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KENTUCKY'S FIRST STATESMAN:  
GEORGE NICHOLAS AND THE FOUNDING OF THE COMMONWEALTH

By

Benjamin Michael Gies  
B.A. Bellarmine University, 2014

A Thesis  
Submitted to the Faculty of the  
College of Arts and Sciences  
Of the University of Louisville  
In Partial Fulfillment of the Requirements  
For the Degree of

Master of Arts in History

Department of History  
University of Louisville  
Louisville, Kentucky

May 2016

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THE COMMONWEALTH

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Benjamin Michael Gies  
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A Thesis Approved on

April 22, 2016

By the following Thesis Committee:

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Dr. Thomas Mackey

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Dr. Daniel Krebs

## DEDICATION

This thesis is dedicated to my grandparents

Mr. Joseph A. Blair

and

Mrs. Chinetha J. Blair

who inspired my grit, perseverance, and resolve.

## ACKNOWLEDGMENTS

I would like to thank the James Madison Memorial Fellowship Foundation of Alexandria, Virginia for their support of my graduate education and for their dedication to the study of the principles, framing, ratification, and implementation of the Constitution of the United States of America. I would also like to thank The Society of Colonial Wars in the Commonwealth of Kentucky and the National Society of the Sons of the American Revolution for their contributions to my research. I must extend a hearty note of gratitude to the University of Louisville's McConnell Center for their support, encouragement, and the many rich opportunities the center provided me. I am honored to have led the McConnell Center's Civic Education Program at the University of Louisville.

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The advancement and diffusion of knowledge is the only guardian of true Liberty.

James Madison

## ABSTRACT

### KENTUCKY'S FIRST STATESMAN:

#### GEORGE NICHOLAS AND THE FOUNDING OF THE COMMONWEALTH

Benjamin M. Gies

April 22, 2016

In late 1789, Colonel George Nicholas arrived in the Kentucky District from eastern Virginia. Nicholas's political astuteness prompted his swift rise to prominence in the Kentucky District's political affairs. In 1792 Nicholas asserted himself as the Kentucky Constitution of 1792's primary author. Nicholas's Kentucky Constitution of 1792 mirrored the federal Constitution of 1787 that had earlier been rejected by Kentuckians in the 1788 Virginia Ratifying Convention. The Kentucky Constitution of 1792 placed the Kentucky District square within the ethos of the Anglo – American constitutional tradition and secured the proposed Commonwealth of Kentucky's separation from the district's "parent-state," the Commonwealth of Virginia. Nicholas's Kentucky Constitution of 1792 represented Kentucky's realization and acceptance of a new legal and constitutional world. On June 1, 1792, the proposed Commonwealth of Kentucky entered into the federal Union after eight years of failed prior attempts at statehood. Nicholas's crucial role as primary author of the Kentucky Constitution of 1792 established Nicholas as the Commonwealth of Kentucky's primary founder. Colonel George Nicholas became Kentucky's first statesman.



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## INTRODUCTION

### A KGGRT QHVJ GHCO G

George Nicholas, Kentucky, and the Anglo - American Constitutional Tradition

No country can be free, unless it has a constitution, limiting in a sufficient degree, the powers of those who are appointed to administer the government; and also hoarding those powers from abuse, as far as such a guard can be established. The most effectual guard which has yet been discovered against the abuse of power, is the division of it. But no constitution affords any real security to liberty, unless it is considered as sacred and preserved inviolate.<sup>1</sup>

George Nicholas

In 1798, Colonel George Nicholas asserted that “no country can be free” without a constitution designed to limit the powers of government.<sup>2</sup> Nicholas well understood the Anglo – American constitutional tradition and became the scion of the Commonwealth of Virginia’s political elite in the Kentucky District. Nicholas’s familial relations with the Old Dominion’s political machinery and legal education at the College of William & Mary under George Wythe formed his early Federalist political leanings.<sup>3</sup> Nicholas used his political connections with George Washington and James Madison to further his political goals in the Kentucky District. Nicholas’s failed bid in the Virginia Ratifying Convention to win the Kentucky District’s support for the federal Constitution of 1787 suggested the Kentucky District’s hostility to a new legal and constitutional world post-1787. The Kentucky District’s many failed bids for American statehood amplified the district’s uneasiness with easterners and their federal Constitution of 1787.

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<sup>1</sup> *Kentucky Gazette*, November 10, 1798.

<sup>2</sup> *Ibid.*

<sup>3</sup> Chase R. Staples, “George Nicholas.” George Nicholas Collection, 1780-1830, MSC 26, Special Collections, Transylvania University, Lexington.

In late 1789, Nicholas's arrival in the Kentucky District sharpened his political ideologies and prompted his rise to prominence in the district's political affairs. In 1792 Nicholas asserted himself as the Kentucky Constitution of 1792's primary author. Nicholas's Kentucky Constitution of 1792 mirrored the federal Constitution of 1787 that had earlier been rejected by Kentuckians in the Virginia Ratifying Convention. The Kentucky Constitution of 1792 placed the Kentucky District square within the ethos of the Anglo – American constitutional tradition and secured the proposed Commonwealth of Kentucky's separation from the district's "parent-state," the Commonwealth of Virginia. Nicholas's Kentucky Constitution of 1792 represented Kentucky's realization and acceptance of a new legal and constitutional world. On June 1, 1792, the proposed Commonwealth of Kentucky entered into the federal Union after eight years of failed prior attempts at statehood. Nicholas's crucial role as primary author of the Kentucky Constitution of 1792 established Nicholas as among the Commonwealth of Kentucky's most important founders. Colonel George Nicholas became Kentucky's first statesman.

Nicholas received great acclaim for his contributions to the Commonwealth of Kentucky in his era. After Nicholas's death Nicholas County, Kentucky and Nicholasville, Kentucky were named in his honor.<sup>4</sup> The *Kentucky Gazette* printed in Nicholas's 1799 obituary that Nicholas, "remained endeared to the recollection of every true republican," and that "the youth of Kentucky" would long deplore Nicholas's loss.<sup>5</sup> In *History of Kentucky* (1812) early Kentucky historian Humphry Marshall celebrated

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<sup>4</sup> Robert M. Rennick, *Kentucky Place Names* (Lexington: University of Kentucky Press, 1984), 214.

<sup>5</sup> George Nicholas Collection, 1780-1830, MSC 26, Special Collections, Transylvania University, Lexington.

Nicholas as among Kentucky's most respected statesmen.<sup>6</sup> Nicholas's tomb at his estate on North Limestone Street in Lexington, Kentucky remained well-preserved until Sayre College purchased Nicholas's homestead just prior to the American Civil War.

Afterwards, Nicholas's heirs removed his tomb to Christ Church's Old Episcopal Burying Ground. Nicholas's burial plot in Lexington's Old Episcopal Burying Ground lay unmarked until the commemoration of his two hundredth birthday in 1954.<sup>7</sup> In commemoration of Nicholas's service in the American Revolution and his contributions to Virginia and Kentucky's political life, the Daughters of the American Revolution placed a Kentucky State Historical Marker near his burial plot.<sup>8</sup> Prior to the Daughters of the American Revolution's commemoration, Nicholas received little more than a passing note in two centuries worth of state histories. Despite the limited attention paid to Nicholas by state historians, in popular culture he has remained "the father of the First Kentucky Constitution."

Nicholas's personal correspondence became scattered among archives and various collections in Kentucky and Virginia. Nicholas's unsteady penmanship no doubt contributed to his status as a significant yet understudied bridge to eighteenth century Virginia and Kentucky. Nicholas's death at the height of his political power in Kentucky and an inattention to his legacy fumbled a historical appreciation of Nicholas and his contributions to the Anglo – American constitutional tradition in Kentucky. This thesis illuminates Nicholas's contributions to the Kentucky District's separation from Virginia,

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<sup>6</sup> Humphrey Marshall, *The History of Kentucky* (Frankfort: Henry Gore, 1812).

<sup>7</sup> *Lexington Herald*, November 11, 1954.

<sup>8</sup> *Ibid.*

the Kentucky Constitution of 1792, Kentucky's admission into the federal Union, and affirms Nicholas's status as one of the Commonwealth of Kentucky's primary founders.

Chapter One, "In Bernard Bailyn's Long Shadow: A Historiography of Anglo – American Eighteenth Century Constitutionalism," examined the study of Anglo – American constitutionalism from Bernard Bailyn's *The Ideological Origins of the American Revolution* (1967) to Woody Holton and David Waldstreicher's new social histories in *Unruly Americans and the Origins of the Constitution* (2007) and *Slavery's Constitution: From Revolution to Ratification* (2009), respectively. An examination of Bailyn and Gordon S. Wood's charge that new social historians "[transformed] history-writing [into] an instrument of moral hand-wringing" and "have no real interest in the pastness of the past" framed a divide among contemporary historians of the American Founding and early national eras.<sup>9</sup> A historiography of the early national West and the Anglo – American constitutional tradition concluded with Thomas P. Slaughter's *The Whiskey Rebellion: Frontier Epilogue to the American Revolution* (1986) and Lenard Richards's *Shays's Rebellion: The American Revolution's Final Battle* (2002). In *James Madison, the South, and the Trans – Appalachian West, 1783 – 1803* (2013), Jeffery Allen Zemler became among the first contemporary historians to provide a richer analysis of the Kentucky District and the contributions of George Nicholas.

In Chapter Two, "The Gentlemen from Virginia: George Nicholas and the Kentucky District's Early Politics," Nicholas's family life, service in the American Revolution, and early political career is analyzed within the context of the Old Dominion's social and political aristocracy. The Kentucky District's push for the

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<sup>9</sup> Gordon S. Wood, "History in Context: The American Vision of Bernard Bailyn," *The Weekly Standard* (February 2015), 2.

district's separation from the Commonwealth Of Virginia and bid for independent American statehood is examined from its genesis in 1783 to Kentucky District Congressman John Brown's failed statehood bid in the 1787 Confederation Congress. An analysis of the Kentucky District's early politics revealed the district's pre-1792 impasse among leaders in Kentucky's quest for statehood.

Chapter Three, "Useful Friendships: George Washington, James Madison, and George Nicholas" established Nicholas's ties to Madison and Washington during the Virginia Ratifying Convention of 1788. Nicholas's political partnership with Madison is examined within the context of the Virginia Ratifying Convention. Although Nicholas failed in his efforts to garner the Kentucky District's support for Virginia's ratification of the federal Constitution of 1787, Nicholas emerged with Madison and Washington's recognition and respect. Washington rewarded Nicholas with his appointment to serve as the Kentucky District's First United States Attorney.<sup>10</sup> Nicholas soon thereafter became a permanent resident of the Kentucky District.

Chapter Four, "George Nicholas: Kentucky's Indispensable Man?" analyzed Nicholas's primary role in Kentucky's bid for statehood from his arrival in the Kentucky District in late 1789 to the Commonwealth of Kentucky's admission into the federal Union on June 1, 1792. Nicholas's comprehension of Kentucky politics and his ability to navigate Kentucky's political waters is examined through his capacity to refuse and accept power when appropriate. Nicholas's status as the Commonwealth of Kentucky's primary founder is secured in Nicholas's role as the Kentucky Constitution of 1792's

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<sup>10</sup> "From George Washington to the United States Senate, 24 September 1789," *The Papers of George Washington, Presidential Series*, vol. 4, 8 September 1789–15 January 1790, ed. Dorothy Twohig. (Charlottesville: University Press of Virginia, 1993), 75–80.

primary author and Kentucky's subsequent realization and acceptance of a new legal and constitutional world in the Danville Convention of 1792.

In Chapter Five, “‘Endeared to the Recollection of Every True Republican:’ The Legacy of George Nicholas,” Nicholas’s political career is examined from 1792 until his death on July 25, 1799. Nicholas’s leadership of Kentucky’s Democratic – Republican Party is articulated as an outgrowth of Kentucky’s political context and era. Nicholas’s role within Governor Isaac Shelby’s Administration and Nicholas’s mentorship of John Breckinridge and Henry Clay pushed Nicholas’s influence beyond his death in 1799. Nicholas’s death at the height of his political power and influence in Kentucky no doubt contributed to a respected albeit diminished historical legacy. Nicholas’s status as Kentucky’s first statesman provided a window into the Commonwealth of Kentucky’s birth in an era of intense political thought and Nicholas’s continuation of the Anglo – American constitutional tradition in Kentucky.

## CHAPTER I

### IP BGTPCTF BCKN P'ULQPI SJ CFQY A Historiography of Anglo - American Eighteenth Century Constitutionalism

The American Constitution is the final and climatic expression of the ideology of the American Revolution. As such, in the two centuries of its existence, it has become the subject of more elaborate and detailed scrutiny and commentary than has been given to any document except the Bible. No one has mastered all the useful writings on the Constitution; no one ever will. There is too much; there is movement in too many directions at once; too many disparate issues are alive and flourishing quite independently of each other. Yet there will never be enough.

Bernard Bailyn

In 1967, Bernard Bailyn concluded that the American Constitution represented the “final and climatic expression” of the American Revolution. Bailyn summarized the “elaborate and detailed” historiography of the Constitution as a commentary written and rewritten over two centuries. The historiography of the American Constitution began as delegates to the Constitutional Convention departed Philadelphia in the summer of 1787 and included influences by the “nationalist” historians of the late eighteenth and nineteenth centuries to the “new social” historians of the twenty first century. An examination of the American Constitution’s historiography *in toto* cannot be achieved in a single chapter. The complete assessment of the Constitution’s historiography must remain the objective of future historians. The Constitution’s contemporary historiography originated in Bailyn’s *The Ideological Origins of the American Revolution* (1967). Although Bailyn conceded that “no one had ever mastered all the useful writings of the Constitution,” Bailyn’s monograph represented a watershed moment in the

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<sup>11</sup> Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge: The Belknap Press of Harvard University Press, 1967), 321.



American Constitution's historiography.<sup>12</sup> Bailyn asserted that American fears of British tyranny proved genuine. Bailyn's mentorship of Gordon Wood, Jack Ravoche, Pauline Maier and other eminent scholars of the American Constitution cemented Bailyn's seminal place within the American Constitution's historiography. Bailyn's analyses and the examinations of Bailyn's students established the *sine qua non* of the Constitution's historiography for a generation of American historians and pushed for a larger understanding of the Founding Era.<sup>13</sup>

In *The Ideological Origins of the American Revolution*, Bailyn returned the study of the Constitution to its most pertinent writings; the pamphlet literature of the Founding Era.<sup>14</sup> Bailyn's seminal work analyzed more than four hundred Anglo - American pamphlets printed prior to the 1776 Declaration of Independence. The pamphlet

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<sup>12</sup> *The Ideological Origins of the American Revolution* received the 1968 Pulitzer Prize and Bancroft Prize and is considered the eminent study of the American Revolution written in the twentieth century.

<sup>13</sup> For other monographs by Bailyn see Bernard Bailyn, *Education in the Forming of American Society* (New York: W.W. Norton & Company, 1960); *The Origins of American Politics* (New York: Random House, 1968); *The Ordeal of Thomas Hutchinson* (Cambridge: Harvard University Press, 1974); *Anglo American Intellectual Relations* (New York: Random House, 1978); *The New England Merchants in the Seventeenth Century* (Cambridge: Harvard University Press, 1979); *Voyages to the West: A Passage in the Peopling of America On the Eve of Revolution* (New York: Alfred A. Knopf, 1986); *Strangers in the Realm: Cultural Margins of the First British Empire* (Chapel Hill: The University of North Carolina Press, 1991); *The Great Republic: A History of the American People* (Lexington, MA: D.C. Heath and Company, 1992); *Faces of the Revolution: Personalities and Themes in the Struggle for American Independence* (New York: Random House, 1992); *On Teaching & Writing of History* (Hanover, New Hampshire: University Press of New England, 1994); *Context in History* (Melbourne, Australia: La Trobe University Press, 1995); *American Constitutionalism* (London: University of London Press, 2002); *To Begin the World Anew: The Genius and Ambiguities of the American Founders* (New York: Random House, 2003); *Atlantic History: Concept and Contours* (Cambridge: Harvard University Press, 2005); *The Barbarous Years: The Peopling of British North America and the Conflict of Civilizations, 1600 – 1675* (New York: Alfred A. Knopf, 2012); and *Sometimes An Art: Nine Essays on History* (New York: Alfred A. Knopf, 2015).

<sup>14</sup> Ibid.

literature, Bailyn argued, represented the political context, motives, assumptions, and ideas of Anglo – American constitutional ideology. Bailyn’s analysis of the pamphlet literature placed the origins of Anglo – American constitutional thought deep within the intellectual history of Anglo Civilization. Arguments drawn from classical antiquity, Enlightenment thought, British “country politicians” of the late seventeenth and early eighteenth centuries, covenant theory, and the Common Law conceptualized Anglo – American ideology.

The English Civil War (1642 – 1651) and Commonwealth in Great Britain (1649 – 1660) unified classical antiquity, Enlightenment thought, the “country politicians,” covenant theory, and the Common Law into a coherent body of ideology. Enemies of Stuart despotism carried forth radical social and political thought into the eighteenth century. Political opponents of British despotism, religious dissenters, Edward Coke (1552 – 1634), John Locke (1632 – 1704), John Trenchard (1662 – 1723) and Thomas Gordon (1691 – 1750), and other eminent Enlightenment thinkers synthesized a single Anglo political ideology. Born during the English Civil War this ideology transferred to the American colonies. Anglo anti-authoritarianism engrained itself into the cultural and ideological order of American life. Colonial Americans, eager to “sit under [their] own vine and fig tree,” fashioned their response to objectionable policies imposed by British rule at the close of the Seven Years’ War (1754 – 1763). Ideology launched against Stuart tyranny manifested again in opposition to the tyranny of George III and his Parliament. Bailyn’s analysis of “language systems” shared among classical, Enlightenment, and eighteenth century American pamphlet literature provided an example of the transfer of political ideas articulated throughout the Founding Era. Terms

like slavery, liberty, constitution, and sovereignty often used in the writings of Enlightenment texts and throughout the English Civil War linked the Founding Era to its intellectual genesis.

In opposition to the tyranny of George III, Americans identified themselves as liberty's last defenders. Guided by principles rooted in antiquity and upheld by their English forbearers, Americans crafted their political ideology throughout the crises of the 1760s to fit their needs during the American Revolution. Bailyn articulated how Anglo-Americans critiqued the "mother country," rationalized independence, and supported a revolution in defense of liberty. In 1781, at war's end, the same ideology established the need for an American system of government. Bailyn's investigation of the pamphlet literature of eighteenth century America yielded little evidence of a struggle for economic or social change, and molded the outlook of constitutional historians for years to come.

Gordon S. Wood is second only to Bailyn in the pantheon of contemporary constitutional scholars. In *The Creation of the American Republic, 1776 – 1787* (1969), Wood identified the creation of the American Constitution as a clear break from the political thought of antiquity. In his interpretation of the revolutionary generation, Wood categorized the creation of the Constitution as a "new conception of politics." Unlike Bailyn, Wood critiqued the development of the American political order as a new science of American politics birthed out of the classical and medieval worlds. Wood described the development of the "new era of politics" as "piecemeal, not linear, and at times inconsistent and ambiguous."<sup>15</sup>

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<sup>15</sup> Gordon Wood, *The Creation of the American Republic* (Chapel Hill: The University of North Carolina Press, 1969), 608.

Wood's overview of Whig ideas constituted the beginning of his interpretation of the creation of a new era of politics. Wood agreed with Bailyn in the importance of Trenchard, Gordon, James Burgh (1714 – 1755) and other key Anglo political thinkers. Careful to establish the lineage of Anglo – American thought as rooted within the intellectual history of the West, Wood cemented Bailyn's appraisal of the pamphlet literature within *The Creation of the American Republic's* assessment of constitutional ideology. Wood asserted that Americans possessed virtue and remained capable of self-government. Wood advanced the narrative that early Americans lived within an era defined by principle and civic virtue. Although suspect to contemporary Americans, early eighteenth century Americans adhered to principles of virtue with a religious-like zeal. In an era characterized by honor, the American Revolution remained a revolution of liberty from political tyranny.

Americans throughout the early 1780s recognized a need for a balanced form of government. The states, with the exception of Pennsylvania, established in their individual constitutions systems of mixed government. From the state constitutions a new science of politics began to take shape. Throughout the 1780s, reluctance to the authority of new laws and the state court systems agitated the early American political order. This reluctance occasioned Whigs to reconsider the locus of American political power. Wood assigned the question of sovereignty as central to the construction of an American system of government. As defined by the Whigs of the mid eighteenth century, sovereignty lay with “the people.”<sup>16</sup> American Whigs argued that the Revolution removed the locus of power from Parliament, and established “the people” as the locus of

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<sup>16</sup> Ibid.

power in a just government. This revelation, Wood argued, necessitated that Whigs of the era rethink the American system of government.

By the mid-1780s, the republic entered its “critical period.” The collapse of Congress under the weak Articles of Confederation demanded that a resumption of power be granted to the central government. Occasioned by an excess of “luxury,” delegates met in Philadelphia in the summer of 1787 to restrain “the evils of the states.” Delegates convinced themselves that the period that followed the American Revolution had devolved in to an age of liberty gone wild. In order to salvage the Revolution of 1776, constitutional delegates crafted an aristocratic check to the licentious tendencies of the period. The American Constitution, Wood argued, embodied the principles of sovereignty and aristocratic checks. The establishment of bicameralism, apportioned representation, a Senate equally responsible to “the people,” separation of powers, and a system of sovereignty beholden to “the people” affirmed the creation of Wood’s “new science of American politics.” The Constitution of 1787 created a republic that did not need a virtuous people to survive. Madison’s “expanding sphere of politics” and the inherent self-interestedness of its leaders constructed and protected the new system of American government from tyranny. In a series of events that, Wood argued, rescued the Revolution of 1776 from its vices, the Constitution succeeded in its struggle of the “worthy against the licentious” and produced “a mature Whig.”<sup>17</sup>

Wood’s analysis of Whig political thought identified a significant ideological transformation from the pre-revolutionary era to the creation of the Constitution of 1787. Wood’s contribution of “a new conception of American politics” established the

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<sup>17</sup> Ibid., 606.

Constitution as a document still connected to Bailyn's wells of classical, Enlightenment, and English conceptions of law. But, Wood articulated the Constitution as representative of a shift in Western Civilization's political history.<sup>18</sup>

Bailyn's mentorship extended to Jack N. Rakove, another key scholar in the study of constitutional history. In *Original Meanings: Politics and Ideas in the Making of the Constitution* (1996),<sup>19</sup> Rakove rejected originalism as an interpretation of the Constitution. Rakove debunked originalism as "the most appropriate strategy to ascertain the meaning of the Constitution."<sup>20</sup> Originalism, Rakove argued, remained appropriate only if used to gain partisan advantage. Furthermore, Rakove asserted that "neutrality could rarely be attained when the Constitution was so highly politicized, or when politics was so highly constitutionalized."<sup>21</sup> Rakove deemed contemporary analysis of the Constitution as an exercise "almost as enigmatic as the dreams Joseph was called upon to interpret for Pharaoh."<sup>22</sup> In his critique of originalism, Rakove differed from Bailyn and Wood. Originalism, Rakove argued, consigned contemporary and future American

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<sup>18</sup> For other monographs by Wood see Gordon Wood, *Representation in the American Revolution* (Charlottesville: University of Virginia Press, 1969); *The Rising Glory of America, 1760 – 1820* (New York: G. Braziller, 1971); *The Radicalism of the American Revolution* (New York: Random House, 1991); *The American Revolution: A History* (New York: Random House, 2002); *Monarchism and Republicanism in the Early United States* (Melbourne, Australia: La Trobe University, 2002); *Revolutionary Characters: What Made the Founders Different* (New York: Penguin Press, 2006); *The Americanization of Benjamin Franklin* (New York: Penguin Press, 2003); *The Purpose of the Past: Reflections on the Use of History* (New York: Penguin Press, 2008); *Empire of Liberty: A History of the Early Republic* (Oxford: Oxford University Press, 2009); and *The Idea of America: Reflections on the Birth of the United States* (New York: Penguin Press, 2011).

<sup>19</sup> *Original Meanings: Politics and Ideas in the Making of the Constitution* received the 1997 Pulitzer Prize in History.

<sup>20</sup> Jack N. Rakove, *Original Meanings: Politics and Ideas in the Making of the Constitution* (New York: Random House, 1996), 365.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*, xvi.

citizens to the constraints of their ancestors. Beholden to the words of the Constitution's ratifiers, originalism prohibited the ability of its successors to break with the Constitution. Ratifiers, the "power givers" of the Constitution, allotted their collective power to the federal Constitution throughout the state ratifying conventions of 1787 and 1788.

Similar to Wood, Rakove asserted the significance of the "critical period" of the young republic throughout the 1780s. The calling of the Constitutional Convention of 1787, Rakove argued, constituted an extralegal affair. The calling of the Philadelphia convention initiated a violation of the Articles of Confederation. Delegates to the Annapolis Convention (September 1786) abandoned their duty to revise the Articles and overstepped their authority in calling for the creation of a new plan of government. Article XIII of the Articles of Confederation required unanimous approval of the states on all measures. The founders ignored requirements set forth by the Articles of Confederation and established the Constitution as a more profound criterion of legality.

At the outset of the 1787 - 1788 state ratifying conventions, delegates debated each state's question of ratification. Delegates of each state, Rakove argued, had little choice but to accept ratification. Despite the politicking of Anti - Federalists, Rakove asserted that rejection of the Constitution held two possible alternatives; a return to the failed Articles of Confederation, or the dissolution of the Union. Ratifiers' possessed only the choice of ratification. Rakove applied his analysis of the ratification debate to attack originalism's validity. The process of ratification granted the Constitution its legal power. Similar to Wood's "new science of American politics," Rakove identified the source of political sovereignty as derived from "the people." Given a false choice by the national government, ratification of the Constitution secured a mere illusion of

sovereignty. The ratification system precluded any conditional opportunities for Anti – Federalists doomed from the outset of each convention.<sup>23</sup> Rakove argued that James Madison, acknowledged “father of the Constitution,” sided with originalism only when “the argument served his [Madison’s] interests best.”<sup>24</sup>

Rakove’s assertion that Madison agreed only when particular arguments “served his [Madison’s] interests best” reasoned against Lance Banning’s *The Sacred Fire of Liberty: James Madison and the Founding of the Federal Republic* (1995). Banning upheld Madison as a consistent political thinker throughout Madison’s public life. Banning argued that an accurate understanding of Madison and Madison’s political ideology remained essential to an accurate understanding of the Constitution’s intellectual foundations. “If we can gain a better understanding of the major architect [Madison],” Banning reasoned, “. . . we cannot fail to gain a fuller knowledge of the new republic’s purpose and nature.”<sup>25</sup>

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<sup>23</sup> For other monographs by Rakove see Jack Rakove, *The Beginning of National Politics An Interpretive History* (Baltimore: Johns Hopkins University Press, 1979); *Interpreting the Constitution: The Debate over Original Intent* (Boston: Northeastern University Press, 1990); *James Madison and the Creation of the American Republic* (London: Pearson, 1990); *Declaring Rights: A Brief History with Documents* (London: McMillian, 1998); *The American Constitution: Problems in American History* (New York: John Wiley & Sons, 2004); *Revolutionaries: A New History of the Invention of America* (New York: Random House, 2007); and *The Annotated U.S. Constitution and Declaration of Independence* (Cambridge: Harvard University Press, 2009).

<sup>24</sup> *Ibid.*, 365.

<sup>25</sup> Lance Banning, *The Sacred Fire of Liberty: James Madison and the Founding of the Federal Republic* (Ithaca: Cornell University Press, 1995), 2. See also Lance Banning, *The Jeffersonian Persuasion: Evolution of a Party Ideology* (Ithaca: Cornell University Press, 1980); *Jefferson and Madison: Three Conversations from the Founding* (New York: Rowan & Littlefield, 1995); *Conceived in Liberty: The Struggle to Define the New Republic, 1789 – 1793* (New York: Rowan & Littlefield, 2004); and *Founding Visions: The Ideas, Individuals, and Intersections that Created America* (Lexington: University of Kentucky Press, 2014).



In constitutional historiography, scholars agreed that Madison's political ideology shifted between the crises of the 1780s and the development of the federal government throughout the 1790s. Scholars long held that a "radical discontinuity" existed between the Madison of the 1780s and the Madison of the 1790s. Madison's perceived shift from a proponent of enlarged federal power to a proponent of restricted federal power established historians' view of Madison's discontinuity. Banning argued that Madison had been misinterpreted by scholars. Madison, Banning reasoned, remained consistent in his views as a strict constructionist throughout his political life. Intent on the protection of the principles behind the American Revolution, Madison displayed continuity throughout the 1780s and 1790s. From the outset of his career, Madison sought liberty for individuals and popular control. Banning's analysis of Madison defined Madison as a consistent thinker and asserted the need to gain a better understanding of Madison as the chief architect of the Constitution.

Building on Rakove's attention to the state ratifying conventions, another of Bailyn's students, Pauline Maier, produced an analysis of the process of ratification in *Ratification: The People Debate the Constitution, 1787 – 1788* (2010).<sup>26</sup> Maier's critical analysis filled a significant gap in constitutional historiography. Maier articulated ratification as a complex exercise assumed to be automatic by general readers. Early in her introduction, Maier dispelled ratification as anything but automatic. The process of ratification, often assigned to the final chapter of monographs dedicated to the federal Convention of 1787, emerged in finer detail. Maier's investigation of *The Documentary*

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<sup>26</sup> Pauline Maier, *Ratification: The People Debate the Constitution, 1787 – 1788* (New York: Simon & Schuster, 2010). *Ratification: The People Debate the Constitution, 1787 – 1788* received the 2011 George Washington Book Prize.

*History of the Ratification of the Constitution* provided key insight to the state ratifying conventions of Massachusetts, Pennsylvania, Delaware, New Jersey, Connecticut, Georgia, New York, and Virginia. For the five states not yet included in *The Documentary History of the Ratification of the Constitution*, Maier reconstructed New Hampshire, South Carolina, Maryland, North Carolina, and Rhode Island's ratification process. Developments in each convention shaped the politics of simultaneous and future conventions in each state's question of ratification.

Maier's approach placed the beginning of the ratification debate one day after the conclusion of the federal Convention. Maier's approach analyzed the start of the ratification debate when "delegates [left] Philadelphia with printed copies of the Constitution in their bags."<sup>27</sup> Maier outlined powers granted under the Constitution of 1787 and identified federal Convention members with "mixed feelings" about the success of the new plan of government. Of particular concern to Maier were the Constitution's "dissenters," or those delegates whom refused to sign the document. Maier's analysis of lukewarm and outright opponents of the Constitution framed the American public's response to the unratified Constitution.

Maier's analysis of public response exposed long forgotten public sentiment of the Constitution of 1787 and the "war of printed words" at the center of debate. Maier devoted significant attention to the public's newspaper and pamphlet debates only when public discourse had a meaningful impact upon delegates to the state conventions. The debates of *The Federalist* were less influential to Maier. Maier identified *The Federalist* as less influential in 1787 and 1788 than in later times ". . .when it [*The Federalist*] was

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<sup>27</sup> Maier, *Ratification*, 27.

too often read as if it were a dispassionate analysis of the Constitution, [and] not a partisan statement written in the midst of a desperate fight.”<sup>28</sup> Maier’s analysis demanded a rebranding of traditional terminology used to describe proponents and opponents of the federal Constitution. Maier’s consistent use of the phrase “critics of the Constitution,” rather than the term anti-Federalist, divorced the ratification debate from a narrative tipped in the Federalists’ favor.

Maier devoted considerable attention to the ratifying conventions of Massachusetts, New Hampshire, Virginia, and New York. In February of 1788, Massachusetts became the sixth state to ratify after Delaware, Pennsylvania, New Jersey, Georgia, and Connecticut. Massachusetts, the hotbed of patriotic sentiment throughout the American Revolution, raised great worry in that state’s question of ratification. News of Massachusetts’s ratification of the federal Constitution, Maier argued, influenced New Hampshire’s ratification. Despite New Hampshire’s status as the ninth state to ratify, a development that ensured the legal adoption of the Constitution, Federalists continued to fret because debate in Virginia persisted. Endowed with immense political clout, Virginia’s question of ratification remained tantamount to an effective adoption of the Constitution. Furthermore, failure to ratify in Virginia might have jeopardized ratification in New York; the nation’s financial and commercial center. Maier’s analysis of each convention reconstructed delegates’ view that consensus remained essential for an effective appraisal of the Constitution. Maier’s description of each convention articulated ratification’s politics as a system in which the delegates of each state watched and waited before final decisions were made. Maier’s *Ratification* produced an

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<sup>28</sup> Ibid., xi.

alternative to Rakove's deduction that ratification of the Constitution remained inevitable.<sup>29</sup>

In a radical break from Bailyn's community of scholars, the application of the Annales School's "new social history" produced significant and varied contributions to constitutional historiography. In *Unruly Americans and the Origins of the Constitution* (2007), Woody Holton appraised ordinary Americans' interpretations of the formation of the Constitution. Holton's bottom-up approach reevaluated the standard narrative of the creation of the Constitution. Holton employed a neo-Marxist approach to critique the view that popular government collapsed in the 1780s because "ordinary Americans were not capable of governing themselves."<sup>30</sup> Holton attacked the Founding Fathers' view of the origins of the Constitution and articulated the document's ratification as an economic imperative. The recession that followed the close of the American Revolution, Holton argued, propagated the ratification of the Constitution and made the United States less "democratic." Holton reasoned that "ordinary farmers" protested their loss of "democracy" and possessed the ability to govern themselves.

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<sup>29</sup> For other monographs by Maier see Pauline Maier, *From Resistance to Revolution: Colonial Radicals and the Development of American Opposition* (New York: Alfred A. Knopf, 1972); *The Old Revolutionaries: Political Lives in the Age of Samuel Adams* (New York: Alfred A. Knopf, 1980); *American Scripture: The Making of the Declaration of Independence* (New York: Random House, 1997); and *The Declaration of Independence and The Constitution of the United States* (New York: Random House, 2008).

<sup>30</sup> Woody Holton, *Unruly Americans and the Origins of the Constitution* (New York: Hill & Wang, 2007), 17. See also Woody Holton, *Forced Founders: Indians, Debtors, Slaves, and the Making of the American Revolution in Virginia* (Chapel Hill: University of North Carolina Press, 1999); *Black Americans in the Revolutionary Era: A Brief History with Documents* (New York: Bedford/St. Martin's, 2009); and *Abigail Adams* (New York: Simon and Schuster, 2009).

Holton articulated the “critical period” of the 1780s as a farce. Holton appraised the postwar economic recession, social strife, and perceived failure of the Articles of Confederation as a natural post-war cycle. The creation of the Constitution represented an overreaction on the part of the framers and the state ratifiers. Holton’s evaluation placed little importance on the “great men” of the Founding Era. Holton argued “ordinary” Americans throughout the 1780s attributed the “evils of the states” as a byproduct of elite, not popular, misrule. Holton repudiated Bailyn’s account of events that led to the Constitutional Convention. Bailyn’s account, Holton argued, remained representative of a powerful institution that “instilled in many well-to-do and well-educated Americans a breezy sense of political entitlement. . . [and] had just the opposite effect on ordinary citizens, chipping away at their self-confidence.”<sup>31</sup>

Holton’s assertion that the ratification of the Constitution made the United States less “democratic” forgets that the Founding Fathers established a republic, and not a democracy. Ratification established a system of checks against the licentious tendencies of the states. The American Constitution placed the locus of sovereignty within “the people.” Representation within the “expanding sphere” of government protected “the people” from tyranny. Furthermore, a more in depth description of “ordinary” Americans is needed within Holton’s appraisal. Holton’s use of the term “ordinary” failed to articulate which American subgroup comprised the “ordinary,” or what Americans of the eighteenth century considered “ordinary.” Holton’s assertion that Bailyn “instilled in many well-to-do and well-educated Americans a breezy sense of political entitlement”<sup>32</sup> appraised Bailyn’s analysis of eighteenth century pamphlet literature in the social context

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<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

of twenty first century Americans. Holton's lack of historical context weakened his entire argument and scholarly reputation.

Continued emphasis of “new social history” garnered increased attention of the institution of slavery throughout constitutional historiography. In *Slavery's Constitution: From Revolution to Ratification* (2009), David Waldstreicher argued that “slavery was as important to the making of the Constitution as the Constitution was to the survival of slavery.”<sup>33</sup> Waldstreicher rejected the Constitution's “silence” on the peculiar institution. The Constitution, Waldstreicher argued, protected the institution and remained essential to the document's creation. Waldstreicher identified mechanisms laced throughout the document that preserved slaveholders' interests and prevented abolition. Rendered “operationally proslavery,” the Constitution propagated slavery for generations to come. Waldstreicher articulated slavery as a necessary evil within the politics of the federal Convention of 1787, but paid little attention to the peculiar institution's Founding Era detractors or to the framers' belief that the institution would die away in the future. Waldstreicher's examination of the American Constitution represented an indictment of the past and did not appreciate the historical context of eighteenth century America.

Wood's response to the prevalence of “new social history” in contemporary historiography appraises adherents to “new social history” as having “given up on trying to recover an honest picture of the past,” in order to transform “their history-writing

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<sup>33</sup> David Waldstreicher, *Slavery's Constitution: From Revolution to Ratification* (New York: Hill & Wang, 2009), 17. See also David Waldstreicher, *In The Midst of Perpetual Fetes: The making of American Nationalism, 1776 – 1820* (Chapel Hill: University of North Carolina Press, 1997); *The Struggle Against Slavery: A History in Documents* (Oxford: Oxford University Press, 2001); and *Runaway America: Benjamin Franklin, Slavery, and the American Revolution* (London: Macmillan, 2005).

[into] an instrument of moral hand-wringing.”<sup>34</sup> In “History in Context: The American Vision of Bernard Bailyn,” Wood critiqued contemporary social historians’ historiographical approach. Wood rebuked social historians’ condemnation of the past “for not being more like the present.”<sup>35</sup> Wood asserted that social historians’ contemporary approach had “no real interest in the pastness of the past.”<sup>36</sup> An abandonment of full-scale narrative histories for isolated histories of the dispossessed, Wood argued, led to a fragmented and anachronistic assessment of the past. Social historians charged Bailyn’s contributions as “attuned to the temper of an earlier time, triumphalist, and rife with American exceptionalism.”<sup>37</sup> Wood’s critique of “activist historians” provided an insightful picture and an important correction of constitutional historiography.<sup>38</sup>

The historiography of the early national West intersected with Bailyn’s and subsequent scholars’ study of American Constitutionalism. Contributions made by intellectual and “new social” historians impacted early western historiography. Eminent studies of the American Constitution offered little analysis of the early national West, but provided a window to the West’s understudied past. Central to the study of the West within constitutional historiography is Thomas Slaughter’s *The Whiskey Rebellion: Frontier Epilogue to the American Revolution* (1998). Slaughter pushed the West “to

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<sup>34</sup> Gordon Wood, “History in Context: The American Vision of Bernard Bailyn,” *The Weekly Standard* (February 2015), 2.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> See Gordon Wood, *The Purpose of the Past* (New York: Penguin Press, 2008).

center stage in the drama of early American politics.”<sup>39</sup> Slaughter produced the first book-length contribution to the rebellion’s historiography since Leland D. Baldwin’s *Whiskey Rebels* (1939). Unlike Baldwin, Slaughter did not take sides in his emotionally-restrained account of the Whiskey Rebellion (1791). Slaughter’s comprehensive evaluation of primary sources appraised the rebellion as an outgrowth of two political cultures. Slaughter argued that the rebellion “was not confined to western Pennsylvania, but was a frontier-wide movement. . .[and] an event of international significance.”<sup>40</sup> Slaughter removed the Whiskey Rebellion from an “almost charmingly benign” historical episode to its rightful place as “the single largest example of armed resistance to a law of the United States between the ratification of the Constitution and the Civil War.”<sup>41</sup>

Slaughter addressed ideological, inter-regional, local, and personal perspectives that pertained to issues of authority and tax collection. Similar to Bailyn, Slaughter grounded his appraisal of the Whiskey Rebellion in a deep sense of context and examined the roots of conflict over taxation as a central theme throughout Anglo history. As early as 1610, Slaughter argued, “members of the British parliament expressed their fear that. . .[excise] taxes might become a general practice.” Slaughter argued that “opposition was immediate, violent, and persisted in some regions for over a century thereafter.”<sup>42</sup>

Contextualization remained Slaughter’s focus as he described American colonists’ frustrations with the 1765 Stamp Act and other taxes levied on the American people in the build-up to the American Revolution. Slaughter provided insight into the early

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<sup>39</sup> Thomas P. Slaughter, *The Whiskey Rebellion: Frontier Epilogue to the American Revolution* (New York: Oxford University Press, 1986), 6.

<sup>40</sup> *Ibid.*, 5.

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*, 12.



national West's development of a distinct political culture. Slaughter articulated westerners as a disgruntled group of backcountry-men unhappy with eastern officials. Furthermore, Slaughter explored westerners' view of the American Revolution in relation to easterners' view of the Revolution as distinct. Slaughter's examination of primary sources revealed "the parallels between the principles and grievances of the Declaration [of Independence] and those of frontiersmen."<sup>43</sup> Slaughter concluded with his evaluation of continued sectional strife among easterners and westerners, the cultural, historical, geographic and ideological makeup of the early national west, and George Washington's relationship with the West.

Slaughter's view of the Whiskey Rebellion as an outgrowth of two political cultures, one eastern and one western, filled a gap in constitutional historiography. Slaughter articulated westerners as "frontiersmen [who] saw themselves as the most beleaguered of citizens worthy of an exemption from any additional burdens."<sup>44</sup> Westerners viewed themselves as underrepresented, unprotected, and their economic interests uncared for by the central government. Slaughter explained the views of easterners as antithetical to the views of westerners and how their frustrations escalated from political discourse to an armed and bloody rebellion with domestic and international implications. Slaughter examined the Whiskey Rebellion on the "liberty – order paradigm" to articulate the place of the rebellion in American ideology and early American historiography. Slaughter's efforts provided a more in-depth portrait of the Whiskey Rebellion and a more in-depth study of its consequences.

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<sup>43</sup> Ibid., 37.

<sup>44</sup> Ibid., 93.

Slaughter removed the Whiskey Rebellion from a simple narrative more akin to an American folktale. Through his use of context and in-depth examination of eastern – western political ideology, Slaughter reasserted the Whiskey Rebellion as a pivotal episode in the early national period of the United States. Similar to Bailyn and Wood, Slaughter’s use of the liberty – order paradigm assessed the Whiskey Rebellion as an event crucial in the understanding of American political ideology. Slaughter’s monograph framed contemporary understanding of the Whiskey Rebellion and the early national West in constitutional historiography.

After the publication of Slaughter’s *The Whiskey Rebellion*, Lenard Richards reevaluated the standard narrative of Shays’s Rebellion (1786 – 1787) in *Shays’s Rebellion: The American Revolution’s Final Battle* (2002).<sup>45</sup> Richards debunked the stereotype that poor and indebted farmers led the rebellion. At the center of his study, Richards analyzed rank-and-file Shaysites. Richards investigated loyalty oaths of some four thousand Shaysites collected at the Massachusetts State Archives. Oath lists articulated three western Massachusetts counties, Worcester, Hampshire, and Berkshire, as the center of the rebellion. Richards’s focus on eighteen hundred oath-takers from Hampshire County alone comprised his argument. In a rebuke of Dave Szatmary’s *Shays’ Rebellion* (1980), Richards articulated “no correlation between debt and rebel towns.”<sup>46</sup> Furthermore, Richards identified creditors and debtors as significant actors throughout the rebellion. Bold in his assertion; Richards reevaluated Shays’s Rebellion as more of a political rebellion than an economic uprising. Richards’s analysis argued

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<sup>45</sup> Leonard L. Richards, *Shays’s Rebellion: The American Revolution’s Final Battle*. (Philadelphia: University of Pennsylvania Press, 2002).

<sup>46</sup> *Ibid.*, 60.

that Shaysites sought to regulate the Massachusetts legislature and secure the liberties they had fought for during the American Revolution.

Failed petitions to the state legislature enraged western Massachusettsans. Their failure to relocate the state legislator to the center of the state exacerbated tensions among westerners and easterners. Petitioners sought to keep power away from easterners. Fearful that the 1780 state constitution shifted power away from farmers and to the elite of Boston, petitioners hoped to distribute power away from the influence of eastern merchants and politicians. Moreover, petitioners sought to reform the state legislature's trend toward tyranny. Disgusted with the legislature's lack of response to their economic and political concerns, petitioners rebelled. Shaysites failed in a struggle to retain the principles many felt they had fought for in the American Revolution.

Despite their failure, Richards argued, Shaysites created significant change. At the national level, Shays's Rebellion illustrated weaknesses inherent in American government. Prompted by Shaysites's rebellion in Massachusetts, a hotbed of patriotic sentiment throughout the American Revolution, national leaders feared insurrection elsewhere. The need to restrain excessive licentiousness with a strong federal government resulted in the Constitutional Convention of 1787. Throughout Massachusetts's 1788 ratifying convention, Richards argued, few rebel towns supported ratification. Despite the former Shaysites's opposition to the federal Constitution, Massachusetts ratified with a slim margin.

While Richards's analysis resurrected the motives of the long forgotten rank-and-file of Hampshire County Shaysites, Richards's evaluation failed to examine Shays's Rebellion in its entirety. Despite the identification of some four thousand Shaysites from

three counties, Richards analyzed only eighteen hundred Shaysites from a single county. More analysis is warranted. Richards's monograph, more akin to an extended essay, failed to examine a representative sample of each western Massachusetts county identified as having a significant role throughout the rebellion. More investigation of Worcester and Berkshire County Shaysites is needed to correct Richards's error in scope. Richardson also remained too similar to the rebellion's standard narrative, despite his attempt to remold understanding of the uprising. Strong similarities resonated in Richards's and Szatmary's critique of Shays's Rebellion. In his attempt to rebuke Szatmary, Richards deduced Shays's Rebellion to an episode of class struggle. While Richards showed strength in his identification of creditors and debtors as participants in the rebellion, Richards rearticulated struggles between eastern and western Massachusettsans as rooted in divisions of class. Richards and Szatmary employed different interpretations, but arrived at all too similar conclusions.

In his examination of Shays's rebellion, Richards resurrected valuable primary sources that stand to create a better informed construction of the uprising. While promising, Richards failed to support a full rebuke of Shays's Rebellion's standard narrative. Chief in Richards's inability to do so is his remarkable error in scope. Perhaps within the records of Worcester and Berkshire County Shaysites, a more complete narrative of Shays's Rebellion can be found.

In *James Madison, the South, and the Trans – Appalachian West, 1783 – 1803* (2013), Jeffery Allen Zemler provided a greater portrait of the West.<sup>47</sup> Zemler evaluated shared western and southern interests throughout the 1780s. James Madison, Zemler

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<sup>47</sup> Jeffery Allen Zemler, *James Madison, the South, and the Trans-Appalachian West, 1783 – 1803* (Lanham: Lexington Books, 2014).

argued, remained at the center of a South – West relationship that shaped southern and western political opposition to the northeast. Zemler’s argument identified Madison as a champion of the West. Madison’s role in forging political relationships with westerners comprised much of Zemler’s monograph. Madison’s effort to persuade delegates of Virginia’s District of Kentucky to support Virginia’s ratification of the Constitution resurrected key insight into Madison’s views of the west.

The close division within the Virginia convention required Madison to forge political partnerships with Kentuckians. Madison sought the support of the district’s most influential residents. Madison opined that much would depend on the votes of Kentucky in Virginia’s ratifying convention. John Brown, Kentucky politician and member of the influential Political Club of Danville, responded to Madison by expressing his support for the federal Constitution. But, Brown was not selected as a member of the Virginia convention. Brown’s support of the federal Constitution remained a minority view in Kentucky and precluded his selection. Correspondence with political confidante George Nicholas, Zemler argued, enabled Madison to better understand the contours of Kentucky politics. Nicholas informed Madison that “one consideration only” shaped Kentucky’s attitude toward ratification. Kentuckians feared that “navigation of the Mississippi would be given up if a new government were to take place.”<sup>48</sup> Madison set about to dispel Kentuckians’ fear of a loss of control of the Mississippi River. Madison wrote to correspondents throughout the Kentucky counties to explain how ratification would enhance Kentucky’s interests. In particular, Madison argued, the Constitution

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<sup>48</sup> Zemler, *James Madison*, 59.

would remove a strong impediment to “improper measures relating to the Mississippi.”<sup>49</sup>

Zemler’s analysis provided insight of Madison’s connections to the West. Zemler’s monograph articulated the West as a significant area of study within constitutional historiography.

Zemler’s attention to George Nicholas’s political relationship with James Madison demonstrates how further investigation of Nicholas is warranted. Nicholas’s political relationship with the District of Kentucky distinguished Nicholas as a seldom examined bridge to the legal and constitutional world of the early national west. Nicholas’s rise in Kentucky political affairs began in March 1785. Nicholas’s procurement of 500 acres of land along the Kentucky River in Fayette County, Kentucky attuned Nicholas to the politics of early national westerners.<sup>50</sup> From 1785 to 1788 Nicholas’s landholdings in Kentucky grew to include acreage in Jefferson and Lincoln counties.<sup>51</sup> Two months after Nicholas’s first visit to his Fayette County property along the Kentucky River, the First Danville Convention assembled in Lincoln County with ambition to “inaugurate the movement for an orderly and legal constitution of a new State,” yet the District of Kentucky’s call for statehood languished for another seven years.<sup>52</sup>

Nicholas remained a resident of Virginia until fall 1789, but frequented the District of Kentucky. When he visited Kentucky, Nicholas intertwined himself within early Kentucky society. In June 1788 James Madison sought Nicholas’s political

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<sup>49</sup> Ibid., 61.

<sup>50</sup> Brookes-Smith, *Master Index*, 198.

<sup>51</sup> Ibid.

<sup>52</sup> George Morgan Chin, *Kentucky Settlement and Statehood, 1750 – 1800* (Frankfort, Kentucky: Kentucky Historical Society, 1975), 436.

guidance regarding the District of Kentucky.<sup>53</sup> Madison remained concerned over the Kentucky District's opposition to the federal Constitution. Despite Nicholas's fervent appeals to the Kentucky delegation, Kentuckians rejected ratification of the federal Constitution. The Kentucky District's disapproval of the federal Constitution relegated Virginia's successful ratification of the federal Constitution to a margin of ten votes. Virginia's slim margin of ratification made for a tight battle in subsequent ratification debates and confirmed westerner's political biases against eastern political goals.

Nicholas became a permanent resident of Kentucky fall of 1789 despite his failure to persuade Kentuckians during the Virginia ratification debates.<sup>54</sup> He remained eager to make his mark in Kentucky politics. President George Washington's appointment of Nicholas as the Kentucky District's first District Attorney in September 1789 placed Nicholas among the first class of Kentucky's statesmen. Washington opined that his judicial appointments "[placed] the administration of the laws with the best and wisest of Citizens."<sup>55</sup> Washington appointed "those Characters who [had] been conspicuous in their country; not only from an impression of their services, but upon a consideration that they had been tried, [and] that a readier confidence would be placed in them by the public than in others, perhaps equal in merit, who had never been proved."<sup>56</sup> Nicholas's loyalty to Federalists in the Virginia Ratifying Convention of 1788 affirmed Washington's favor of Nicholas. Nicholas's connections to the first class of Virginian gentry and to

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<sup>53</sup> Maier, *Ratification*, 240.

<sup>54</sup> Brookes-Smith, *Master Index*, 198.

<sup>55</sup> From George Washington to Edmund Pendleton, 28 September 1789, *The Papers of George Washington, Presidential Series*, vol. 4, 8 September 1789–15 January 1790, ed. Dorothy Twohig. Charlottesville: University Press of Virginia, 1993, pp. 75–80.

<sup>56</sup> From George Washington to William Fitzhugh, 24 December 1789, *The Papers of George Washington, Presidential Series*, vol. 4, 8 September 1789–15 January 1790, ed. Dorothy Twohig. Charlottesville: University Press of Virginia, 1993, pp. 75–80.

prominent Kentuckians Harry Innes, Samuel McDowell, John Brown, and John Breckinridge compelled Nicholas to forge a political career in the Kentucky District. Nicholas championed Kentucky statehood throughout the late 1780s and early 1790s and, in 1792, he became the key leader in Kentucky's successful bid for independent statehood. Nicholas's status as primary author of the Kentucky Constitution of 1792 secured his political ascendancy and established Nicholas's public career as being of great consequence to Kentucky. Nicholas's implementation of Federalist principles within the Kentucky Constitution of 1792 signaled the recognition of a new legal and constitutional world in Kentucky and asserted Nicholas as the Commonwealth of Kentucky's primary founder.



## CHAPTER II

### THE GENTLEMEN FROM VIRGINIA

#### George Nicholas and the Kentucky District's Early Politics

George Nicholas (1754 – 1799) began his life in Williamsburg, Virginia the eldest son of Robert C. (1728 – 1780) and Anne (Cary) Nicholas.<sup>57</sup> Robert Nicholas's father, Dr. George Nicholas (d. 1734), migrated to Virginia from England and married Elizabeth Carter Burwell Nicholas, the daughter of a wealthy Virginia landowner. After the death of his parents, Robert Nicholas studied law at the College of William and Mary and married Anne Cary in 1751. The couple raised four daughters and six sons. Robert Nicholas represented York County (1755 – 1761) and James City County (1766 – 1775) in the House of Burgesses and served as colonial Virginia's treasurer (1766 – 1775). In 1766, Robert Nicholas stopped taking legal cases and turned over his existing cases to Thomas Jefferson. Although Robert Nicholas opposed the adoption of the Declaration of Independence, he sat on the drafting committee for the Virginia Declaration of Right and served in the Virginia General Assembly from 1776 to 1778. In 1779 the elder Nicholas became a member of the first Virginia Court of Appeals, but died in 1780.<sup>58</sup> After Nicholas's death, many of his children assumed leadership roles in the early American Republic. William Cary Nicholas became United States Senator (1799 – 1804) and Governor of Virginia (1814 – 1816). John Nicholas represented Virginia in the United States House of Representatives (1793 – 1801), and Phillip Nicholas became a judge in

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<sup>57</sup> Huntley Dupre, "The Political Ideas of George Nicholas," *Register of Kentucky State Historical Society* 39 (1941): 201.

<sup>58</sup> *Ibid.*

Virginia's General Court.<sup>59</sup> George Nicholas fit well within the Nicholas family's political tradition.

George Nicholas attended the College of William and Mary and practiced law in Hanover County, Virginia.<sup>60</sup> Nicholas volunteered for the patriot cause and served as a lieutenant colonel in the 11<sup>th</sup> Virginia Regiment in the American Revolution. Nicholas saw action with the 11<sup>th</sup> Virginia Regiment at the Battle of Brandywine (September 1777), Germantown (October 1777), and Monmouth (June 1778) before British General Sir Henry Clinton captured his unit at the Siege of Charleston (May 1780). Nicholas's unit disbanded in January 1781. Nicholas moved to Albemarle County, Virginia to practice law after his military service concluded in 1781. Nicholas married Marry Smith of Baltimore, Maryland<sup>61</sup> before he began his political career as a representative of Albemarle County in the Virginia legislature. Nicholas became a supporter of his neighbor Thomas Jefferson and cooperated with another neighbor, James Madison.<sup>62</sup> Jefferson described Nicholas as "a very honest and able man, [though] young and ardent."<sup>63</sup> Nicholas's first test of leadership came in 1784. Alongside Madison, Nicholas repealed Virginia's incorporation of the Protestant Episcopal Church. Despite Nicholas's membership in the Episcopal Church, Nicholas "played an important, even decisive, role"

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<sup>59</sup> Ibid.

<sup>60</sup> Nicholas attended the College of William and Mary with Harry Innes. Nicholas and Innes studied under George Wythe. Nicholas maintained a close friendship with Innes. Washington appointed Innes to first District Judge of the Kentucky District in 1789. Innes later played a significant role in early Kentucky District politics and in the First Kentucky Constitutional Convention.

<sup>61</sup> Sister of Samuel Smith, member of Congress and United States Senator from Maryland and of Robert Smith, U.S. Secretary of the Navy in the Jefferson Administration (1802 – 1805), and U.S. Secretary of State in the Madison Administration (1809 – 1811).

<sup>62</sup> Dupre, "The Political Ideas of George Nicholas," 202.

<sup>63</sup> Ibid.

in defeating the Episcopal clergy's influence within the Virginia legislature.<sup>64</sup> Nicholas remained committed to the issues of his day as a young legislator when concerns about the Kentucky District emerged during his formative years in the Virginia General Assembly.

But, long before Nicholas's attention shifted to the needs of the Kentucky District, the district began its quest for statehood. In as early as 1783, Kentuckians began to question their district's political attachment to the Commonwealth of Virginia. By 1784, district leaders assembled in Danville for the first time to consider the Kentucky District's separation from Virginia. Little animosity existed between the Kentucky District and the Old Dominion in the district's push for separation and independent statehood. From 1783 – 1792, tensions between the “parent-state” and Kentucky rose, but remained civil. The Commonwealth of Virginia proved to be a reasonable partner in the Kentucky District's push for American statehood. Political radicals, opportunists, and agents of the Spanish Crown no doubt acted in order to intensify the Kentucky District's frustration with Virginia, but failed to sully the Virginia-Kentucky relationship. The Commonwealth of Virginia sought a fair and sensible separation, an adequate protection of their financial and political interests, and remained a patient partner in their political dealings with Kentucky. But, the more than eight year struggle to establish Kentucky's independent statehood led to a volatile political situation in the Kentucky District. Frustration ran high among the Kentucky District's early leaders. A series of prolonged and failed conventions, bitter political rivalries, a distrust of easterners, and a general

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<sup>64</sup> Ibid.

disgust of “politics as usual” endangered the statehood process prior to Nicholas’s arrival in the Kentucky District.

In 1783, the close of the American Revolution shifted Kentucky’s interests from military to political and economic affairs. After the terms of the 1783 Treaty of Paris reached the United States, the Virginian government and the people of Kentucky transitioned to peace time pursuits. Kentucky’s promise of land and new opportunities enticed settlers to abandon their ancestral homes in search of economic gain. Payments in land granted to Virginian veterans of the American Revolution and favorable propaganda in the East fueled migration westward to Kentucky. Nicholas’s colleague Humphrey Marshall (1760 – 1841) described Kentucky’s transition best. In the late 1780s, Marshall wrote:

As a consequence of the apparent safety, many new settlements were made in different parts of the country. So that, to a great extent, it was no longer a military enterprise, but a mere act of civil employment, to commence, a new improvement, or establish a new station. Emigrants continued to augment the population. The people, finding themselves much at their ease, turned their industry to the improvement of their domestic affairs. The arts, connected with agriculture, took their residence in the country; and those which furnished the household, and kitchen, with vessels, and cabinet work, for ordinary use, had already become naturalized. Money was tolerably current; and labour of every kind well rewarded. Plenty abounded; cattle and hogs were seen to increase, and thrive to an astonishing degree; and the fields were burthened with Indian corn. Some trade, and barter sprung up among the citizens – amusements succeeded; and horse races were run. Schools were opened, for teaching, reading and writing in the vernacular tongue; and preachers of the gospel were heard publically proclaiming the terms of salvation. To fill up the circle of the year, with its agreeable productions, it may be added – that sundry crops of wheat were raised on the south side of the river; and some distilleries erected on a small scale, in which spirits were produced from Indian corn. Merchandise, transported from Philadelphia to Fort Pitt, in wagons, and thence to the falls of the Ohio in flatbottomed (*sic*) boats were landed; and a retail store opened. . . . in Louisville.<sup>65</sup>

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<sup>65</sup> Marshall, *The History of Kentucky*, 161.

By 1783, population in Kentucky's three counties (Lincoln, Fayette, and Jefferson) reached thirty thousand.<sup>66</sup> One year prior to the Treaty of Paris (1783), the Virginia General Assembly established a criminal court and "controlling power" in the Kentucky District. Early leaders petitioned the Virginia Assembly to "establish a power for the control of all civil and military affairs in the country or else allow Kentucky the power to separate from Virginia and join the Union."<sup>67</sup> The Virginia legislature agreed that "some kind of controlling power for the better management of their [Kentuckians'] civil and military affairs, is reasonable."<sup>68</sup> The Virginia legislature appointed John Floyd, George Muter, and Samuel McDowell to serve as justices on Kentucky's general court. The court opened in March 1783 in Harrodsburg to settle local disputes.

1783 also marked a turning point in the Kentucky District's land policies. In late 1783 Thomas Paine argued in Philadelphia that Virginia's charter claim to its lands west and northwest became invalidated after American independence. Paine contended that Kentucky's land deeds issued by Virginia proved null and void. Pennsylvanians George Pomeroy and Joseph Galloway moved to Kentucky and twisted Paine's argument to their benefit. Pomeroy and Galloway led Kentuckians to believe that Congress annulled all claims and ownership of Kentucky's lands. Pomeroy and Galloway had few successes in "the actual appropriation of lands by those affected by the rumor."<sup>69</sup> Although Pomeroy and Galloway had little success and spent time in prison for their offences, Pomeroy and

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<sup>66</sup> Chinn, *Kentucky Settlement and Statehood*, 427.

<sup>67</sup> James R. Robertson, *Petitions of the Early Inhabitants of Kentucky to the General Assembly of Virginia, 1769 – 1792* (Louisville: John P. Morgan & Company, 1914), 67.

<sup>68</sup> Ibid.

<sup>69</sup> John M. Brown, "The Political Beginnings of Kentucky," *Filson Cub Publications* 6 (1889): 154.

Galloway's scandal exacerbated settlers' concerns about land laws in the Kentucky District.

Confusion abounded in Kentucky in response to Pomeroy and Galloway's false claims. The Pomeroy – Galloway scandal highlighted Virginia's clumsy control of Kentucky land policies and inherent complications caused by the five hundred mile separation of Richmond and Harrodsburg. Kentuckians grew frustrated by overlapping land grants and other contradictory land policies. As Marshall wrote:

The public attention was turned to the acquisition of land. . . and the business was very much engrossed [to the] illiterate; ignorant of what the law required to constitute a good location. They never-the-less proceeded to make entries, urged by their employers, with all the avidity of men, fearful of loss, and intent upon gain. Hence they strewed the locations over the face of the country, as autumn distributes its falling leaves; heedless of those which had previously fallen; and almost as destitute of intelligent design, as they were ignorant of the legal consequences.<sup>70</sup>

Recent settlers to Kentucky grumbled at high costs of undesirable land and grew embittered against the “nest of lawyers” hired to settle disputes among land claimants. Unscrupulous land speculators issued propaganda designed to lower the price of land. Speculators purchased land below fair value. Other speculators sold claimed land to eager settlers without the authority or credentials to do so. More established Kentucky families ranted against land “squatters” and protected land grants issued by Virginia's House of Burgesses for service in the French and Indian War (1754 – 1763). Prominent Kentuckians Dr. John Connolly, John Campbell, William Byrd and William Preston protected between one thousand and six thousand acres of land granted to them by the British crown.<sup>71</sup> Potential land-owners and established land-owners faced economic

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<sup>70</sup> Marshall, *The History of Kentucky*, 161.

<sup>71</sup> Chinn, *Kentucky Settlement and Statehood*, 430.

uncertainty and financial ruin in the Kentucky District. Kentuckians remained powerless to resolve land disputes or to establish more clear land policies.

Slow communication and dangers associated with travel to Richmond worsened the Kentucky District's relationship to the Virginia legislature. Travel to Richmond required settlers to remain absent from their homesteads for weeks, and sometimes months, at a time. Journeys to Richmond often proved ruinous to settlers' finances and endangered them. General Thomas Bodley (1772 – 1833) remarked:

One might travel hundreds of miles through a difficult and dangerous mountain wilderness to look into a land title at Richmond, or to attend the trial of a suit, or to settle an account, or to collect a claim against the state, and perhaps be delayed here [Richmond, Virginia] for months at ruinous expense before he could return to home and family. Many were the lawful land titles lost by pioneer soldiers and others unable to look after them [land titles] at the capitol.<sup>72</sup>

Military considerations also contributed to the Kentucky District's frustration with the Virginian legislature. Virginia's failure to provide adequate military protection heightened settlers' fears of Native American aggression. Virginia expected the Kentucky District to provide protection for settlers after the American Revolution. Virginia's lack of supplies, man power, and general exhaustion after the American Revolution made Virginia weary of continued military actions. Furthermore, Congress' assumption of the Northwest Territory caused some Virginian decision-makers to believe that Virginia might someday cede Kentucky to the central government. Virginia limited its investments in Kentucky. Kentuckians refused to pay for the district's military provisions. Virginia also forbade Kentuckians to engage against Native Americans from

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<sup>72</sup> Thomas Bodley, *Little's Political Transactions Concerning Kentucky*.

the northwest and beyond. Kentucky District settlers lived in fear of Native American attack and had little power to defend themselves.

Control of the Mississippi River dominated the Kentucky District's political considerations. Since the Peace of Paris of 1763, Spain controlled navigation of the Mississippi River. The waterway remained closed to American navigation. If opened to American navigation, the Mississippi River provided an indispensable trade route for goods from the Kentucky District. If the waterway remained closed, goods from the Kentucky District might fail to reach wider markets and handicap the district's economic needs. Over-land trade across the Appalachian Mountains presented far too many difficulties. Spain held tight to control of the Mississippi River throughout the 1780s. Settlers in the Kentucky District resented the Virginia legislature and American Congress' inaction against Spain's control of the waterway. Kentuckians speculated that eastern leaders stifled discussion of navigation rights. Eastern leaders feared that trade from the West would be lost if the Mississippi River opened to the Kentucky District. Control of the Mississippi River caused some in Kentucky to question their loyalty to the United States. Late in 1787, rumors of a conspiracy between the Spanish Crown and key members of the Kentucky District's political leadership raised mistrust in once respected leaders.<sup>73</sup> In November 1784, Kentuckians again raised the question of separation from the Commonwealth of Virginia.

In November 1784, Colonel Benjamin Logan called for a meeting of Kentucky District leaders at Danville. Logan feared attack from the Cherokee and Chickamauga tribes south of the district. The Kentucky District remained volatile to Native American

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<sup>73</sup> Chinn, *Kentucky Settlement and Statehood*, 455.



attack from the Shawnee in the Northwest Territory. Logan and those under his command believed the Shawnee, still aided by British forces in the Northwest Territory, and southern tribal nations co-conspired to attack the Kentucky District for mutual gain. Logan's claim caused great excitement in the district. The threat of Native American attack galvanized the Kentucky District's first significant push for separation from Virginia and American statehood. The Kentucky District faced eminent invasion, yet had no power to defend itself from attack. Nicholas's later colleague John Brown best articulated the district's conundrum:

To await the enemy's coming was manifest unwisdom (*sic*). But who was to authorize a levy of the Militia and a march into the enemy's country, or lay a tax to support the troops? There was no declared state of war, and consequently the county lieutenant possessed no statutory authority to call out the men or take measures to equip and supply them. These powers had lapsed with the promulgation of the peace with Great Britain. There were no magazines of war material, nor any public funds. It was not possible to pledge the public credit, for there was no legislative power at hand to authorize it. In short there was no public machinery other than the meager authority of the county justices, limited as it was by the statutes erecting the counties, and that of the militia colonels now upon a peace footing. An executive or military act required, first to be sanctioned by the Governor of Virginia. New and original powers could be had only from the [Virginia] legislature.<sup>74</sup>

The delegation of leaders at Danville decided that time had come to make Kentucky an independent state and to petition Congress for statehood. The November 1784 Danville meeting concluded with their call for a convention. Logan and Brown instructed militiamen to elect representatives from each county precinct. Representatives met in Danville in December 1784 to consider the question of separation.

On December 27, 1784, elected delegates stated their deliberations. A majority of native-born Virginians sat in the convention. Delegation members selected Colonel

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<sup>74</sup> Brown, *The Political Beginnings of Kentucky*, 58.

William Fleming (1729 – 1795) to serve as chairman. Fleming remained well-connected to prominent members of the Virginia legislature and served as a liaison between the Kentucky District and Richmond. From 1777 to 1779, Fleming represented Kentucky in the Virginia Senate. By order of Governor Thomas Jefferson, Fleming investigated land disputes in 1779 and later served as commissary to militiamen from 1782 to 1783 in the Kentucky District.<sup>75</sup> Fleming presided over sensible delegates experienced in public leadership. Delegates represented the elite of the Kentucky District and conducted their “inquires and deliberations. . .with much decorum.”<sup>76</sup> Delegates held no animosity toward their “mother state” of Virginia. Rather, delegates debated if the Kentucky District could be better served under the Virginia legislature, or as an independent state. Delegates concluded that particular “grievances could be remedied by the Virginia Assembly, but that most could be alleviated only by the erection of Kentucky into an independent state.”<sup>77</sup> The convention recommended separation, but decided that a new convention be called “for the express purpose of considering , and deciding, on the propriety, and expediency, of applying to the general assembly, for an act of separation, and permission to become an independent member of the union.”<sup>78</sup> News of the convention’s recommendation reached Richmond through Fleming. Twenty-six delegates won election to the new convention held at Danville in May 1785.

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<sup>75</sup> Francis S. Drake, *The Dictionary of American Biography* (Boston: Boughton, Osgood, & Company, 1879), 461.

<sup>76</sup> Marshall, *The History of Kentucky*, 230.

<sup>77</sup> Bodley, *History of Kentucky*, 234.

<sup>78</sup> Ibid.

Delegates led by Judge Samuel McDowell assembled to “inaugurate the movement for an orderly and legal constitution of a new state” on May 21, 1785. After nine days of deliberation, delegates passed their first resolutions:

Resolved, unanimously, as the opinion of this committee, that a petition be presented to [Virginia’s] Assembly, praying that the said [Kentucky] district may be established into a state, separate from Virginia.

Resolved, unanimously, as the opinion of this committee, That (*sic*) this district when established into a state, ought to be taken into union with the United States of America and enjoy equal privileges in common with the said states.

Resolved, That this convention recommend it to their constituents, to elect deputies in their respective counties, to meet at Danville on the second Monday of August next, to serve in convention, and to continue by adjournment till the first day of April next, to take further into their consideration the state of the district.

Resolved, unanimously, That the election of deputies for the proposed convention, ought to be on the principles of equal representation.<sup>79</sup>

The Danville Convention of May 1785 also established that a constitution be authored based upon Virginia’s example, that Kentucky be required to pay any outstanding debts to Virginia, and agreed that Kentucky would establish all necessary functions of state government through independent taxation. Universal manhood suffrage remained most significant to the convention and marked a departure from the Constitution of Virginia. The convention’s adoption of universal manhood suffrage signaled a shift in the legal and constitutional world of the Kentucky District. The landed elite’s unanimous decision to adopt universal manhood suffrage confirmed a distinct difference of political thought from Virginia’s state constitution (1776). The convention’s unanimous decision included Kentucky’s influential McDowell, Speed, Todd, Brown, Innes, and Wallace families. Marshall commented:

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<sup>79</sup> Bodley, *Little’s Political Transactions*, 64.

The resolution of the convention, which has been made the subject of remark, was then a creature of local circumstances, and matters of fact at the time, rather than the result of any political sagacity. It was for the times and occasions near at hand, rather than for those in the future, and distant. It was for a state of equality. For if equality ever existed in a civilized society, it was in those early periods of the settlement of Kentucky – when danger, the mode of living, and other circumstances, common to all- had placed all, on a common level. In such a community, entering into a political state, their equality would of course, form the basis of their constitution.<sup>80</sup>

Marshall identified principles of equality essential to the political mechanics of Kentucky. Marshall's summation attested to Kentucky's unique distillation of legal and constitutional understanding.

On August 8, 1785,<sup>81</sup> delegates elected by universal manhood suffrage met at Danville. Convention clerk George Muter delivered a summary report:

Your committee having maturely considered the important matters to them referred, are of opinion that the situation of this district upwards of five hundred miles from the seat of the present government, with the intervention of a mountainous desert of two hundred miles passed only at particular seasons, and never without danger from hostile nations of savages, precludes every idea of a connection on republican principles, and originates many grievances; among which we reckon the following:

It destroys every possibility of application to the supreme executive power, for support or protection in cases of emergency, and thereby subjects the district to continued hostilities and depredations of the savages; relaxes the execution of the laws, delays justice, and tends to loosen and dissever the bonds of government.

It suspends the operation of the benign influence of mercy, by subjecting condemned persons, who may be deemed worthy of pardon, to tedious languishing and destructive imprisonment.

It renders difficult and precarious the exercise of the first and dearest right of men – adequate representation – as no person properly qualified, can be expected, at the hazard of his life, to undergo the fatigue

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<sup>80</sup> Marshall, *The History of Kentucky*, 198.

<sup>81</sup> In August 1785, the Virginia General Assembly established the Kentucky counties of Madison and Mercer from Lincoln County. The assembly also established Bourbon County from Fayette County. The Virginia General Assembly established Madison, Mercer, and Bourbon counties in response to a separate petition drafted by residents of Lincoln and Fayette counties.

of long journeys, and to incur burthensome expenses, by devoting himself to the public service.

It subjects us to penalties, and inflictions which arise from ignorance of the laws, many of which have their operation and expire before they reach the district.

It renders a compliance with many of the duties required of sheriffs and clerks, impracticable; and exposes those officers, under the present revenue law, to inevitable destruction.

It subjects the inhabitants to expensive and ruinous suits in the High Court of Appeals, and places the unfortunate poor, and men of mediocrity, complete in the power of the opulent. . . .

Resolved therefore: That it is the indispensable duty of this Convention, as they regard the prosperity and happiness of their constituents, themselves, and posterity, to make application to the General Assembly [of Virginia], at the ensuing session, for an Act to separate this district from the present government forever on terms honorable to both and injurious to neither; in order that it may enjoy all the advantages, privileges, and immunities of a free, sovereign, and independent republic.<sup>82</sup>

The convention selected Nicholas's William and Mary classmate, friend, and colleague Harry Innes to present the Kentucky District's petition to the Virginia General Assembly. The convention also selected George Muter to accompany Innes to Richmond.<sup>83</sup> The Virginia General Assembly reacted well to Innes and Muter's petition.

In January 1786, the Virginia General Assembly passed, "An act concerning the erection of the District of Kentucky into an Independent State." In order to "[put] in motion a new political machinery and [conserve] public and private rights"<sup>84</sup> Virginia required the Kentucky District to declare separation in a new convention. The Virginia legislature required the new convention to confirm separation in accordance with the General Assembly's act. After the new convention concluded, the Virginia General Assembly permitted Kentucky leaders to "proceed to fix a day, posterior to the first day

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<sup>82</sup> Brown, *The Political Beginnings of Kentucky*, 70.

<sup>83</sup> Ibid.

<sup>84</sup> Ibid., 72.

of September [1787], on which the authority of [Virginia] shall cease and determine forever over the proposed state.” The Virginia legislature concluded that, “the said articles [would] become a solemn compact, mutually binding the parties, and [remain] unalterable by either without the consent of the other.”<sup>85</sup> The General Assembly of Virginia demanded other reasonable conditions:

That prior to the first day of June [1787], the United States in Congress, shall assent to the erection of the said district into an independent state, shall release this commonwealth [Virginia] from all its federal obligations arising from the said district, as being part thereof.

[That Congress agree] that the proposed state shall be admitted into the federal Union posterior to the first day of September [1787], or at some convenient time future thereto.

[That the Kentucky District] take the necessary provisional measure for the election and meeting of a convention at some time prior to the day fixed for the determination of the authority of this commonwealth [Virginia] and posterior to the first day of June [1787], aforesaid, with full power and authority to frame and establish a fundamental constitution of government for the proposed state, and to declare what laws shall be in force therein, until the same shall be abrogated or altered by the legislative authority, acting under the constitution, so to be framed and established.<sup>86</sup>

The Virginia General Assembly’s agreement with Innes and Muter suggested an agreeable road to statehood for the Kentucky District. The Virginia legislature’s swift approval of the Danville convention’s petition for separation showed Virginia’s willingness to part with the Kentucky District. The Kentucky District’s frequent and fervent appeals to the Virginia legislature for military aid, clarification of land policies, and push for control of the Mississippi River necessitated Virginia’s split with Kentucky. Virginia’s best interests aligned with Kentucky’s petition for separation. The Virginia

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<sup>85</sup> Ibid.

<sup>86</sup> William Waller Hening, *The Statutes at Large; Being a Collection of all the Laws of Virginia, From the First Session of the Legislature in the Year 1619* XII (Richmond: W.W. Gray, 1819), 37.

legislature ended a strained relationship with the Kentucky District on amicable and reasonable terms. Virginia's terms of separation provided a responsible avenue for Kentucky's statehood in the best interests of the Old Dominion and federal Union. Virginia's terms remained representative of the Anglo-American constitutional tradition. However, the Virginia legislature's terms proved to be a near insurmountable task for the Kentucky District's political leadership.

In August 1786, residents of Kentucky's seven counties elected representatives scheduled to gather for a convention in September. The September 1786 convention failed to reach a quorum. Under the threat of attack by the Shawnee and Wabash tribes, many of the convention's delegates followed Logan into battle. The convention called for by the Virginia General Assembly remained delayed for four months, until January 1787. The delegates able to report to the September 1786 convention drafted "a memorial reciting the reasons why the convention could not proceed to business."<sup>87</sup> Delegates called upon John Marshall (1755 – 1835) of Richmond to present their memorandum to the Virginia General Assembly.<sup>88</sup> Marshall and his allies in Richmond sustained Kentucky's bid for separation in the interim months.

Between September 1786 and January 1787, factions sharpened in the Kentucky District's quest for statehood. Kentucky's movement toward statehood splintered into conservative and radical groups.<sup>89</sup> Conservative supporters accepted Virginia's

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<sup>87</sup> Brown, *The Political Beginnings of Kentucky*, 74.

<sup>88</sup> John Marshall, fourth Chief Justice of the United States Supreme Court (1801 – 1835).

<sup>89</sup> The terms "conservative" and "radical" are employed in order to identify each political faction in the Kentucky District's push for separation from the Commonwealth of Virginia. These terms do not reflect the political language of 1780s Kentucky. The term "conservative" is used to identify Kentucky District leaders supportive of Virginia and Kentucky's 1786 agreement in "An act concerning the erection of the District of

reasonable terms for separation and statehood. Radical dissenters advocated for the Kentucky District's immediate and unconditional separation from the Commonwealth of Virginia. The Kentucky District became awash in the rhetoric and politicking of varied factions. Residents of Kentucky contemplated their district's push for statehood amid a mix of demagogues and well-reasoned statesmen.

From August 1786 to January 1787 General James Wilkinson (1757 – 1825) inflamed the Kentucky District with his demagoguery. A radical, Wilkinson advocated separation prior to the date agreed to by Virginia law. Wilkinson's sway of Lexington's voters troubled conservative leaders in other regions of the Kentucky District. Humphrey Marshall<sup>90</sup> argued that Wilkinson's plan proved "illegal, revolutionary, and dangerous."<sup>91</sup> An intense political rivalry and hatred fermented between Wilkinson and Marshall.

Prior to the election of delegates for the proposed September 1786 convention, Wilkinson and Marshall campaigned against one another in Fayette County. On the first day of the Fayette County election, Wilkinson ordered the polls closed despite that Kentucky law required open polls for five days. Militiamen followed Wilkinson's orders and closed the polls after well-known Wilkinson supporters casted their first votes. Marshall's supporters observed that some five hundred votes failed to be cast after Wilkinson ordered the poll's abrupt closure.<sup>92</sup> Later, Marshall's supporters concluded

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Kentucky into an Independent State." The term "radical" is used to identify Kentucky District leaders in favor of immediate and unconditional separation from the Commonwealth of Virginia.

<sup>90</sup>First cousin and brother-in-law to prominent Richmond attorney and fourth Chief Justice of the United States Supreme Court John Marshall.

<sup>91</sup> Marshall, *The History of Kentucky*, 244.

<sup>92</sup> Chinn, *Kentucky Settlement and Statehood*, 445.



that Wilkinson enticed his Lexington-based supporters to vote before he ordered the polls closed. Fayette County declared Wilkinson the victor of the election despite his alleged election fraud. But, Fayette County later concluded Marshall the rightful victor.

Marshall explained that Wilkinson:

. . . had taught him [Marshall], that the way to men's hearts, was down their throats. [Wilkinson] lived freely, and entertained liberally. If he paid for his fare it was well for those who furnished it; if he did not, it was well for himself, and those who feasted on it. He surrounded himself with idle young men, of both town and country, who loved him dearly; because they loved his beef, his pudding, and his wine. They served to propagate his opinions, to blazon his fame, to promote his popularity, and to serve him in elections . . .<sup>93</sup>

The campaign between Wilkinson and Marshall represented a departure from the decorum exhibited by Kentucky's political leadership between November 1784 and August 1786. The rise of strong factions within the Kentucky District's push for statehood, the continued threat of Native American attack, and the Virginia General Assembly's reasonable terms created a precarious struggle among Kentucky's political leadership.

In response to the Kentucky District's demagoguery, a group of conservative supporters formed the Political Club of Danville (1786 – 1790). The political club established a constitution and permitted the most able and respected leaders of the Kentucky District to join. Admission to the club remained selective and required a unanimous vote for acceptance of new members. McDowell, Brown, Innes, Todd, Muter, Brown and Christopher Greenup formed the club's core leadership.<sup>94</sup> Members of

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<sup>93</sup> Marshall, *The History of Kentucky*, 244.

<sup>94</sup> Other members of the Political Club of Danville included: William McDowell, William McClung, James Speed, Abraham Buford, Robert Dougherty, Thomas Speed, Willis Green, Stephen Ormsby, Matthew Walton, Thomas Allin, Peyton Short, Gabriel

the club debated Kentucky's quest for statehood and national issues of the era at Grayson's Tavern in Danville. The political club served several important purposes. The club allowed the Kentucky District's elite to caucus and form political coalitions. The club helped to clarify members' policy positions and reach compromise among conservative statesmen. Members of the Political Club of Danville sharpened their leadership skills and became masters of debate. Iron sharpened iron at the Political Club of Danville's meetings. The Kentucky District's most prominent leaders sought admission to the club in order to advance their political goals and earn admission into the first rank of Kentucky statesmen. Yet, not all leaders rose to the strict standards of the Political Club of Danville. Humphrey Marshall's initial bid for acceptance in the club failed, although he later gained admittance.

In January 1787, delegates from Kentucky's seven counties again met at Danville.<sup>95</sup> News from John Marshall arrived from Richmond soon after the convention met quorum. Marshall convinced the Virginia legislature to extend the Kentucky District's deadline passed by the Virginia General Assembly. The Virginia legislature passed the Second Enabling Act and pushed Kentucky's potential date to enter the federal Union to June 1, 1789, provided that Congress approved statehood prior to July 4, 1788.

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Jones Johnson, Joshua Barbee, John Overton Jr., Baker Ewing, James Overton, Benjamin Sebastian, Peter Tradeveau, James Nourse, David Walker, James Brown, and William Kennedy.

<sup>95</sup> Representatives included; Jefferson County: Richard Easton, Alexander Breckinridge, Michael Lackasang, Benjamin Sebastian, James Meriwether. Nelson County: Joseph Lewis, William McClung, John Caldwell, Isaac Cox, Matthew Walton. Bourbon County: James Garrard, John Edwards, Benjamin Harrison, Edward Lyne, Henry Lee. Lincoln County: Benjamin Logan, John Logan, Isaac Shelby, William Montgomery, Walker Baylor. Madison County: William Irvine, John Miller, Higgerson Grubbs, Robert Rodes, David crews. Mercer County: Samuel McDowell, Harry Innes, George Muter, William Kennedy, James Speed. Fayette County: Levi Todd, John Fowler, Humphrey Marshall, Caleb Wallace, William Ward.

The January 1787 convention adjourned given Marshall's report. From January to September 1787, Kentucky's political situation grew more volatile. Representatives to the January 1787 Danville convention became disheartened by the series of disappointments and failures in Kentucky's push for statehood. Although frustrated, conservative members of the convention reasoned that Virginia's delay provided more time to court influence in the Confederation Congress in New York. However, tensions abounded in February 1787 between Attorney General Harry Innes and Virginia's new governor, Edmund Randolph (1753 – 1813).<sup>96</sup>

In February 1787, Randolph learned of Logan's assault against the Cherokee and other allied tribes. Logan ignored Virginia's insistence that Kentucky refrain from invasion of tribal lands beyond the district. Randolph insisted that Innes punish Logan and Innes refused. Tension intensified between Innes and Virginia's leadership. Residents of the Kentucky District believed that the Old Dominion would rather Kentuckians remain assaulted by native tribes, than be permitted to defend themselves. Relations between the Kentucky District and Richmond turned cold. In a rare breach of character, Innes asserted to Randolph that the Kentucky District might declare an independent government since "Congress did not seem disposed to protect them."<sup>97</sup> Radical leaders in the Kentucky District manipulated cold relations to promote their "illegal, revolutionary, and dangerous"<sup>98</sup> policies.

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<sup>96</sup> In 1776, Nicholas's youngest sister, Elizabeth Nicholas, married Edmond Randolph.

<sup>97</sup> Chinn, *Kentucky Settlement and Statehood*, 449.

<sup>98</sup> Marshall, *The History of Kentucky*, 244.

At the same time, residents of the Kentucky District learned of Secretary John Jay's proposed treaty with Spain.<sup>99</sup> Jay's proposed treaty closed American navigation of the Mississippi River for twenty five years. The United States Congress stipulated to Jay that any treaty with Spain should protect the right of the United States to the free navigation of the Mississippi River. Despite Congress' appeal, Jay's negotiations with Spanish minister Don Gardoqui ended with Jay's support for closure of the waterway. Washington and Jay concluded that "it would be another generation before the actual needs of the western settlements would include the [Mississippi] river."<sup>100</sup> Northeastern representatives in Congress supported the measure.

Although Kentuckians possessed a limited ability to trade at the time of Jay's proposed treaty, Kentuckians rallied against closure of the Mississippi River. News of the treaty reached the Kentucky District by way of John Marshall. Bodley commented:

When, to all other causes of complaint on the part of the Kentuckians (their dire poverty; the desperate savage war they had endured for years after peace had come to their fellow-Americans east of the Alleghanies; the indifference to their danger on the part of their state and federal governments; and the closing of their only market outlet by the Spaniards) was added this plainly illegal attempt of the northern majority in Congress to barter away their navigation right, who can wonder that the Kentuckians were wrathful; or that they demanded a prompt separation from Virginia and a state government of their own to look after their own interests; or if many of them hotly denounced Congress; or if some talked of revolt from the Confederation, and others feared that continued injustice might be brought about?<sup>101</sup>

Jay's potential closure of the Mississippi River represented a worst case scenario for conservative proponents of Kentucky's statehood. The district became inflamed by the radical political discourse of Wilkinson and others of his persuasion. Many radicals

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<sup>99</sup> United States Secretary of Foreign Affairs, 1784 – 1790.

<sup>100</sup> Chinn, *Kentucky Settlement and Statehood*, 449.

<sup>101</sup> Bodley, *Little's Political Transactions*, XV.

talked of secession and alliance with Spain. Wilkinson's alleged meeting with Gardoqui in New Orleans incensed his followers and manifested into allegations of treason against Wilkinson. The demagoguery of the Kentucky District's radicals held potential to dismantle the efforts of conservatives, further alienate the district from Richmond, and grant Spain an opportunity to subvert the westward expansion of the federal Union.

District leaders assembled in Danville in March 1787 and called for the election of a new convention to be held on the first Monday in May 1787. Delegates to the May 1787 convention penned a remonstrance to the Virginia General Assembly written against the closure of the Mississippi River. Leaders in the Virginia legislature agreed with the Kentucky convention's remonstrance and condemned the proposed treaty by Jay.

John Marshall wrote:

The negociation (*sic*) which opened with Spain, for ceding the navigation of the Mississippi – negociation so dishonorable and injurious to America, so destructive of the natural rights of the western world, is warmly opposed by this country, and for this purpose the most pointed instructions are given to our delegates in congress. I persuade myself that this negociation will terminate in securing, instead of ceding that great point.<sup>102</sup>

Kentucky leaders satisfied by Virginia's response to the proposed treaty with Spain called for a new convention to be held at Danville in September 1787.

In September 1787, delegates at Danville approved the Virginia legislature's Second Enabling Act and asserted that Virginia's authority over Kentucky end on December 31, 1788. In late September 1787, news of the federal Convention of 1787 reached the Kentucky District. The federal Convention of 1787's passage of the federal Constitution gave pause to delegates at Danville. On September 23, Samuel McDowell

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<sup>102</sup> Bodley, *Little's Political Transactions*, 74.

wrote to William Fleming that “[delegates at Danville spent] some time debating whether their votes should be entered [under the] New Cons[titution of 1787] or unanimously.”<sup>103</sup> Delegates at Danville faced a new legal and constitutional world in late September 1787. At this moment, delegates debated if their resolutions should be adopted by a two-thirds majority vote, or unanimously as specified by their model of governance, the Articles of Confederation and of Perpetual Union. The federal Constitution of 1787 occasioned significant debate in the Kentucky District. The Lexington *Kentucky Gazette* carried debate across the district. The Political Club of Danville spent several months debating the new plan of American government, and annotated their copy of the document with great attention to detail.<sup>104</sup> However, the federal Constitution of 1787’s question of ratification had not yet been decided. The September 1787 convention at Danville continued its business. After the convention’s approval of the Second Enabling Act reached Richmond, the Virginia General assembly appointed John Brown to represent the Kentucky District in the Confederation Congress. Continued delays in Congress caused the Second Enabling Act to expire. John Brown failed. The ratification debates of 1787 – 1788 intensified in established states as Kentucky’s quest for statehood entered its most critical phase.

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<sup>103</sup> Samuel McDowell to William Fleming, 23 September 1787. William Fleming Papers, Washington & Lee University Archives and Special Collections, Lexington, Virginia.

<sup>104</sup> U.S. Constitution, Annotated, The Political Club of Danville Papers, The Filson Historical Society, Louisville, Kentucky.

## CHAPTER III

### USEFUL FRIENDSHIPS

George Washington, James Madison, and George Nicholas

James Madison made clear the authority of the federal Constitution of 1787.

Madison asserted the authority of the federal Constitution as “nothing more than the draught of a plan, nothing but a dead letter, until life and validity were breathed into it, by the voice of the people, speaking through the several state conventions.”<sup>105</sup> Later in Madison’s public life, he harkened back to the state ratifying conventions of 1787 and 1788 and he urged his constituents to decipher “the state conventions which accepted and ratified the constitution.”<sup>106</sup> In the Virginia Ratifying Convention of 1788, Madison came to know George Nicholas as a political ally and a personal friend. Madison’s partnership with Nicholas later captured the attention of George Washington. Washington too recognized Nicholas as a formidable statesman and a personal friend. The Virginia Ratifying Convention of 1788 cemented Nicholas as a first-rate statesman in his era and prepared Nicholas to be successful later in Kentucky.

The Kentucky District’s cold reception of the proposed federal Constitution of 1787 worsened Virginia’s push for ratification. The Kentucky District’s distrust of eastern political leaders reached its crescendo with Congress’ failure to admit Kentucky into the federal Union. Virginia’s political clout and role as an important leader of the Revolution made the Old Dominion’s ratification debate essential to the adoption of the proposed federal Constitution.<sup>107</sup> The concerns of fourteen delegates from the District of Kentucky proved an important factor at Virginia’s 1788 ratifying convention. Kentucky’s seven

<sup>105</sup> J.C.A. Stagg, Jeanne Kerr Cross, and Susan Holbrook Perdue, *The Papers of James Madison*, XVI. (Charlottesville: University of Virginia Press, 1989), 295 – 296.

<sup>106</sup> *Ibid.*, 296.

<sup>107</sup> Maier, *Ratification*, 222.

counties held fourteen votes at the convention, and thus held considerable influence over the future of Virginia and, the federal Union.<sup>108</sup>

Madison realized the importance of Kentucky to the success of the federal Constitution and he sought the support of the district's most influential citizens. Madison turned to his close political ally in the Virginia legislature, George Nicholas.<sup>109</sup> Nicholas noted to Madison early in the ratification debates that "the greatest danger for ratification in Virginia [came] from the Kentucky delegates."<sup>110</sup> Madison and Nicholas believed that the close division within the Virginia convention might enable Kentucky's delegates to decide the question of ratification in Virginia.

In early April 1788, Madison observed to several prominent Kentuckians that "a good deal might yet depend on the vote of Kentucky."<sup>111</sup> Kentucky's congressman and member of the influential Political Club of Danville John Brown, responded to Madison by expressing his support for the federal Constitution. But, Brown failed to be selected as a member of the Virginia convention by Kentucky District voters. Brown's support of the federal Constitution remained a minority view in Kentucky and, for that reason precluded his selection. Although still a resident of Virginia, Nicholas employed his status as a Kentucky District landholder and a proponent of statehood. Nicholas chipped away at the Kentucky District's distrust of easterners and their opposition to the proposed federal Constitution. Nicholas' support for ratification in Virginia strengthened Madison

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<sup>108</sup> Ibid., 238.

<sup>109</sup> Nicholas had been Madison's political ally since 1784 in the Virginia House of Delegates.

<sup>110</sup> John P. Kamanski, Gaspare J. Saladino, Richard Leffler, Charles H. Schoenleber, and Margaret A. Hogan, *Documentary History of the Ratification of the Constitution IX*, 704.

<sup>111</sup> John P. Kaminski et al., *Documentary History of the Ratification of the Constitution IX*, 709.



and George Washington's respect for Nicholas. But, before debate began in Virginia, Madison, Nicholas, and Washington first examined the ratification debates in New Hampshire, Massachusetts, and subsequent states.

New Hampshire's ratification of the federal Constitution on June 21, 1788 occasioned little celebration. Despite New Hampshire's status as the ninth state to ratify, a decision that ensured the adoption of the federal Constitution by Article VII of the proposed document, Federalists continued to fret because the debate in Virginia persisted. Consensus remained essential in each state convention as delegates watched and waited before they made final decisions. The path to Virginia had not been easy. In February 1788, Massachusetts became the sixth state to ratify after Delaware, Pennsylvania, New Jersey, Georgia, and Connecticut.<sup>112</sup>

The ratification process in Massachusetts, a hotbed of patriotic sentiment throughout the American Revolution, worried leading Federalists. In correspondence throughout the Massachusetts debate, Washington and Madison expressed their anxiety to one another. Washington spent the snowy days of January and February 1788 cooped up in Mount Vernon. Writing from the Confederation Congress in New York, Madison had little good news to share with Washington. On January 20, 1788, Madison informed Washington that "the intelligence from Massachusetts [began] to look very ominous"<sup>113</sup> when Boston turned cold on ratification. A few weeks later, when ratification in Boston seemed more possible, Madison's forecasts lightened. But, Washington received more disconcerting news in early February. On February 1, 1788, Madison reported that "another mail [arrived] from Boston without terminating the conflict between our hopes

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<sup>112</sup> Ibid., 215.

<sup>113</sup> J.C.A. Stagg et al., eds. *The Papers of James Madison*, XVI, 89.

and fears.”<sup>114</sup> Like other proponents of the federal Constitution, Washington feared what rejection or a slim majority in Massachusetts would mean for the proposed Constitution. Rejection in Massachusetts heightened the probability of rejection in the seven states yet to ratify. In particular, the debates in the influential states of New York and Virginia would be shaped and channeled by Massachusetts’s decision. A margin of ratification from Boston meant heightened debate in the remaining seven states and increased political ammunition for opponents of the Constitution in the states that had ratified. Anxiety permeated Washington’s correspondence with Madison over opponents who blew “the Trumpet of discourse more loudly.”<sup>115</sup>

Washington received news of Massachusetts’s ratification of the proposed Constitution one week after the close of the convention in Boston on February 6, 1788. Despite the good news, Washington remained skeptical about the proposed Constitution’s prospects. He balked at Massachusetts’s proposed amendments to the federal Constitution although he found solace in the sizable ratifying majority.<sup>116</sup> It seemed likely to Federalist leaders that New Hampshire’s convention, scheduled to meet on February 13, would follow Massachusetts. An optimist, Madison concluded that “There [seemed] to be no question that New Hampshire [would add a] seventh pillar . . . to the federal Temple.”<sup>117</sup> New Hampshire’s ratification of the federal Constitution languished until late June, but the state’s support for ratification remained assured. In the interim, Maryland and South Carolina endorsed the Constitution. Victory in Massachusetts brought the vision of victory in Virginia into Washington’s view.

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<sup>114</sup> Ibid., 384.

<sup>115</sup> Ibid.

<sup>116</sup> Maier, *Ratification*, 215.

<sup>117</sup> Ibid.

Ratification in Massachusetts, Washington contended, had dealt “a severe stroke” to the opponents of the Constitution in Virginia. Moreover, he believed that even past opponents of the Constitution would choose “moderation, peace, and candor”<sup>118</sup> after Massachusetts’s ratification. But, Washington’s optimism faced Patrick Henry’s steadfast opposition to the proposed Constitution. Eager to secure a seat at the Virginia ratifying convention, Madison hurried from New York to Virginia. Washington’s secretary, Tobias Lear, believed that Madison was “the only man in the state that could combat the influence of [George] Mason and Henry.”<sup>119</sup>

In late 1787, Madison wrote to Washington that “much [would] depend on Mr. Henry” in the debate over Virginia’s ratification.<sup>120</sup> In October, Henry confessed to Washington the concern he felt over the Constitution was “greater than I am able to express.”<sup>121</sup> Henry held the “highest reverence” for Washington, but he became the leader of the opposition to the proposed 1787 Constitution from the first day of the convention. When Francis Corbin moved that the Virginia convention “be called according to the recommendation of Congress,” Henry objected. In Henry’s view, the mandate that the Constitution be sent to the state conventions for “assent and ratification” precluded Virginia’s delegates proposing amendments. Henry countered with a proposal that allowed the convention to add amendments. Mason seconded Henry’s motion. In the back and forth over the Virginia convention’s first motion, Henry first encountered eastern Virginian, and later Kentuckian, George Nicholas. A firm proponent of

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<sup>118</sup> Ibid.

<sup>119</sup> Kaminski et al. *Documentary History of the Ratification of the Constitution* IX, 699.

<sup>120</sup> Maier, *Ratification*, 225.

<sup>121</sup> Henry to Washington, October 19, 1788. Kaminski et al. *Documentary History of the Ratification of the Constitution* IX, 699.

ratification, Nicholas argued that neither he nor Corbin “denied the right of the convention to propose amendments.”<sup>122</sup> Nicholas’s later interactions with Henry would not be so conciliatory. Nicholas remained an outlier among Kentucky-minded delegates in Virginia’s ratifying convention, but his support for the proposed federal Constitution endeared him to Madison and Washington, but to a minority of the Kentucky District’s delegates.

Correspondence with Nicholas enabled Madison to better understand the contours of Kentucky politics. On April 5, Nicholas informed Madison that “one consideration only” shaped Kentucky’s attitude toward ratification. He explained that Kentuckians feared that “navigation of the Mississippi would be given up if a new government were to take place.” Madison, Brown, and Nicholas worked to dispel the Kentucky District’s fears.<sup>123</sup> Madison wrote to correspondents throughout the Kentucky counties to explain how ratification would not hurt, but enhance Kentucky’s interests. In particular, Madison argued, the Constitution removed a strong impediment to “improper measures relating to the Mississippi.” Nicholas stressed that ratification promised “several consequences extremely favorable to the rights and interests of the Western Country, “[and included] the removal of British troops from the Northwest and greater representation for the [Kentucky District].”<sup>124</sup> But, the Kentucky District’s mistrust of the proposed federal Constitution impeded Nicholas’s efforts.

In 1786, Secretary of Foreign Affairs John Jay enflamed the West when he proposed seceding control of the Mississippi River to Spain for thirty years. Residents of

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<sup>122</sup> Maier, *Ratification*, 227.

<sup>123</sup> *Ibid.*, 704.

<sup>124</sup> Zemler, *James Madison*, 56.

the Kentucky District believed that Jay intended to forsake their interests in exchange for commercial gains that benefited the east coast and especially the Northeast. The residents of Kentucky protested Jay's intentions. Denial of access to the Mississippi River represented a crime against "the God of nature having granted the right and means of acquiring it, ourselves, and against prosperity."<sup>125</sup> After seven northern states voted in favor of adopting Jay's proposal, the Kentucky District addressed a "Remonstrance of the Citizens West of the Allegany Mountains" to the "President and Congress of the United States of America." The petition began:

. . . your Remonstrants (*sic*) yield not in patriotism to any of their fellow citizens: but patriotism, like every other thing, has its bounds. We love those states from which we were all congregated, and no event (not even an attempt to barter away our best rights) shall alien our attachments. . . but attachments to governments cease to be natural, when they cease to be neutral. . . If wretchedness and poverty await us. . . if the interest of Eastern America requires that we should be kept in poverty. . . we can never be taught to submit.<sup>126</sup>

Despite the popularity of Jay's treaty in the Northeast, five southern states opposed it.

Jay's treaty failed to gain the support of the nine states needed for ratification under the 1781 Articles of Confederation.

Concern over Jay's failed treaty fermented dissent in the Kentucky District and it shaped the district's response to ratification. Kentuckians viewed Jay's act as a betrayal and hypothesized Jay's sinister intentions. Patrick Henry, James Monroe, George Mason, and other leading opponents of the proposed federal Constitution used Kentuckians' memory of the treaty to advance their cause. They sought to persuade Kentuckians that "the surrender of the Mississippi would probably be among the early acts of the new

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<sup>125</sup> "The Remonstrance of the Citizens West of the Allegany Mountains," Arthur Campbell Papers, Filson Historical Society, Louisville, Kentucky.

<sup>126</sup> *Ibid.*

congress,”<sup>127</sup> and used the potential surrender of the Mississippi River “as a means to kill the [proposed federal Constitution].” Virginia’s Federalists went on the defensive. “Only the new government,” Madison wrote to Nicholas, “could promise in any short time such arrangements with Spain as Kentucky must wish for.”<sup>128</sup>

Nicholas urged Kentuckians that “their navigation [of the Mississippi River] so far from being endangered will probably be promoted by the adoption of the new government.”<sup>129</sup> Madison responded by arguing that “a more intimate and permanent Union destroyed the excessive regard of the Atlantic seaboard states to their own interests,” and would create a more interdependent relationship among northerners and southwesterners (*sic*).<sup>130</sup> But, opponents of ratification remained unconvinced. Henry touted the effectiveness of the 1781 Articles of Confederation in securing the rights of westerners, and Kentuckians in particular. The Articles protected southern and western interests. The Articles allowed Kentuckians to escape Jay’s proposed treaty. Henry, Mason, and Kentucky’s delegates to the convention celebrated the Articles of Confederation as a bulwark for liberty, and labeled the proposed federal Constitution an instrument of consolidated expanding tyranny.

Nicholas and Madison countered their opponents. “On the very subject of the Mississippi,” Madison argued, “I have seen the opinion of a State in Congress [under the Articles of Confederation] depending altogether on the casual attendance of these or those members of the same delegation, and sometimes varying more than once in the

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<sup>127</sup> Kaminski et al., *Documentary History of the Ratification of the Constitution* IX, 709.

<sup>128</sup> Ibid.

<sup>129</sup> Zemler, *James Madison*, 59

<sup>130</sup> Kaminski et al., *Documentary History of the Ratification of the Constitution* IX, 709.

course of a few days.”<sup>131</sup> Madison argued that the proposed federal Constitution secured the Kentucky District greater and more reliable support. The proposed federal Constitution’s balance of powers produced the protections Kentuckians sought and it held the power to promote Kentucky’s interests. Madison argued that a separation of powers thwarted concerns that a powerful Senate might ignore the Kentucky District’s interests. Representatives from likeminded states could defend their interests in the House if Kentucky were threatened in the Senate.

Madison’s explanations to Kentucky’s leaders did little to deter opponents of the federal Constitution. Spanish control of the Mississippi River remained opponents’ chief concern throughout the Virginia convention. American navigation of the Mississippi River remained the convention’s central point of debate throughout the spring and summer of 1788. “In my opinion,” Henry retorted, “the preservation of that river calls for our most serious consideration.” Kentucky District delegate William Grayson warned that the loss of the Mississippi River precluded migration to Kentucky. Grayson speculated that, “the Northern states would not only retain their inhabitants, but preserve their superiority and influence over those of the South.”<sup>132</sup> Grayson’s appeal that ratification entailed the inevitable loss of the Mississippi River and dissuaded would-be Kentucky District settlers rekindled fears of eastern political domination. Kentucky District delegates viewed control over the Mississippi as a part of a larger plot to increase the population, wealth, and superiority of the Northeast. From 1785 to 1788, leading members of the Kentucky District assembled in Danville to petition Richmond for

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<sup>132</sup> Lowell Harrison, *Kentucky’s Road to Statehood* (Lexington: University Press of Kentucky, 1992), 19.

Kentucky's admission into the federal Union. In February of 1788, Brown presented Kentucky's petition for statehood to Congress. When Virginia's ratifying convention assembled in June 1788, Brown's congressional committee dissolved. Kentucky's delegates to the ratifying convention cried foul. The Kentucky District's delegates speculated that Kentucky's petition for statehood remained sabotaged by Northeastern states eager to prevent an upset of power in Congress. A furious Brown wrote to Madison that the failure of Congress to admit Kentucky into the union "may be unfavorable to the union especially as that district entertains such prejudices against the new Constitution."<sup>133</sup> Brown wrote that in Kentucky's push for statehood, "there always [seemed] to be something" that prohibited admission to the federal Union.<sup>134</sup> Kentucky's treatment fit Grayson's accusations in the eyes of many. Henry articulated that a vote for ratification meant increased Northeastern political power. Henry argued that southern states "situated contiguously to that valuable and inestimable river [Mississippi River] should reject a plan of government harmful to [southwestern] interests."<sup>135</sup>

Proponents of the proposed federal Constitution contended that government under the Articles of Confederation weakened the nation's ability to retain navigation of the Mississippi. Failure to ratify risked the loss of western lands. Madison added that northern trade, dependent upon "extended and advanced" markets, stood to lose greatly if the United States abandoned the Mississippi. Nicholas argued that the prospect of increased tax revenue incentivized the United States government to admit Kentucky as a state. Proponents of the proposed federal Constitution sought to reassure Kentucky's

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<sup>133</sup> Kaminski et al., *Documentary History of the Ratification of the Constitution* VII, 525.

<sup>134</sup> *Ibid.*

<sup>135</sup> Kaminski et al., *Documentary History of the Ratification of the Constitution* IX, 1161.



delegates that the protection of the Mississippi “[remained] the interests of all the states.”<sup>136</sup> Much to the dismay of Henry and delegates of his persuasion on June 25, 1788, Virginia became the tenth state to ratify the proposed Constitution. New York followed one month later on July 26, 1788.

Virginia ratified the Constitution by a vote of 88 to 78. The Kentucky delegation voted 11 against and 3 in favor.<sup>137</sup> Concerns mounted that Virginia’s slim margin of victory might impede progress in states yet to ratify the proposed Constitution. Kentucky’s rejection of the proposed federal Constitution of 1787 highlighted the district’s continued disdain for and distrust of northeastern political influence. Virginia’s record of ratification held a clear victory, but its close margin secured an uncertain future in states yet to ratify. Kentucky’s influence remained in other ratifying conventions when opponents of the proposed Constitution exploited Virginia’s slim ratifying margin. Nevertheless, Madison, Washington, and Nicholas heralded Virginia as the tenth pillar of the federal temple.

Kentuckians accepted the Constitution with minimal protest. When word reached Lexington, the *Kentucky Gazette* reported the celebration of Kentucky’s first Independence Day under the new Constitution. An ode written at Lexington and sung to the tune of ‘Rule Britannia’ celebrated the occasion:

I

“When the Almighty Fiat gave  
‘Creation’s boundless rage’ a birth;  
The choir of Angels hail’d our Land,  
The Land most favour’d of the Faith

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<sup>136</sup> Zemler, *James Madison*, 57.

<sup>137</sup> Lewis Collins, *History of Kentucky* (Louisville: Richard H. Collins, 1877), 21.

‘Hail Kentucke! Kentucke thou shalt be  
‘For ever great, most blest and free.

## II

High as thy streams whose swelling pride  
Increasing torrents quickly raise;  
So high, the trump of Fame shall swell  
Thy name with tributary Praise.  
‘Hail Kentucke! For ever be thy name  
‘The theme of never dying Fame.

## III

‘Till latest times, by teeming fields,  
By lib’ral Heav’n’s great commands,  
Shall on thy torrents unconfin’d  
Send plenty to far distant lands.  
‘Hail Kentucke! For ever thou shalt be  
‘For ever great, most blest and free!’<sup>138</sup>

After the songs and other festivities, the people of Lexington offered a toast to the United States. Kentuckians toasted to “the Western world, perpetual Union, on principles of equality, or amicable separation, the navigation of the Mississippi, at any price but that of liberty. . .harmony with Spain,” and to the Virginia convention. The celebration closed with a toast that, “the Atlantic states be just, the Western states be free, and both be happy.”<sup>139</sup> Still, Kentucky remained a district of Virginia whose residents desired independence, autonomy, and equal footing as a separate member of the federal Union.

The Kentucky delegates held remarkable influence throughout the Virginia convention. Virginia’s ratification rested in the hands of proponents and opponents of the proposed federal Constitution concerned with the views of Kentuckians. Although Virginia ratified the Constitution with minute support from Kentuckians, Kentuckians

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<sup>138</sup> Kaminski et al., *Documentary History of the Ratification of the Constitution X*, 1730.

<sup>139</sup> *Ibid.*, 1731.

nevertheless steered the direction of the Virginia convention from its outset to its final days. Kentucky's influence remained in future ratifying conventions when opponents of the proposed Constitution exploited Virginia's slim ratifying margin. Kentucky's rejection of the federal Constitution of 1787 highlighted the district's continued disdain for and distrust of northeastern political influence.

Nicholas's failure to sway Kentucky's delegates at the Virginia convention proved in the long-run, inconsequential. Although eleven of the fourteen Kentucky delegates to the Virginia convention voted against ratification of the Constitution, the federal Constitution's ratification enabled admission of Kentucky to the union four years later. Nicholas's heightened reputation in the eyes of Madison and Washington signaled Nicholas's rise to the first rank of Virginia's statesmen. In September 1789, Washington appointed Nicholas to serve as the Kentucky District's first United States Attorney. Washington's appointment placed Nicholas among the "founding generation" of the federal judiciary. Later in 1789, Nicholas became a permanent resident of the Kentucky District. From his experience in the Virginia Ratifying Convention of 1788, Nicholas grew attuned to the Kentucky District's befuddled attempts at statehood and the district's crises of political leadership. Nicholas entered Kentucky a respected statesman and a friend of Washington, Madison, and at times Jefferson. Additionally and importantly, Nicholas also remained close to local leaders prominent in the Kentucky District. Nicholas's arrival to Kentucky signified a shift in the district's struggle for statehood. From 1789 to 1792, Nicholas became a man of great consequence to the Kentucky District's push for admission in to the federal Union.

## CHAPTER IV:

### GEORGE NICHOLAS: KENTUCKY'S INDISPENSABLE MAN?<sup>140</sup>

Nicholas's heightened influence coalesced with his arrival in the Kentucky District when "perhaps no other American community ever so completely gave itself over to thoughts and arguments on constitutional principles."<sup>141</sup> Judge Harry Innes noted to Thomas Jefferson:

The people of Kentucky are all turned politicians – from the highest in Office to the Peasant – the Peasantry are perfectly mad – extraordinary prejudices and without foundation have arisen against the present Officers of Government – the Lawyers and Men of Fortune – they say plain honest Farmers are the only men who ought to be elected to form our [Kentucky] Constitution. They have given a very serious alarm to every thinking man, who are determited (*sic*) to watch and court the temper of the people.<sup>142</sup>

Nicholas fit the description of Innes and other "men of fortune." From 1785 to 1788, Nicholas amassed over 40,000 acres of land in Fayette, Bourbon, and Jefferson Counties.<sup>143</sup> He established his main homestead on North Limestone Street in Lexington. Nicholas maintained a hemp planation in Fayette County and later supervised the production of iron ore in Bath County.<sup>144</sup> Nicholas held considerable wealth inherited after his father's death in 1780. Nicholas's inheritance also included a number of slaves.

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<sup>140</sup> See James Thomas Flexner, *Washington: The Indispensable Man* (Boston: Little, Brown and Company, 1969). Primary and secondary evidence attested to George Nicholas's status as a leader of great consequence to the Kentucky District's push for American statehood. Evidence is inconclusive that Nicholas became an "indispensable man." Historians of early Kentucky must redirect their attention to Nicholas. Historians of early Kentucky must consider if Nicholas proved indispensable in the Kentucky District's push for American statehood.

<sup>141</sup> E. Merton Coulter, "Early Frontier Democracy in the First Kentucky Constitution." *Political Science Quarterly* (December 1924): 665.

<sup>142</sup> Chinn, *Kentucky Settlement and Statehood*, 473.

<sup>143</sup> Brookes-Smith, *Master Index*, 198.

<sup>144</sup> Chase R. Staples, "George Nicholas." George Nicholas Collection, 1780-1830, MSC 26, Special Collections, Transylvania University, Lexington.

Over 30 slaves remained in bondage at Nicholas's Lexington plantation upon his death in 1799.<sup>145</sup> But, Nicholas's chief interests became his law practice and his role in the Kentucky District's public life. Nicholas remained entrenched in the sensibilities and culture of Ablemarle County Virginian aristocracy. Nicholas's social status and role as the Kentucky District's first District Attorney presented opportunities and challenges in Nicholas's new political life. Nevertheless, Nicholas asserted himself among the first rank of Kentucky's statesmen. In time, Nicholas's leadership became of major consequence to Kentucky's push for statehood.

In late 1789, Nicholas began to attune himself to the political winds of his new home. His network of friends and allies in the new federal government and in the Kentucky District became useful to Nicholas's political goals. In the aftermath of Nicholas's appointment to United States Attorney in the Kentucky District, Secretary of the Treasury Alexander Hamilton presented his *Report on Public Credit* to the United States Congress. Congress acted to consolidate state and national debts into a single debt funded by the federal government in June 1790. Nicholas received occasional correspondence from Madison, Jefferson, and Congressman John Brown on issues of national interest.<sup>146</sup> Nicholas remained well-informed from his contacts in Philadelphia and through his voracious reading of the *Kentucky Gazette*.

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<sup>145</sup> "Inventory of the Estate of George Nicholas, Deceased." George Nicholas Collection, 1780-1830, MSC 26, Special Collections, Transylvania University, Lexington.

<sup>146</sup> To James Madison from George Nicholas," *The Papers of James Madison*, ed. Robert A. Rutland and William M. E. Rachal. (Chicago: The University of Chicago Press), 1973, 8 – 10, 40 – 41, 138 – 141, 264–265, 267, 316 – 317, 326, 406 – 409, 427 – 428, 442 – 426. To Hon. John Brown from Col. George Nicholas. George Nicholas Letters, 1789-1796, 98SC95, Library Special Collections and Archives, Kentucky Historical Society, Frankfort.

In December 1790, Hamilton promoted the passage of an excise tax on American distilled spirits. The tax on distilled spirits incensed westerners in Pennsylvania and Kentucky. The 1793 Whiskey Rebellion inspired “massive civil disobedience and occasional violence” throughout the Kentucky District, although the uprising is better known as an act of rebellion in western Pennsylvania.<sup>147</sup> Kentuckians dismissed the whiskey tax. Prominent leaders in the Kentucky District refused to comply with taxation from “a distant government that seemed of little use to them.”<sup>148</sup> Taxation on the district’s most exported product further antagonized political radicals who conspired to surrender Kentucky to the Spanish Crown. Later in the 1790s, a Spanish agent confirmed that an “inability [in the Kentucky District to pay] taxes . . . or an attempt of the [United States] government to collect the sum in force” might compel Kentucky to accept Spanish rule.<sup>149</sup> Prominent Kentucky legal historian Mary K. Bonsteel Tachau concluded that the fragility of the Union precluded federal invasion of the Kentucky District. The federal government sought to make an example of western Pennsylvania, but sought an alternative solution in the Kentucky District.<sup>150</sup>

The federal government employed legal processes in order to collect the whiskey tax in the Kentucky District. Force remained too volatile of an option despite the petitions, protests, and violence of Kentuckians. The collection of the excise tax became the duty of the United States attorneys. Washington offered the duties of the office of United States Attorney for the Kentucky District to Nicholas, but he refused

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<sup>147</sup> Mary K. Bonsteel Tachau, *Federal Courts in The Early Republic: Kentucky, 1789 – 1816* (Princeton, New Jersey: Princeton University Press), 1978, 66.

<sup>148</sup> Ibid.

<sup>149</sup> Ibid., 67.

<sup>150</sup> Ibid., 68.

Washington's appointment.<sup>151</sup> In March 1790, Washington appointed James Brown, the brother of Congressman John Brown. However, Brown also refused Washington's appointment. A prominent Lexington attorney, William Murry filled the appointment. But, Murry failed to prosecute any of the Kentucky District's tax- evaders. The Internal Revenue Service in Kentucky appointed Colonel Thomas Marshall to assemble tax collectors. Despite Marshall's efforts, Murry again failed to prosecute any violators of the law. Later in the early 1790s, Murry resigned thus leaving the post vacant.<sup>152</sup>

Washington again turned to Nicholas to fill the office of United States Attorney of Kentucky. But, Nicholas refused the appointment for a second time. Nicholas explained his position in a letter to Colonel Thomas Marshall. He contended:

I have encouraged no man to oppose the law; I have recommended it to all who have applied to me for that Purpose, to comply with it; I have refused to give instructions how the distillers might evade the law; I have declined giving my general opinion on the Practicability of enforcing the law; but after suits have been brought, I have upon being employed in them, given an opinion as to the decision that would Probably take place in those Particular cases. In all future applications, except where defendants shall have been guilty of a clear breach of the Peace, I shall hold myself at liberty to appear for them, and to endeavor to show that their cases do not come within the law, or ought to be punished under it.<sup>153</sup>

Nicholas recommended Thomas T. Davis for the position, but Marshall held that Davis, “[could] be no match to Nicholas at the bar.”<sup>154</sup> Washington then selected John Breckinridge to fill the troubled appointment. Like Nicholas, Breckinridge remained cautious of the appointment. Breckinridge too sought to enter the first rank of Kentucky statesmen and remained a new face in the Kentucky District. Like Nicholas,

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<sup>151</sup> Ibid.

<sup>152</sup> Ibid., 69 -70.

<sup>153</sup> Ibid., 70.

<sup>154</sup> Ibid.

Breckinridge rejected Washington's offer. In time, Breckinridge became Nicholas's close friend and protégé.

Kentucky's Office of the District Attorney languished until well after Kentucky entered the federal Union. In desperation, Hamilton recommended Commissioner of Revenue Tench Coxe to send private counsel to prosecute suits in Kentucky. Marshall again asked Nicholas to fill the appointment. Despite the promise of a hefty salary, for a third time, Nicholas refused the position. Finally, in 1796 William Clarke of Maryland accepted his appointment to serve as United States Attorney of Kentucky seven years after Nicholas first refused Washington's appointment.<sup>155</sup>

Although Tachau argued that Nicholas refused Washington because Nicholas "was probably not interested in [a] less prestigious appointment," it is evident that Nicholas understood the formidable political opposition to the whiskey tax in the Kentucky District.<sup>156</sup> Nicholas's strong connections within the early federal government and his keen understanding of Kentucky politics dissuaded Nicholas from his acceptance of an unpopular political position. Nicholas's early reading of the political winds in the Kentucky District precluded his acceptance of Washington's appointment in 1789 – 1790. Nicholas's goal to enter the first rank of Kentucky politics may have been over before it started had Nicholas remained duty-bound to collect the excise tax. Rather than accept Washington's appointment and cement his fate as an elitist eastern outsider, Nicholas allied with Kentuckians in their district's movement against federal taxation. Nicholas's 1789 refusal of Washington's appointment to the federal Judiciary demonstrated Nicholas's political astuteness. Nicholas's subsequent refusals of the

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<sup>155</sup> Ibid., 72.

<sup>156</sup> Ibid., 68 – 69.



judicial appointment confirmed his political ties to Kentucky, and his refusals established Nicholas's loyalty to his Kentucky electorate.

Despite Nicholas's refusal of his federal appointment in 1789 – 1790, Nicholas and others of the Virginian aristocracy faced increased animosity in their struggle to secure prominent positions within the politics of the Kentucky District. In autumn 1791, Nicholas encountered his first public detractor. In the weeks that followed a speech given by Nicholas in Danville, a letter by Phillip Phillips appeared in the November 26, 1791 edition of the *Kentucky Gazette*. In his published letter, Phillips decried:

I am an inhabitant of Kentucky, tho [*sic*] but lately arrived in the district. My father was the president of a political club in Ireland. He was a larned [*sic*] man; but I was a vile sarpent [*sic*] and would never take larning [*sic*]. Mr. Printer I never was a frend [*sic*] to larned men for I see it is those sort of fokes [*sic*] who always no [*sic*] how to butter thare [*sic*] own bread and care not for others. Now Col. N[icholas] is a grate [*sic*] reasoner and he said if unlarned [*sic*] men go to the legislater [*sic*] to make laws, thay [*sic*] could not understand them when they had made them, and it would take all the larned men and all the squires in court to make it out. For my part, Mr. Printer I am a friend to the liberties of the pepel [*sic*] . . . .<sup>157</sup>

Phillips's aversion to Nicholas and other “larned” [*sic*] men demonstrated the Kentucky District's apprehension to the Old Dominion's tradition of aristocratic rule. The “pepel” [*sic*] of the district remained distrustful of the eastern elite. By the 1790s, the Kentucky District transitioned from the “good poor man's country” of Daniel Boone and Simon Kenton to the Kentucky of men like Nicholas, Breckinridge, Todd and other notable old families of the Virginian aristocracy.<sup>158</sup> Kentuckians from the Boone and Kenton era wrestled with the district's transition. Although Phillips “tho [*sic*] but lately [had] arrived

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<sup>157</sup> *Kentucky Gazette*, November 26, 1791.

<sup>158</sup> For more information on Kentucky's period of political and cultural transition in the 1790s – early 1800s see Stephen Aaron, *How the West Was Lost: The Transformation of Kentucky from Daniel Boone to Henry Clay* (Baltimore: The Johns Hopkins University Press, 1996).

in the district,” his abhorrence of Kentucky’s new political elite mirrored the attitudes of his more seasoned peers. Nevertheless, Nicholas remained steadfast in his goal to lead the Kentucky District to statehood, and to build consensus among the citizens of Kentucky.

From late 1790 through 1792, Nicholas remained a sagacious student of the Danville conventions and their proceedings. Months before Nicholas’s arrival in the Kentucky District, a new convention assembled in Danville in response to Kentucky’s failed bid for statehood under Brown in the Confederation Congress. The July 1788 Danville Convention reaffirmed the Kentucky District’s position to separate from the Commonwealth of Virginia and to enter Kentucky into the federal Union. Delegates of the 1788 Danville Convention prepared a proclamation almost identical to the call for separation and admission to the federal Union produced in 1786 – 1787. Delegates selected General James Wilkinson to deliver the July 1788 proclamation to Richmond. The convention adjourned until July 1789. The July 1789 Danville Convention assembled and unanimously selected Samuel McDowell as the convention’s president. The July 1789 convention called for a constitution to be assembled for Kentucky at a later date. Later in 1790, the convention called for elections to be held for a constitutional convention. In 1791, newly elected and re-elected delegates met. Delegates again confirmed their proposed separation from Virginia and called for a final election of delegates to meet in Danville in April 1792 in order to draft the First Kentucky Constitution.<sup>159</sup> Delegate Hubbard Taylor wrote to his cousin James Madison:

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<sup>159</sup> Kentucky Constitutional Convention Journal, 1788 – 1792. MSS 145 Library Special Collections and Archives, Kentucky Historical Society, Frankfort.

The elections for the Members to Convention is now at hand in [the Kentucky District]. I have enclosed you a list of the members from the Counties where the elections are over and I flatter myself I shall be able at a future day to acquaint you of Colo. Nicholas' election as it is a matter of the utmost importance to this district.<sup>160</sup>

On April 2, 1792, Nicholas won election to the convention as a representative of Mercer County alongside McDowell, David Rice, Jacob Frowman, and Samuel Taylor.<sup>161</sup>

At the April 1792 Danville Convention, Nicholas became a member of the Committee of Privileges and Elections and he rose to become the leading member of the committee to draft a constitution. Nicholas reported the proposed constitution to the committee of the whole at the Danville Convention of April 1792. The preamble to Nicholas's constitution read:

We, the representatives of the people of the State of Kentucky, in Convention assembled, do ordain and establish this Constitution for its government.<sup>162</sup>

The remainder of the document established the proposed Kentucky State Government in 12 articles.

Article One established the proposed Commonwealth of Kentucky's legislative branch of government. The proposed constitution created a bi-cameral legislature with a lower house and senate. Members of the lower house were to be elected by white males 21 years of age and older. Members of the senate were to be elected by an electoral college for a period of four years.<sup>163</sup> As such, the proposed Kentucky Constitution of 1792 confirmed a precedent for universal white manhood suffrage that first began in the

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<sup>160</sup> Dupre, "The Political Ideas of George Nicholas," *Register of Kentucky State Historical Society* 39 (1941): 208.

<sup>161</sup> Ibid.

<sup>162</sup> A Constitution or Form of Government for the State of Kentucky, 1792. MSS 145 Library Special Collections and Archives, Kentucky Historical Society, Frankfort.

<sup>163</sup> Ibid.

Danville Convention of May 1785. The proposed 1792 Kentucky Constitution represented a break with the Commonwealth of Virginia's Constitution of 1776 that restricted the Old Dominion's electorate to white male landowners over the age of 21. April 1792 marked a critical moment in the development of Kentucky government. The proposed Kentucky Constitution of 1792 signaled a shift in the aristocratic traditions of the Virginian "parent-state" in the Kentucky District. Nicholas's proposed Kentucky Constitution of 1792 proved ahead of its era. Universal white manhood suffrage became law under Kentucky's first constitution in 1792, but did not occur on a wider scale in the United States until the rise of Jacksonian Democracy some 30 years later.

Article Two established the Executive Branch of the proposed state government. The proposed constitution established the Office of Secretary of the Governor and of the Attorney-General. The plan of government established the governor as the "commander-in-chief of the army and navy of [the] Commonwealth [of Kentucky], and of the militia, except when called into the service of the United States," among other powers akin to the federal Executive.<sup>164</sup> No provision established the Office of Lieutenant-Governor. The governor received election via the Electoral College and served a term of four years.

Article Three established the parameters of elections and Article Four established the impeachment process in the proposed commonwealth. Article Five established the Judiciary in a Supreme Court of the Commonwealth of Kentucky. Article Six established the role of sheriffs and coroners and Article Seven established the oath to be administered to government officials. Articles Eight, Ten, and Eleven established laws that pertained to acts of treason, the proposed state treasury, and re-codified the laws of Virginia,

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<sup>164</sup> Ibid.

established the location of a proposed State Capitol, and provided a process for additional amendments, respectively.<sup>165</sup> Of significant consequence remained the role of the Court of Appeals in land title cases, and Articles Nine and Twelve.

Significant criticism arose in opposition to the elections and qualifications for governors and senators. Delegates accused the Electoral College as little more than a tool for political domination used by Kentucky's aristocracy. The committee of the whole reasoned that Nicholas's qualifications for governors and senators best protected a separation of powers. Nicholas's use of the Electoral College erected a bulwark against tyranny despite the popular outcry against aristocracy. The powers of the Court of Appeals produced much greater concern and outcry. Nicholas held chief responsibility for a clause that "[required] all land title suits to be tried before the Supreme Court at Frankfort."<sup>166</sup> Members of the committee of the whole attacked the clause. Delegates in opposition to the clause contended that travel to and from Frankfort would prove ruinous for poor farmers. Nevertheless, the clause remained in the final draft of the proposed 1792 Kentucky Constitution.

Delegate Alexander Scott Bullitt took the greatest offense against Nicholas's land claim clause. Despite Bullitt's status as a wealthy landholder in Jefferson County, Bullitt decried Nicholas as "capable of sacrificing the most essential interests of his country to [Nicholas's] private emolument."<sup>167</sup> Nicholas responded:

I will undertake to prove to the disinterested and unprejudiced part of the community that some such power was necessary, that the present was the

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<sup>165</sup> Ibid.

<sup>166</sup> Ibid.

<sup>167</sup> Letter to Alexander Scott Bullitt from Col. George Nicholas, August 19, 1792. Bullitt Family Papers 1683 – 2003. Papers of George Nicholas. The Filson Historical Society, Louisville, Kentucky.

best mode in which it [legal disputes over land claims] could have been given, that the checks it [land disputes settled in the Supreme Court] contains are sufficient to guard it from abuse, and [that] those [whom] know very little of the subject [are those whom have] made the most noise about it.<sup>168</sup>

The dispute between Nicholas and Bullitt turned visceral. Nicholas's protégé

Breckinridge reported that Bullitt called Nicholas a "rascal," earlier in the convention.

Breckinridge wrote Bullitt in order to confirm Bullitt's use of the "epithet Rascal" against

Nicholas.<sup>169</sup> While Bullitt's reply to Breckinridge is not known to exist, Nicholas's response to Bullitt lambasted him:

From every point of view in which I have been able to place your conduct respecting the Court and myself, I am of opinion that it has proceeded from the disappointment which you met with in the convention. After having flattered yourself that you should dictate to that body, you found that your influence was confined to a very narrow circle; and that those talents which you had supposed would have borne down all before them, were esteemed by others to be below mediocrity. Stung with chagrin you pitched on me as the object of your resentment, and after having in vain endeavored to infuse a jealousy of me into the minds of the convention, you have been doing the same thing since when you knew that I had no opportunity of answering you.<sup>170</sup>

Nicholas and Bullitt felt their honor questioned. The question of a duel between the two adversaries hung thick in the air. Nicholas settled the question:

You [Bullitt] ask if I expect any further satisfaction from you on this subject. I make no scruple to declare that I am of opinion that fighting does no real service to the reputation; that I think it wrong to hazard life in that way contrary both to the laws of God and man, and that for these reasons I shall never call any person to the field. But I hold myself at full

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<sup>168</sup> Ibid.

<sup>169</sup> Letter to Alexander Scott Bullitt from Breckinridge, August 16, 1792. Bullitt Family Papers 1683 – 2003. Papers of George Nicholas. The Filson Historical Society, Louisville, Kentucky.

<sup>170</sup> Letter to Alexander Scott Bullitt from Col. George Nicholas, August 19, 1792. Bullitt Family Papers 1683 – 2003. Papers of George Nicholas. The Filson Historical Society, Louisville, Kentucky.

liberty to resent any aspersion that may be cast on me and to defend myself against any personal attack which may be made upon me.  
[Signed] Your Obedient Servant,  
G. Nicholas<sup>171</sup>

Later, farmers fought the clause and won the clause's repeal because they believed that the clause proved a tyranny. The clause remained on equal footing to travel to Richmond, Virginia prior to statehood. Later in the 1790s, Nicholas's popularity diminished in response to the public's hatred of the land claim clause.<sup>172</sup> Nevertheless, Nicholas remained a respected, albeit controversial, statesman in Kentucky.

Nicholas's support of Article Nine of the proposed Kentucky Constitution of 1792 also drew disdain from some delegates and citizens. Article Nine established that:

The Legislature shall have no power to pass laws for the emancipation of slaves without the consent of their owners, or without paying their owners, previous to such emancipation, a full equivalent in money for the slaves so emancipated; they shall have no power to prevent emigrants to this State from bringing with them such persons as are deemed slaves by the laws of any one of the United States, so long as any person of the same age or description shall be continued in slavery by the laws of this State; that they shall pass laws to permit the owners of slaves to emancipate them, saving the rights of creditors, and preventing them from becoming a charge to the country in which they reside; they shall have full power to prevent slaves being brought into this State as merchandise ; they shall have full power to prevent any slave being brought into this State from a foreign country, and to prevent those from being brought into this State who have been, since the first day of January, one thousand seven hundred and eighty-nine, or may hereafter be, imported into any of the United States from a foreign country. And they shall have full power to pass such laws as may be necessary, to oblige the owners of slaves to treat them with humanity, to provide for them necessary clothing and provisions, to abstain from all injuries to them extending to life and limb; and in case of their neglect or refusal to comply with the directions of such laws, to have such slave or slaves sold for the benefit of their owner or owners.<sup>173</sup>

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<sup>171</sup> Ibid.

<sup>172</sup> Chase R. Staples, "George Nicholas." George Nicholas Collection, 1780-1830, MSC 26, Special Collections, Transylvania University, Lexington.

<sup>173</sup> A Constitution or Form of Government for the State of Kentucky, 1792. MSS 145 Library Special Collections and Archives, Kentucky Historical Society, Frankfort.

Delegates John Bailey, George Smith, James Garrard, David Rice, James Crawford, Benedict Swope, and Charles Kavanaugh assembled formidable opposition to Article Nine of the proposed constitution.<sup>174</sup> Each leader of the anti-slavery delegation served as ministers throughout the Kentucky District. Anti-slavery lobbies existed within the district's Baptist, Methodist, and Dutch Presbyterian congregations. Presbyterian Minister David Rice served as the chief opponent to slavery in the Danville Convention of April 1792.<sup>175</sup> Slavery in the Kentucky District remained unique to the Blue Grass region's network of prominent landholders.<sup>176</sup> Nicholas held around 30 slaves at his Lexington plantation in the heart of the Blue Grass region and led the pro-slavery wing of the April 1792 Danville Convention. Rice and his delegation moved to strike Article Nine from the proposed constitution. On April 7, 1792 Nicholas resigned his position in the convention in order to lobby supporters of slavery. On April 10, 1792, Nicholas

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<sup>174</sup> Dupre, "The Political Ideas of George Nicholas," *Register of Kentucky State Historical Society* 39 (1941): 209.

<sup>175</sup> Ibid.

<sup>176</sup> For additional information regarding slavery in Kentucky see J. Coleman Winston Jr., *Slavery Times in Kentucky* (Chapel Hill: University of North Carolina Press), 1940., John Craig Hammond, *Slavery, Freedom, and Expansion in the Early American West* (Charlottesville: University of Virginia Press, 2007)., Marion B. Lucas, *A History of Blacks in Kentucky: From Slavery to Segregation, 1760-1891* (Frankfort: Kentucky Historical Society), 1992., Mason Matthew, *Slavery and Politics in the Early American Republic* (Chapel Hill: University of North Carolina Press), 2006., John Craig Hammond and Matthew Mason, *In Contesting Slavery: The Politics of Bondage and Freedom in the New American Nation* (Charlottesville: University of Virginia Press), 2011., Ivan E. McDougale, *Slavery in Kentucky, 1792-1865* (Westport, CT: Negro Universities Press), 1970., Matthew Salafia, *Slavery's Borderland: Freedom and Bondage along the Ohio River* (Philadelphia: University of Pennsylvania Press), 2013., Harold D. Tallant, *Evil Necessity: Slavery and Political Culture in Antebellum Kentucky* (Lexington: University Press of Kentucky), 2003.



gained reelection to the convention.<sup>177</sup> No record is known to exist of Nicholas's defense of slavery at the Danville Convention of 1792. However, on April 11 the *Journal of the Danville Convention of 1792* recorded Rice's permanent resignation from the convention.<sup>178</sup> Whether Rice resigned for reasons that pertained to his personal moral faith, or to further a separate aim is inconclusive. Innes won election to the convention in place of Rice and supported the anti-slavery cause. On April 18, 1792 Nicholas swayed the majority of the convention's delegates to "allow slavery out of respect to the institutions of old Virginia and its [property-rights]."<sup>179</sup> Nicholas and his allies defeated the measure to expunge Article Nine by a vote of 26 to 7.<sup>180</sup> Nicholas's great friend and political ally Harry Innes remained among the anti-slavery voters.<sup>181</sup>

Later and in the final months of Nicholas's life, Nicholas submitted a letter to the March 30, 1799 *Kentucky Gazette* that defended his support of Article Nine in the First Kentucky Constitution. Nicholas stated:

In the doing of this [Nicholas's support of Article Nine], I dwelt largely on the attack which was threatened against property in slaves, and endeavored to prove, that admitting slavery was an evil, and that the policy of the state required that it should be done away, that as that evil had been established by law that that evil could not now be justly removed by the means of laws acting compulsorily on the owners, without the State's making the owners a real and just compensation. . . . The resolutions which were then adopted, contain the substance of the ideas which I delivered at the time. You will find that they contain no justification of slavery. Nor a prohibition to emancipation: so far from it,

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<sup>177</sup> Kentucky Constitutional Convention Journal, 1788 – 1792. MSS 145 Library Special Collections and Archives, Kentucky Historical Society, Frankfort.

<sup>178</sup> Ibid.

<sup>179</sup> John C. Doolan, *The Constitutions and Constitutional Conventions of 1792 and 1799* (Louisville, Kentucky: Kentucky State Bar Association), 1917, 6.

<sup>180</sup> Kentucky Constitutional Convention Journal, 1788 – 1792. MSS 145 Library Special Collections and Archives, Kentucky Historical Society, Frankfort.

<sup>181</sup> Ibid.

they admit the idea that the legislature ought to have powers to direct it upon fair and just terms.<sup>182</sup>

Nicholas's position on slavery mirrored the cultural and moral considerations of his time. Nicholas must not be studied through the lens of contemporary racial sensitivities, but in the moral standards of his own time. Nicholas's complicated relationship with slavery is best understood within the context of Nicholas's early life. Nicholas remained entrenched within the standards and expectations of the Old Dominion's aristocratic planter society. Nicholas viewed slavery as a complicated evil inherited from a colonial past. However, Nicholas did not view black slavery and white liberty as linked like his later Southern descendants. Rather, Nicholas viewed slavery as an evil to be done away with by later generations, but necessary for his personal economic success and the success of the Kentucky District. In Article Nine of the First Kentucky Constitution, Nicholas sought to grant the legislature the "powers to direct it [the institution of slavery in the proposed Commonwealth of Kentucky] upon fair and just terms."<sup>183</sup> Nicholas codified the humanity of enslaved persons in his requirement that "owners of slaves treat them [enslaved persons] with humanity."<sup>184</sup> Nicholas viewed enslaved persons as more than just chattel in his insistence in the First Kentucky Constitution that enslaved persons, "[be provided] necessary clothing and provisions, [that masters] abstain from all injuries to them [enslaved persons] extending to life or limb; [and that masters'] refusal to comply with the directions of such laws [resulted in the forfeiture of slaves]."<sup>185</sup> Such explicit

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<sup>182</sup> *Kentucky Gazette*, "To the Freemen of Kentucky," March 30, 1799.

<sup>183</sup> A Constitution or Form of Government for the State of Kentucky, 1792. MSS 145 Library Special Collections and Archives, Kentucky Historical Society, Frankfort.

<sup>184</sup> *Ibid.*

<sup>185</sup> *Ibid.*

laws for the treatment of enslaved persons remained an abnormality in the laws of slave states, let alone enshrined in slave state constitutions.

Nicholas's most celebrated achievement came in Article Twelve of the proposed Kentucky Constitution. Article Twelve enumerated 28 rights of the people and restrictions of the proposed state government. Of the 28 enumerated rights and restrictions of government, 11 provisions remained similar to Madison's federal Bill of Rights approved by Congress on September 25, 1789. Provisions similar to Madison's federal Bill of Rights included:

That the general, great and essential principles of liberty and free government may be recognized and established, WE DECLARE –

3. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man can be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent; that no human authority can, in any case whatever, control or interfere with the rights of conscience; and that no preference shall ever be given by law to any religious societies or modes of worship.

4. That the civil rights, privileges, or capacities of any citizen shall in nowise be diminished or enlarged on account of his religion.

6. That trial by jury shall be as heretofore, and the right thereof remains inviolate.

7. That printing presses shall be free to every person who undertakes to examine the proceedings of the Legislature or any branch of Government; and no law shall never be made to restrain the right thereof; the free communications of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write, and print on any subject, being responsible for the abuse of that liberty.

9. That the people shall be secure in their persons, houses, papers, and possessions from unreasonable seizures and searches; and that no warrant to search any place, or to seize any person or things, shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation.

10. That in all criminal prosecutions, the accused hath a right to be heard by himself and his counsel; to demand the nature and cause of the accusation against him, to meet the witnesses face to face, to have compulsory process for obtaining witnesses in his favor; and in

prosecutions by indictment or information, a speedy public trial by an impartial jury. . . .

12. No person shall, for the same offense, be twice put in jeopardy of his life or limb. . . .

22. That the citizens have a right, in a peaceable manner, to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances or other proper purposes by petition, address, or remonstrance.

23. The rights of the citizens to bear arms in defense of themselves and the State shall not be questioned.

25. That no soldier shall, in time of peace, be quartered in any house, without the consent of the owner. . . .

28. To guard against transgressions of the high powers which we have delegated, WE DECLARE, that everything in this article is expected out of the general powers of government, and shall forever remain inviolate; and that all laws contrary thereto, or contrary to this Constitution, shall be void.<sup>186</sup>

Nicholas's enumeration of rights in Article Twelve of the proposed Kentucky Constitution won unanimous approval from convention delegates and Kentucky's other citizens. Nicholas's influence in Article Twelve is unquestionable. Article Twelve's Third Amendment erected religious liberty in the proposed Commonwealth of Kentucky. The Third Amendment's establishment that "no preference [be] given by law to any religious societies or modes of worship" traced its development to Nicholas's disestablishment of Virginia's Protestant Episcopal Church in 1784.<sup>187</sup> Nicholas's partnership with Madison in Virginia's House of Delegates influenced Nicholas's views on religious liberties and the role of civil government.<sup>188</sup> Madison and Nicholas's 1784 partnership in Virginia's House of Delegates informed Nicholas's constitutional philosophies.

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<sup>186</sup> Ibid.

<sup>187</sup> Ibid.

<sup>188</sup> Daniel L. Dreisbach and Mark David Hall, *The Sacred Rights of Conscience: Selected Readings on Religious Liberty and Church – State Relations in the American Founding* (Indianapolis, Indiana: Liberty Fund, Inc., 2009), 590.

Madison's influence is felt throughout Article Twelve of Nicholas's proposed constitution. No known communication between Madison and Nicholas discussed Madison's federal Bill of Rights. Nevertheless, Nicholas's language in amendments three, four, six, seven, nine, ten, twelve, twenty-two, twenty-five, and twenty-eight suggested Madison's influence in Article Twelve of the proposed Kentucky Constitution. Nicholas's insistence that individual rights remain in the first draft of the proposed Kentucky Constitution incorporated Nicholas's wisdom from the Virginia Ratifying Convention of 1788. In the Virginia Convention, Nicholas served with Madison in a committee charged to report amendments to the federal Constitution.<sup>189</sup> At the close of the Virginia Convention, Nicholas and Madison suggested that a bill of rights be added to the federal Constitution.<sup>190</sup> Nicholas no doubt considered the popular outcry for a federal bill of rights from 1787 until Madison's election to the First Federal Congress in 1789. The Danville Convention of 1792 adopted the First Kentucky Constitution on April 19, 1792. The constitutional rights of Kentucky's citizens became law less than one year after the ratification of Madison's federal Bill of Rights on December 15, 1791. Madison and Nicholas's partnerships in the Virginia House of Delegates, the Virginia Ratifying Convention of 1788, and subsequent correspondence between each friend confirmed their lengthy political partnership.

An inventory of Nicholas's estate provided a glimpse into Nicholas's political development. An heir of Nicholas's estate catalogued Nicholas's extensive library

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<sup>189</sup> The "committee to prepare and report any amendments" included Governor Edmond Randolph, James Madison, John Marshall, John Corbin, and George Nicholas.

<sup>190</sup> Dupre, "The Political Ideas of George Nicholas," *Register of Kentucky State Historical Society* 39 (1941): 202.

housed at his Lexington plantation.<sup>191</sup> Nicholas's library included over 200 volumes that informed his political philosophy. Nicholas's library included books familiar to the Old Dominion's political elite. Nicholas's mastery of William Blackstone's *Commentaries on the Laws of England*, John Trenchard and Thomas Gordon's *Cato's Letters*, Thomas Hobbes's *Leviathan*, and John Locke's *The Second Treatise on Civil Government* placed Nicholas within the context of the Anglo – American constitutional tradition. Nicholas's library included copies of the Magna Charta, Declaration of Independence, United States Constitution and other essential texts.<sup>192</sup> Article Twelve of the Kentucky Constitution of 1792 demonstrated Nicholas's adherence to Lockean political theory.<sup>193</sup> Article Twelve's First Amendment read:

That all men when they form a social compact, are equal, and that no man or set of men are entitled to exclusive separate public emoluments or privileges from the community, but in consideration of public services.<sup>194</sup>

Nicholas's inclusion of Lockean ideas in the Kentucky Constitution of 1792 advanced the Anglo – American constitutional tradition in the American West and placed Kentucky's constitutional ethos square within the American political tradition. Nicholas's adherence to Locke and other Anglo thinkers placed the Kentucky Constitution of 1792 within the context of America's political development. Nicholas's reliance on the essential texts of Anglo – American constitutionalism opened a window to study constitutional questions in the early American West left unanswered in Bernard Bailyn's *The Ideological Origins*

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<sup>191</sup> "Inventory of the Estate of George Nicholas, Deceased." George Nicholas Collection, 1780-1830, MSC 26, Special Collections, Transylvania University, Lexington.

<sup>192</sup> Ibid.

<sup>193</sup> Dupre, "The Political Ideas of George Nicholas," *Register of Kentucky State Historical Society* 39 (1941): 208 – 209.

<sup>194</sup> A Constitution or Form of Government for the State of Kentucky, 1792. MSS 145 Library Special Collections and Archives, Kentucky Historical Society, Frankfort.

*of the American Revolution* (1967). Nicholas's library is evidence of the continuation of Anglo – American constitutionalism in the early Trans-Appalachian West.

On April 19, 1792, the Danville Convention adopted the First Kentucky Constitution. The convention lasted just 17 days and may have concluded earlier had delegates not selected April 19 for that date's symbolic importance.<sup>195</sup> April 19, 1792 marked 17 years since the Battle of Lexington began the American Revolution in 1775. Although an Act of Congress admitted Kentucky into the federal Union on a tentative basis on February 4, 1791, the official admission of Kentucky into the federal Union did not occur until June 1, 1792.<sup>196</sup>

Several considerations blocked Kentucky's admission into the federal Union until June 1, 1792. Chief among the concerns of Congress remained Kentucky's proposed plan of constitutional government. On April 19, 1792, The Danville Convention's adoption of the First Kentucky Constitution directed Congress to admit Kentucky as an independent state into the federal Union. The Commonwealth of Virginia secured the protection of its financial and political interests in the First Kentucky Constitution. Danville Convention delegates affixed a "schedule" to the close of the constitution that established the Kentucky District's final act of separation from the Commonwealth of Virginia. The Eleventh Amendment in the First Kentucky Constitution's "schedule" conferred with the federal Congress that June 1, 1792 served as the date the Government of the Commonwealth of Kentucky commenced.<sup>197</sup> Therefore, the Kentucky Constitution of 1792 secured the Kentucky District's final separation from the Commonwealth of

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<sup>195</sup> Doolan, *The Constitutions and Constitutional Conventions of 1792 and 1799*, 8.

<sup>196</sup> Ibid.

<sup>197</sup> A Constitution or Form of Government for the State of Kentucky, 1792. MSS 145 Library Special Collections and Archives, Kentucky Historical Society, Frankfort.

Virginia and permitted Congress to allow the Commonwealth of Kentucky into the federal Union.

*The Journal of the Danville Convention* first attested to Nicholas's key role as primary author of the Kentucky Constitution of 1792. Thomas Todd, Clerk of the Danville Convention of 1792, recorded Nicholas's key contributions to the convention.<sup>198</sup> Nicholas's contributions to the First Kentucky Constitution mirrored Madison's main contributions to the federal Constitution of 1787. Contemporaries of Madison and Nicholas each attested to each statesman's primary authorship of the federal Constitution of 1787 and the Kentucky Constitution of 1792, respectively. Humphrey Marshall became the first early historian to assert the Kentucky Constitution of 1792 as credited, "if to any one man, to Nicholas."<sup>199</sup> Marshall's *History of Kentucky* (1812) asserted that "[Nicholas] prepared assiduously for the convention, and, when it met, [Nicholas] immediately obtained control of [the drafting of the Kentucky Constitution of 1792]."<sup>200</sup> Nicholas's role as the primary author of the Kentucky Constitution of 1792 remained uncontested in Lewis Collins's *History of Kentucky* (1847), John Doolan's *The Constitutions and Constitutional Conventions of 1792 and 1799* (1917), Thomas D. Clark's *A History of Kentucky* (1937), and Huntley Dupre's "The Political Ideas of George Nicholas" (1941).

Prominent historian Mary K. Bonsteel Tachau disputed Nicholas's role in the Danville Convention of 1792. In *Federal Courts in The Early Republic: Kentucky 1789 – 1816* (1978), Tachau claimed that "the significance of Nicholas's important

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<sup>198</sup> Ibid.

<sup>199</sup> Tachau, *Federal Courts in The Early Republic*, 40 – 41.

<sup>200</sup> Ibid.



contribution [had] been exaggerated.”<sup>201</sup> Tachau insisted that the Political Club of Danville and the contributions of the club’s members remained overlooked in the historiography of the Kentucky Constitution of 1792. Tachau argued that Political Club of Danville member Judge Harry Innes deserved much of the credit for the First Kentucky Constitution. While the Political Club of Danville served a vital role in the development of constitutional and political thought in the Kentucky District, it is important to consider that the political club functioned from 1786 to 1790. The Political Club of Danville disbanded a full two years prior to the Danville Convention of 1792. Correctly, Tachau argued that the political club, its members, and the club’s contributions to political thought in the Kentucky District influenced later developments in the Danville Convention of 1792. However, Clerk Thomas Todd’s *Journal of the Danville Convention of 1792* named Nicholas as responsible for reporting the proposed Kentucky Constitution to the committee of the whole.<sup>202</sup> Nicholas’s subsequent defense of the institution of slavery in Kentucky, the right of the Kentucky Supreme Court to settle land disputes, and the language used to secure the rights of the people in Article Twelve of the Kentucky Constitution each suggested that Nicholas held chief responsibility for the Kentucky Constitution of 1792.

Tachau’s argument that Judge Harry Innes deserved more credit than Nicholas as primary author of the Kentucky Constitution of 1792 stemmed from Tachau’s distrust of Humphrey Marshall’s *History of Kentucky* (1812). Tachau argued that Marshall’s temporary exclusion from the Political Club of Danville and Marshall’s intense political

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<sup>201</sup> Ibid.

<sup>202</sup> Kentucky Constitutional Convention Journal, 1788 – 1792. MSS 145 Library Special Collections and Archives, Kentucky Historical Society, Frankfort.

feud with Innes precluded Marshall from giving Innes his just due in *History of Kentucky* (1812). Marshall's intense distrust and dislike of Innes remained clear. However, it made little sense that Marshall chose to laud Nicholas; Innes's College of William and Mary classmate, lifelong friend, and close political ally. Tachau conceded that "any friend of Innes was an enemy [to] Marshall, who [Marshall] assailed for their political convictions, private behavior, and professional incompetence."<sup>203</sup> Had Marshall sought to spite Innes in *History of Kentucky* (1812), Marshall selected the wrong man to heap praise upon. Nicholas remained Innes's closest political ally until Nicholas's death in 1799. Nicholas and Innes became the primary leaders of the Commonwealth of Kentucky's early Republican Party. If Marshall "hoped to remove all Kentucky Republican leaders from power," and to tarnish Innes's legacy, Marshall failed to do so in his assertion that the Kentucky Constitution of 1792 remained the accomplishment "if to any one man, to Nicholas."<sup>204</sup>

Nicholas's primary authorship of the Kentucky Constitution of 1792 occasioned the final act of separation of the Kentucky District from the Commonwealth of Virginia, and allowed the Commonwealth of Kentucky to enter the federal Union. Nicholas's astute understanding of early Kentucky politics and Nicholas's network of leaders in the first federal Congress and in the Kentucky District afforded Nicholas the proper political connections, skills, and knowledge to secure Kentucky's statehood. Nicholas's Kentucky Constitution of 1792 mirrored the federal Constitution of 1787. Kentuckians rebuked the federal Constitution of 1787 in the Virginia Ratifying Convention of 1788 just four years prior to the Danville Convention's adoption of the Kentucky Constitution of 1792.

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<sup>203</sup> Tachau, *Federal Courts in The Early Republic*, 43.

<sup>204</sup> *Ibid.*, 46, 68 – 69.

Despite the Kentucky District's aversion to the federal Constitution, Nicholas swayed the district's leaders to accept a new legal and constitutional order through their adoption of the Kentucky Constitution of 1792. The Danville Convention of 1792's acceptance of Nicholas's Kentucky Constitution represented the Kentucky District's realization of a new legal and constitutional world established by the ratification of the federal Constitution of 1787. The Danville Convention of 1792's adoption of Nicholas's Kentucky Constitution and Congress's admission of Kentucky into the federal Union on June 1, 1792 established Nicholas as the Commonwealth of Kentucky's primary founder. George Nicholas proved to be a man of great consequence to the Commonwealth of Kentucky's eight year struggle to enter the federal Union.

CHAPTER FIVE:  
“ENDEARED TO THE RECOLLECTION OF EVERY TRUE REPUBLICAN:”  
The Legacy of George Nicholas

On June 4, 1792, the citizens of Kentucky assembled to celebrate the birth of their new commonwealth. Prominent citizen of Lexington George W. Ranck noted:

The streets [of Lexington] were crowded with citizens and soldiers. Men, women, and children arrayed in the gayest pioneer fashion, poured in from the country in every direction. Orderlies dashed about, drums beat, sabers clattered, and ramrods rattled, and such a cleaning of rifles, patching of buckskin suits, snapping of flints, and gathering of provisions, was wonderful to behold. The day was well worthy of the attention it received. It had been eagerly and anxiously desired by the people of Kentucky for years, and was destined to be a significant date, a high point, in their history, for on that day Isaac Shelby was to take the oath of office as governor of a commonwealth then but three days old, and the work of setting up the political machinery of the new state was to be regularly begun.<sup>205</sup>

In the days that followed Governor Isaac Shelby’s inauguration, Shelby appointed Kentucky’s most respected statesmen to high-ranking positions within his first state government. Shelby appointed James Brown Secretary of State, William McDowell State Auditor, John Campbell Quarter Master General, Baker Ewing Land Register, Percival Butler Adjutant General, and George Nicholas Attorney General.<sup>206</sup> In its first session, the Kentucky Senate elected Nicholas’s adversary Alexander Scott Bullitt as its president. The Kentucky House elected Robert Breckinridge as its speaker.<sup>207</sup> Nicholas accepted his appointment, but Nicholas’s health soon began to deteriorate. In June 1792, Nicholas entered the final seven years of his life.<sup>208</sup> Nicholas resigned his post as

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<sup>205</sup> Chinn, *Kentucky Settlement and Statehood*, 486.

<sup>206</sup> *Ibid.*, 493.

<sup>207</sup> *Ibid.*

<sup>208</sup> On June 22, 1792, Nicholas died at age 45. No record of Nicholas’s cause of death is known to exist, however Nicholas complained of chronic health problems. In 1788, James Madison allegedly “laughed until he cried” when someone compared Nicholas’s

Kentucky's first Attorney General six months into Governor Shelby's administration due to his ailing health.<sup>209</sup> Although fraught with poor health, Nicholas's political importance increased until his death on July 25, 1799. Nicholas's favorable reputation among his peers grew in the aftermath of Nicholas's primary authorship of the First Kentucky Constitution and the Danville Convention of 1792. Nicholas became the undisputed leader of the Democratic – Republican Party in the Commonwealth of Kentucky despite his self-removal from the Shelby Administration. Nicholas's steady hand guided the development of Kentucky's state government, the growth of the Democratic – Republican Party in Kentucky, and Kentucky's stance on political issues of national importance. In the final year of his life in 1798, Nicholas selected John Breckinridge and a young man rising in Kentucky politics, Henry Clay, to serve as his political successors. Nicholas's death in July 1799 came at the height of his influence and political power. Nicholas served as the Commonwealth of Kentucky's elder statesmen and political power broker.

Nicholas's abrupt exit from the Shelby Administration provided an opportunity for Nicholas's young friend and protégé John Breckinridge. Breckinridge identified with Nicholas's rise to prominence. Breckinridge sought to mirror Nicholas's rise to political power as a young member of the Virginian aristocracy and a recent transplant to Kentucky. Breckinridge too turned down one of Washington's many failed appointments

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personal appearance to “a bowl of plum budding with legs to it.” Nicholas “was of a stocky build, large head, almost entirely bald [and very overweight].” Nicholas's stocky and overweight build, reported shortness of breath, and exhaustion is suggestive of cardiovascular disease. Nicholas's early death at age 45 may have resulted from a heart defect, stroke, or myocardial infraction.

<sup>209</sup> Chase R. Staples, “George Nicholas.” George Nicholas Collection, 1780-1830, MSC 26, Special Collections, Transylvania University, Lexington.

made to fill Nicholas's refusal of the office of Kentucky District Attorney. Breckinridge learned from Nicholas's political astuteness and sought to emulate Nicholas. Nicholas enrolled Breckinridge as a political ally and protégé. Shelby appointed Breckinridge as Attorney General soon after Nicholas's resignation.<sup>210</sup> Nicholas's respected status as lawyer and statesman no doubt influenced Shelby's decision to appoint Breckinridge as his replacement. While no record is known to exist regarding Shelby's appointment of Breckinridge, Breckinridge's post within the Shelby Administration furthered Nicholas's political reach, freed much of Nicholas's time to pursue other political goals, and allowed Nicholas's health a brief respite from the demands of public office.

Chief among the concerns of Kentuckians remained Spain's control of the Mississippi River. Spain's continued control of the Mississippi River threatened the Commonwealth of Kentucky's allegiance to the federal Union. From 1792 until Spain's release of the Mississippi River in Pinckney's Treaty in 1795, Nicholas, Innes, and other Kentucky leaders appealed to Spain for the river's release. Rumors circulated among Kentucky's political elite that Innes and Nicholas might conspire to cede control of Kentucky to Spain.<sup>211</sup>

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<sup>210</sup> Ibid.

<sup>211</sup> See Thomas Marshall Green, *The Spanish Conspiracy: A Review of Early Spanish Movements in the South-West. Containing Proofs of the Intrigues of James Wilkinson and John Brown; of the Complicity Therewith of Judges Sebastian, Wallace, and Innes; The early Struggles of Kentucky for Autonomy* (Cincinnati: R. Clarke & Company, 1891); Temple Bodley, *Littell's Political Transactions* (Louisville: John P. Morgan & Company, 1926); Arthur Preston Whitaker, *The Spanish – American Frontier, 1783 – 1795: The Westward Movement and Spanish Retreat in the Mississippi Valley* (Glouster, Massachusetts: Smith, 1928); Lowell Harrison, *Kentucky's Road to Statehood* (Lexington: University of Kentucky Press, 1992); Robert L. Bisner and Kurt W. Hanson, *American Foreign Relations Since 1600: A Guide to the Literature* (Oxford, England: ABC Clio, 2003); and Brian W. Forbes, *The Spanish Conspiracy in Kentucky and*

However, by August 1793 Kentucky's political elite turned their attention to potential French designs on Louisiana and control of the Mississippi River. The arrival of Citizen Genet<sup>212</sup> from France in the United States complicated the Mississippi River problem. On August 23, 1793, the Democratic Society of Lexington assembled in response to Washington's 1793 Proclamation of Neutrality. Washington's Proclamation of Neutrality inflamed pro-French Revolution Kentuckians. Proponents of the French Revolution believed the United States should continue the American and French Alliance of 1778 and be France's ally, rather than shift to a neutral power.<sup>213</sup> The Washington Administration sought to avoid potential war with Great Britain and Spain and it sought to dissuade Americans from an acceptance of and approval of radical French political ideology. The Democratic Society of Lexington mustered support for Citizen Genet's mission in the United States and proclaimed the free navigation of the Mississippi River

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*Recriminations of Treason* (New Brunswick, New Jersey: Rutgers University Press, 2010).

<sup>212</sup> Edmond – Charles Genet (1763 – 1834) is known to most Americans as Citizen Genet. Genet served as French Ambassador to the United States during the French Revolution. In 1793, France dispatched Genet to the United States to promote American support of France's wars with Spain and Britain. Genet encouraged the formation of American Democratic Societies in order to promote American support of France. President George Washington disapproved of American Democratic Societies and proclaimed American neutrality. Genet ignored Washington and recruited American privateers. The Citizen Genet Affair continued until France's Jacobin government recalled Genet to France in 1794. Genet feared political persecution and received political asylum from the Washington Administration. Genet settled in New York until his death in 1834.

<sup>213</sup> See George Clinton Genet, *Washington, Jefferson, and "Citizen" Genet, 1793* (New York: Harper's, 1897); Regina Katherine Crandall, *Genet's Projected Attacks on Louisiana and the Floridas, 1793 – 1794* (Chicago: University of Chicago Press, 1902); and Henry Budd, *Citizen Genet's Visit to Philadelphia* (Philadelphia: City History Society of Philadelphia, 1919).

and the defense of American and French freedom to be “salient items” on the society’s agenda.<sup>214</sup>

In 1793, John Breckinridge became chairman of the Democratic Society of Lexington.<sup>215</sup> Nicholas did not play a direct role in the Democratic Society of Lexington. Instead, Nicholas used the society’s formation and General George Rogers Clark’s allegiance with the French against Spanish Louisiana for political leverage with Madison and other members of the Washington Administration. Nicholas hoped to play on Washington’s and Madison’s fears of the French and Kentucky’s pro-French sentiments against Spanish control of the Mississippi River. If the Washington Administration asserted American control of the Mississippi River over the Spanish Crown, Kentucky leaders might then disavow their pro-French attitudes. In a letter dated November 15, 1793, Nicholas wrote to Madison:

We [Kentuckians] have been in a great state of anxiety on account of the French, but our fears began to subside and gave way to our hopes for their success. Their cause is so good that we are naturally inclined to overlook their imprudence. The situation in which America stands respecting them is delicate. Prudence forbids her taking an active part. Let Genet’s conduct have been ever so unproper (*sic*) it was highly unbecoming of the American nation to take any notice of it.

You will probably hear something of an attempt being made [by George Rogers Clark] to raise an army [allied with France] to go against the Spaniards [and expel Spain from Louisiana and the Mississippi River]. [Clark] has shown me unquestionably that the French may be induced to join [Kentucky] in procuring what we are not satisfied our government [lacks] inclination and spirit to obtain for us [the free navigation of the Mississippi River].

We have no reason to suppose that [Easterners] who make money their God will enter into a war to procure a just right for a particular part of America when the greater part suppose that this right will be prejudicial to them. You must determine whether America shall continue united or

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<sup>214</sup> Dupre, “The Political Ideas of George Nicholas,” *Register of Kentucky State Historical Society* 39 (1941): 213.

<sup>215</sup> *Ibid.*



whether a division shall take place, which will necessarily be attended with applications to foreign powers for support. We will have what we are entitled to. The Western Country united can bid defiance to the rest of America and to the Spaniards too.<sup>216</sup>

Nicholas intended to force a hard bargain with the Washington Administration.

Nicholas's November 1793 letter to Madison represented a moment of political brinkmanship in which Nicholas intended to threaten Kentucky's proposed disunion with the United States, allied support of France, and war with Spain in order to secure free navigation of the Mississippi River. Nicholas's letter likely inflamed Madison and caused great alarm in the Washington Administration. Although free American navigation of the Mississippi River did not come for another year and a half, Nicholas's letter communicated the disgust and desperation Kentuckians harbored in response to their lack of Mississippi River navigation rights. Nicholas maintained his political pressure on the Washington Administration until Pinckney's Treaty (1795) secured American navigation rights to the Mississippi River. Nicholas's political pressure resulted in speculative rumors among Kentucky and national political elites. Rumors abounded that Nicholas accepted bribes from the Spanish and plotted high treason against the United States government in order to gain immediate navigation rights to the Mississippi River.

In the late 1790s, Lexington Democratic Society vice-chairman John Bradford conceded that, "the leading of [the Democratic Society of Lexington] endeavored to mature some plan to induce the General Government to use their best endeavors to

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<sup>216</sup> Ibid., 214.

procure the free navigation of the Mississippi River.”<sup>217</sup> In 1799, Nicholas published in the *Kentucky Gazette* that:

. . . so far from thinking that a separation of the union would be proper, or my wishing to see it take place, that I am, and always have been firmly of the opinion that it would be destructive, and equally so, to every part of the United States; and that if such an attempt should be made, that I would oppose it by every means in my power: and I do assert that so far from my being privy to any such design, I do not believe any such design existed in [Kentucky]; and that during my residence in this country, I have never heard even one man express an opinion that it ought, or wish that it [separation from the federal Union] should take place.<sup>218</sup>

Nicholas’s loyalty to the federal Union can be verified. In 1928, historian Arthur Preston Whitaker gained access to the Spanish archives in Madrid and Seville. Whitaker discovered records from Spanish agents in Kentucky that listed the estimated appropriate bribes for Kentucky’s political leaders. John Brown, Caleb Wallace, Harry Innes and other leading men were valued at \$1,000 each. But, the Spanish records listed Nicholas valued at \$2,000. The Spanish agents valued Nicholas’s loyalty to the federal Union as worth twice as much as any of his peers. Whitaker’s research absolved Nicholas from any participation in the “Spanish Conspiracy,” but uncovered damning evidence that implicated Judge Harry Innes. The Spanish archives held a 1794 letter written by Innes to Spanish Governor Colonel Manuel Gayoso de Lemos. In his letter Innes inquired about Spanish proposals for Kentucky, personal indemnity assurances, and requested that Colonel de Lemos answer all letters in code.<sup>219</sup> It was Innes who may have been responsible for any potential threat to the federal Union.

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<sup>217</sup> Ibid.

<sup>218</sup> *Kentucky Gazette*, November 10, 1799.

<sup>219</sup> Tachau, *Federal Courts in The Early Republic*, 47.

After Pinckney's Treaty settled the Mississippi River question, Nicholas turned his attention to his law practice, his plantation, and his iron works. The Election of 1796 tore Nicholas away from his private affairs and again threw him into the storm of Kentucky politics. After the election of President John Adams, Nicholas became the recognized leader of the Democratic – Republican Party in Kentucky. Nicholas had maintained his allegiance to the Federalist Party in his earlier years in the Virginia House of Delegates and in his service throughout the 1788 Virginia Ratifying Convention. However, the Federalists remained a despised political group in Kentucky. The political context of Kentucky changed Nicholas's political alignment. Nicholas's transition from a member of the Federalist Party in Virginia to the leader of the Democratic – Republicans in Kentucky signaled a shift in his personal political philosophies. Nicholas recognized the need for a stronger central government during his time as a colonel in the American Revolution. Throughout the late 1770s and early 1780s, Nicholas's personal correspondence is replete with letters to and from the Continental Congress. Soldiers under Nicholas's command suffered due to Congress's inability to provide adequate food and supplies to American troops on the battlefield.<sup>220</sup> Nicholas's leadership experience in the American Revolution and his support of the federal Constitution of 1787 in the Virginia Ratifying Convention established his early Federalist views. However, Nicholas's move to Kentucky exposed him to a new context of political thought. Nicholas's leadership experience in the Kentucky District and later the Commonwealth of Kentucky caused a swift shift in his political leanings. Nicholas's understanding of the 1792 federal tax on whiskey and the lack of federal support in securing navigation rights

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<sup>220</sup> George Nicholas Collection, 1780-1830, MSC 26, Special Collections, Transylvania University, Lexington.

to the Mississippi River pushed him to shift his political loyalties to the Democratic – Republican Party. In a 1791 letter to Madison, Nicholas wrote:

Do you not think it is unjust to subject us [Kentuckians] to the [whiskey] excise until you give us the use of our rivers; is it not requiring us to make bricks without straw? Ought not our situation to induce Congress to give us a temporary exemption? If it is said they have no such power, I answer it is in the same clause which empowers them to erect a Bank, if no such express clause can be found more necessarily implied than the power to do such an act.<sup>221</sup>

In as early as 1791, Nicholas began to shift his political ideology to favor Democratic - Republican ideas. Nicholas's suspicion of the federal Constitution's "implied" powers and his scornful derision of Congress's power to "erect a Bank" confirmed his changed political direction. Throughout the 1790s, Nicholas moved away from Alexander Hamilton's Federalist Party and made a place for himself in Thomas Jefferson's Democratic – Republican Party. Nicholas's transition from Federalist to Democratic – Republican remained a product of his time and the political context on the ground in early Kentucky.

President John Adams's 1798 support of Congress's Alien and Sedition Acts further clarified Nicholas as the leader of the Democratic – Republican Party in Kentucky. The 1798 Naturalization Act, Alien Act, and Sedition Act occasioned great concern throughout the United States, but especially inflamed the Commonwealth of Kentucky. The Naturalization Act established that an immigrant to the United States could not be made a citizen for at least fourteen years. The Alien Act established new immigrants as "dangerous to the peace and safety of the United States."<sup>222</sup> The Sedition

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<sup>221</sup> Dupre, "The Political Ideas of George Nicholas," *Register of Kentucky State Historical Society* 39 (1941): 213 – 214.

<sup>222</sup> *Ibid.*, 216.

Act drew the most disgust. The Sedition Act permitted fines and imprisonment “for writing or publishing any article intended to bring the officers of the Government into ridicule, contempt, or disrepute.”<sup>223</sup> Nicholas responded to the Alien and Sedition Acts in the August 1, 1798 *Kentucky Gazette*:

In vindication of my right as a free citizen of the United States, and as an exercise of the invaluable privilege of speaking and publishing my sentiments of the official conduct of those who have been appointed to administer the government of the United States; a privilege which is secured to me by the constitution of the state in which I live: which is acknowledged and guaranteed by the Constitution of the United States, and which is in itself so inestimable, that the want of it must render all other earthly things of no value: I do solemnly declare, that I do verily believe that the majority of the legislature of the United States, who voted for the [Alien and Sedition Acts] have violated that clause of the Constitution of the United States, which declares, that “Congress shall make no law respecting an establishment of religion, or prohibit the free exercise thereof, or abridging the freedom of speech, or of the press, or of the right of the people peaceably to assemble and to petition the government for a redress of grievances?” And I do further solemnly declare, that I do verily believe, if the president of the United States hath approved the said act; and if any of the judges have, by any official transaction, endeavored to enforce it, that they have also violated that part of the constitution.<sup>224</sup>

On August 14, 1798, an estimated crowd of between four thousand and six thousand Kentuckians gathered on Cheapside in Lexington to hear Nicholas speak against the hated Alien and Sedition Acts. Excerpts of Nicholas’s speech were published in the *Kentucky Gazette* in Nicholas’s open letter, “To the Freemen of Kentucky.” Nicholas’s speech at Cheapside is reported to have concluded:

As long as my country continues free, I care not who watches me; I wish all my thoughts, words, and deeds, so far as they concern the public, to be known. He who has not political objects, but the happiness and liberty of his country need not fear having them exposed to the eyes of the world. And if the time has come, when that liberty is to be terminated I have lived

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<sup>223</sup> Ibid.

<sup>224</sup> *Kentucky Gazette*, August 1, 1798.

long enough. Indeed, I have lived too long; for if that be the case, it would have been better that I should have died, before I became father of eleven children; and before I had instilled in them republican principles, which must add greatly to their wretchedness, if they are now to be slaves.<sup>225</sup>

The crowd demanded more after Nicholas concluded his speech. Nicholas's poor health prohibited him from giving more of his eloquence to the crowd. A recent transplant from Virginia and determined to make his mark in Kentucky, Henry Clay requested to speak. Nicholas and Clay ran in the same political circles and had come to respect one another. Nicholas admired Clay's speaking ability and likely identified with Clay's push to rise through the ranks of Kentucky politics. Clay mounted a nearby wagon and spoke against the Alien and Sedition Acts for another hour. At the conclusion of Clay's final speech, a Federalist, William Murray tried to speak, but the crowd shouted him down. Allegedly, members of the crowd hoisted George Nicholas and Henry Clay on their shoulders and paraded the elder statesman and the driven youth down Main Street in Downtown Lexington.<sup>226</sup>

After Nicholas's Cheapside Speech, Transylvania University appointed Nicholas the first preceptor of Transylvania University's School of Law.<sup>227</sup> Nicholas's law students included Joseph Hamilton Daviess, John Rowan, Martin D. Hardin, William T. Barry, and Robert Wickliffe.<sup>228</sup> Nicholas served as the first law professor in the Trans – Appalachian West in his role as first preceptor of Transylvania University's School of Law. Nicholas's law lectures further disseminated the Anglo – American legal and constitutional tradition to the region. Nicholas's poor health forced him to resign his law

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<sup>225</sup> *Kentucky Gazette*, November 10, 1798.

<sup>226</sup> *Lexington Herald*, November 8, 1954.

<sup>227</sup> Chase R. Staples, "George Nicholas." George Nicholas Collection, 1780-1830, MSC 26, Special Collections, Transylvania University, Lexington.

<sup>228</sup> *Ibid.*

professorship after a little more than a year of teaching. In 1799, Nicholas recommended that Transylvania University's Board of Trustees appoint Henry Clay to fill his position. Nicholas's mentorship of Clay likely had a profound impact on Clay's early years in Kentucky.

Nicholas's protégé John Breckinridge also had a significant impact in the Commonwealth of Kentucky's early history. In 1798 in response to the Alien and Sedition Acts Nicholas and Breckinridge worked with Thomas Jefferson to draft the Kentucky Resolutions.<sup>229</sup> Breckinridge presented the Kentucky Resolutions to the Kentucky State Legislature for approval. Soon after, Madison's Virginia Resolutions passed the Virginia State Legislature. Nicholas, Breckinridge, Jefferson, and Madison cemented the Virginia and Kentucky Resolutions as Southern statements of political theory. Nicholas and Breckinridge's contributions to the Kentucky Resolutions defined the compact theory of the Union and became the basis of separatist Southern political theory until crushed by the outcome of the United States Civil War. In the final month of Nicholas's life, a new Kentucky Constitutional Convention produced the Kentucky Constitution of 1799. Although unable to attend the convention due to his poor health, Nicholas's influence asserted Breckinridge as the Kentucky Constitution of 1799's primary author.<sup>230</sup> Breckinridge insured that Nicholas's contributions to the Kentucky Constitution of 1792 remained in the Kentucky Constitution of 1799.

On June 25, 1799 George Nicholas died at his Lexington home on North Limestone Street. The August 1, 1799 *Kentucky Gazette* printed his obituary.

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<sup>229</sup> Dupre, "The Political Ideas of George Nicholas," *Register of Kentucky State Historical Society* 39 (1941): 216.

<sup>230</sup> *Ibid.*

Vain would be the attempt to calculate the loss the public has sustained in the death of Colonel Nicholas: the ability and firmness which he has constantly displayed in his efforts to detect and expose every attempt to invade his country's rights must endear him to the recollection of every true republican; and next to a numerous and affectionate family, the youth of Kentucky will long deplore the loss.<sup>231</sup>

Nicholas's family and public mourners laid him to rest on the grounds of his Lexington estate. Nicholas's tomb lay undisturbed until Sayre College purchased his estate at auction in 1854. Nicholas's remains were removed to Christ Church's Old Episcopal Burial Ground on Third Street in Downtown Lexington, Kentucky. In 1954, the Lexington Chapter of the Daughters of the American Revolution placed a Kentucky Historical Society Marker at Nicholas's tomb in recognition of Nicholas's two hundredth birthday. The marker read:

Colonel George Nicholas  
Grave of George Nicholas  
1754 – 1799  
Revolutionary Soldier  
Virginia House of Delegates  
Father of Kentucky Constitution  
First Attorney General  
Professor of Law at Transylvania University<sup>232</sup>

George Nicholas represented more than this brief, but impressive epitaph listed by the Daughters of the American Revolution. Nicholas secured the Kentucky District's separation from the Commonwealth of Virginia, became one of the primary founders of the Commonwealth of Kentucky, and asserted Kentucky's realization of a new legal and constitutional world in his 1792 Kentucky Constitution. In his astute understanding of Kentucky politics, the Anglo – American constitutional tradition, and American

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<sup>231</sup> George Nicholas Collection, 1780-1830, MSC 26, Special Collections, Transylvania University, Lexington.

<sup>232</sup> *Lexington Herald*, November 8, 1954.



constitutionalism Nicholas became Kentucky's primary founder. Colonel George Nicholas became Kentucky's first statesman.

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Zemler, Jeffery Allen. *James Madison, the South, and the Trans – Appalachian West, 1783 – 1803*. Lanham: Lexington Books, 2014.



## CURRICULUM VITA

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EDUCATION: MA University of Louisville  
American History, Constitutional History, European History  
Dr. Thomas Mackey, Advisor  
Cumulative GPA, 3.67  
Degree Expected, May 2016  
James Madison Memorial Fellow

Georgetown University  
Institute on the Constitution  
Washington, D.C.  
2015

BA Bellarmine University  
History, Secondary Education, Liberal Arts  
Cumulative GPA, 3.77  
GPA in Major (History), 4.0  
GPA in Major (Secondary Education), 4.0

Kentucky Institute for International Studies  
Areas of study, French Enlightenment and Revolution, Intercultural  
Communications  
Paris, France  
2012

Commonwealth of Kentucky Education Professional Standards Board  
Certified Social Studies Educator – Secondary (Grades 8 – 12)

BA SENIOR THESIS: “Citizens of a High Order: The Kentucky Rock Asphalt Company and the Kyrock Community 1918 – 1957”

This research examined the folklore culture and company town structure of the Kentucky Rock Asphalt Company located in Edmonson County, Kentucky between 1918 and 1957. Research challenged the popular social assumption of the unjust company town. Thesis Readers: Dr. Eric Paul Roorda (advisor), Dr. Timothy Welliver.

MA THESIS: “Kentucky’s First Statesman: George Nicholas and the Founding of the Commonwealth”

This research examined "state building" efforts in the early national West. My research focused on the Commonwealth of Kentucky in its separation from Virginia, a process initiated in 1785 and achieved in 1792.

#### FELLOWSHIPS

#### & GRANTS:

Rhodes Scholarship

Oxford University

University of Louisville Candidate

James Madison Memorial Fellowship

James Madison Memorial Fellowship Foundation

Alexandria, VA

Commonwealth of Kentucky Fellow

Society for Colonial Wars

Thomas Kennedy Helm, Jr. Research Grant

Library of Virginia & Rockbridge Historical Society

March 2015

Graduate Student Council, University of Louisville

Research Grant

April 2015

Up to Us Fix the Federal Debt Collegiate Competition

Clinton Global Initiative, Net Impact, Peterson Foundation

Executive Leadership Committee

Louisville, Kentucky

January 2014

Religious Diversity Study

Campus Ministry Department, Bellarmine University

Kerala, India

December 2013

World Affairs Council of America

National Conference Student Delegate

Washington, D.C.

November 2013

POSITIONS &

ASSISTANTSHIPS: McConnell Center

Civic Education Coordinator

University of Louisville

2014 – Present

Kentucky Council of the Social Studies

Executive Board Member

2014 – Present

Jefferson County Republican Party

Executive Board Member

2015 – Present

Department of Defense, U.S. Naval Command

Education Programs Intern

Naples, Italy

2013

Jefferson County Public Schools

Co-teacher, American History

Eastern High School

Louisville, Kentucky

2013

Jefferson County Public Schools

Human Resources Intern

VanHoose Education Center

Louisville, Kentucky

2010 – 2012

National Society of the Sons of the American Revolution

Archival Data, Education Programs Intern

Louisville, Kentucky

2010 – 2011

SCHOLARSHIPS: 2014 James Madison Memorial Fellowship  
(\$24,000)

- 2012 Presidential Achievement Scholarship, Bellarmine University  
(\$3,000)
- Ella Norton Walsh Scholarship in History, Bellarmine University  
(\$2,000)
- 2010 Monsignor Treece Scholarship, Bellarmine University  
(\$26,000)
- Theodore Buerck Leadership Award, Rotary Club of Louisville  
(\$16,000)
- United Way Community Service Award, Metro United Way  
(\$2,500)
- George Eastman Young Leaders Award, Rochester University  
(\$7,500)
- Black History Makers of Tomorrow Award, McDonalds  
(\$1,000)
- Unsung Hero Award, Rotary Club of Louisville  
(\$500)
- Prospective Educator Award, Phi Delta Kappa International  
(\$1,000)
- Harold L. Steele Award, Kentucky PTA  
(\$1,000)
- Milburn T. Maupin Award, Association of School Administrators  
(\$1,000)
- Sampson Work Ethic & Integrity Award, Susan Sampson  
(\$500)
- Future Educators Association Award, Department of Education  
(\$2,500)

AWARDS, HONORS  
& MEMBERSHIPS:

Virginia Madden Award for Leadership  
University of Louisville  
2016

Dean's Citation  
University of Louisville  
2016

White House Internship Program  
2016

Taylor & Francis Group, Reviewer  
Reviews of New Books, History

Liberty Fund, Inc. “*Thomas Jefferson & Alexander Hamilton: Two Visions for America*” conference attendee, University of Virginia

2015

Kentucky Council of the Social Studies, Presenter

2015

Liberty Fund, Inc. “*Liberty & Responsibility in 20<sup>th</sup> Century Dystopian Literature*” conference attendee

2015

The Filson Historical Society, Member

March 2015

World Affairs Council of America, Member

2015

Abraham Lincoln Presidential Library Foundation, Member  
Springfield, IL

May 2015

Liberty Fund, Inc. “*Liberty and the Western Tradition*” conference attendee, Annapolis, MD

2014

Liberty Fund, Inc. “*Rediscovering Alexis de Tocqueville’s Democracy in America*” conference attendee, Detroit, MI

2014

Commissioned Member, Honorable Order of Kentucky Colonels

2014

Most Outstanding Educator Award, Bellarmine University

2014

Dean’s List, Bellarmine University

2010 – 2014

Military Extension Internship Program Featured Speaker, Purdue University 2013

Student Correspondent, World Affairs Council of America

2013

Phi Alpha Theta Historical Honor Society, Member

2014

## PROFESSIONAL

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