. The United States had established a universal standard—one it still claims to live by today—that a government’s authority must systematically be derived directly from the people at large.

Vermonters in the northern portion of the state, however, were not as willing to submit to the authority of the United States. The Vermont historian Paul S. Gillies has suggested three themes for examining how Vermont “adjusted to its new role as the fourteenth state:” the first is to pay particular attention to the “cost of settling up with the past,” which includes both their payment to New York (they never got away with their land for free after all) and the shared cost of the war with Great Britain; second is the

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249 *Spooner’s Vermont Journal*, 6/6/1791, pg. 3. The trip appears to have been somewhat of a success in rallying support for the federal government, see *Moses Robinson and the Founding*, 279.
constitutional adjustment described above; and third is jurisdictional. Commenting for a brief moment on the jurisdictional theme is how I would like to conclude this project.

In *Leviathan*, Hobbes provided a strict understanding of sovereign jurisdiction. He argued, with his typical absolutism, that sovereign power “cannot, without [the sovereign’s] consent, be transferred to another.” Unless, of course, there was “A Common-wealth by acquisition,” where “the sovereign power is acquired by force.” For this new entity to be considered “sovereign,” however, required the event of individuals coming together and “by plurality of voices, for fear of death, or bonds, do authorize all actions of that man, or assembly, that hath their lives and liberty in his power.” The difference here is that individuals consent to the new sovereign because it is the entity “they are afraid of:” these covenants “proceed from fear of death, or violence, void [sic]…” For Hobbes, the transition of sovereign authority involved consent as a zero sum event in which the moment one provides consent a new sovereign is immediately established.

Locke, on the other hand, divided consent into two distinct categories of “express” and “tacit.” The definition of express consent, Locke argued, “nobody doubts…makes him a perfect member of that society, a subject of that government.” But there was an issue with “what ought to be looked upon as a tacit consent.” How could

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250 “Adjusting to Union: An Assessment of Statehood, 1791-1817,” in *Vermont Becomes a State*, 114-143.
251 *Leviathan*, 132.
252 The full sentence continues as follows: “void: which if it were true, no man, in any kind of commonwealth, could be obliged to obedience.” *Leviathan*, 132.
253 *Two Treatises*, 291.
consent be evaluated “where he has made no expressions of it at all”? Locke begins with the traditional absolutist view posited by Hobbes: “every man, that hath any possessions, or enjoyment, of any part of the dominions of any government, doth thereby give his tacit consent, and is as far forth obliged to obedience to the laws of that government, during such enjoyment [sic], as anyone under it.”254 In perhaps the most impressive description of human agency found in Locke’s political theory, Locke separates the individual mind from the person’s possessions. A government has a “direct jurisdiction” over the land a non-expressing individual “dwells upon,” but the “obligation [said individual] is under, by virtue of such enjoyment...begins and ends with enjoyment.” Locke sums up his argument by stating that nothing can make an individual a consenting participant of a commonwealth unless “actually entering into it by positive engagement, and express promise and compact.”

Similar to the time and events that took place in the days of Vermont’s early history, it took time for some Vermonters during the early years of nationhood to accept the absolute authority of the United States.

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254 Ibid.
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