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PIONEERS, PROCLAMATIONS, AND PATENTS:  
A NARRATIVE OF THE CONQUEST, DIVISION, SETTLEMENT, AND TRANSFORMATION OF  
KENTUCKY

By

Brandon Michael Robison  
B.A., Southern Adventist University, 2009

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

Department of History  
University of Louisville  
Louisville, Kentucky

May 2013



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A Thesis Approved on

April 26, 2013

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## DEDICATION

This thesis is dedicated to my wife

Whitney Elaine Robison

who has supported and encouraged me so much throughout this process.

## ACKNOWLEDGMENTS

I would like to thank my professor Dr. Glenn Crothers for his incredible patience, support, and guidance in the development of this thesis. Without his assistance, this paper would not exist in its current state. The copious hours he spent editing multiple drafts helped refine both my argument and my prose. I would also like to thank Dr. Daniel Krebs for his inspiration and encouragement in this process. His classes provided the original inspiration for this work, and he played the role of mentor throughout this process.

## ABSTRACT

### PIONEERS, PROCLAMATIONS, AND PATENTS:

### A NARRATIVE OF THE CONQUEST, DIVISION, SETTLEMENT, AND TRANSFORMATION OF KENTUCKY

Brandon M. Robison

May 1, 2013

This study provides a narrative of Revolutionary Kentucky, focused on three key areas. First, it traces the struggle Native Americans, white settlers and speculators, and the various colonial, state, imperial, and national governments that claimed the territory for control and possession of Kentucky's lands in the late eighteenth century. Second, this study focuses on the long-term effects of the struggle over Kentucky's lands, paying particular attention to Virginia's land laws of 1778-79, which created the framework by which the state distributed Kentucky's land, and based on poor implementation of Jeffersonian notions of republicanism and allodial land ownership. Third, this study examines. The region's transition from an Indian hunting ground to an agricultural economy radically changed the ecology; seeing the elimination of Kentucky's bison as an archetype of the broader environmental changes taking place. This study argues, in short, that the conflict over the use and ownership of Kentucky lands dramatically impacted Native Americans, Euro-Americans, the future course of western settlement, and the ecology of the region itself.

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## INTRODUCTION

John Filson's famous pamphlet, *The Discovery, Settlement, and Present State of Kentucke* (1784), contains a fascinating description of a region in transition. Today, historians often view Filson's work as an example of clever advertising, rather than a thoughtful study. However, the book possesses important clues about the environmental, political, and social factors driving settlement patterns within the boundaries of Kentucky. Though Filson painted a rosy picture for potential Kentucky residents, his description omitted important details. Kentucky and the Ohio Valley region were still fraught with violence and Indian wars. Kentucky's environment was in dramatic transition, and by 1784, much of the vaunted Bluegrass region was already claimed and its environment in dramatic transition. Land, the commodity Filson tried to sell in his work, was not easy to obtain. Law suits already divided Kentucky's land claimants into decades-long legal wars. Filson described Kentucky, "As yet united to the State of Virginia, they are governed by her wholesome laws, which are virtuously executed, and with excellent decorum."<sup>1</sup> However, Virginia's laws and policies generated many of the problems facing settlers of the state's western territories. The situation threatened Virginia's cultural and political hegemony over Kentucky and eventually sparked Kentucky's separation from Virginia and creation as the fifteenth state in the union.

Historians have long described Kentucky's transition from a Native American hunting ground to the first western state. Individual studies have focused on specific subgroups like politicians, Native Americans, squatters, long hunters, planters, and speculators. However,

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<sup>1</sup> John Filson, *The Discovery and Settlement of Kentucke* (Ann Arbor [Mich.]: University Microfilms, 1966), 23.

historians struggle to integrate these stories into a single narrative. They also fail to articulate the broader impact of Euro-American colonization in Kentucky. In particular, historians have neglected the significance and glanced over the important consequences of Virginia's land laws of 1778-79, which arose from a complex web of social, military, economic, and environmental factors. The process that Virginia established to distribute Kentucky's lands left a chaotic record. Settlers confronted by the challenges accompanied with land ownership in Kentucky frequently moved to other lands further west. Historians have largely done the same, giving the land laws too little attention.

### **Purpose**

This study has three primary goals. First, it seeks to trace the struggle over the control and possession of Kentucky's lands in the late eighteenth century. This narrative involves a large number of historical actors, but it focuses on the intersection of Native Americans, white settlers and speculators, and the various colonial, state, imperial, and national governments that claimed the territory. The decisions and actions of each party influenced the others in important ways as all sought to control Kentucky's lands to further their varied interests.

Second, this study focuses on the long-term effects of the struggle over Kentucky's lands. It pays particular attention to Virginia's land laws of 1778-79, which created the framework by which the state distributed Kentucky's land. The laws had important social, political, and economic consequences for each of the parties involved. This thesis highlights the role that Jeffersonian notions of republicanism and allodial land ownership played in the formation and legacy of the land laws.

Third, this study examines the transformation of Kentucky itself. The region's transition from an Indian hunting ground to an agricultural economy radically changed the ecology. While

Ohio Indians husbanded Kentucky's herds of bison, elk, and deer, Kentucky's white population hunted each to the point of local extinction. Seeing the elimination of Kentucky's bison as an archetype of the broader environmental changes taking place, this thesis considers the fundamental changes in Kentucky's ecology that resulted from the political, social, and economic transformations of the era.

This study argues, in short, that the conflict over the use and ownership of Kentucky lands dramatically impacted Native Americans, Euro-Americans, the future course of western settlement, and the ecology of the region itself.

### **Questions**

This study seeks to answer the following key questions. First, what made Kentucky's lands such prized commodities, and what were the results of the competition between the various parties in Kentucky? The governments of Virginia, Pennsylvania, and North Carolina all worked to claim their portion of the region. Likewise, land speculators, Native Americans, squatters, politicians, and even founding fathers battled aggressively over Kentucky. Each group had different visions for the region and they seldom coincided. The claimants to Kentucky settled their disputes in court, in the state house, and on the battlefield. The first chapter describes Kentucky's topography and ecology, and the region's history prior to the American Revolution. This broad topic raises several smaller questions: How did colonial America's view Kentucky? What was Kentucky's natural environment like? How did Virginia substantiate its hegemony over the region? What role did Native Americans play in Kentucky? The answers to these and many other questions highlight the significance of Kentucky during the pre-Revolutionary era.

The second question in this study is more specific: Namely, what role did the colony and state of Virginia play in the process of settling, partitioning, and defending Kentucky? To answer

this question requires studying Virginia's official land policies, traditions, politics, and broader issues of the Revolutionary era such as taxation, war funding, recruitment, and national military strategy. Virginia's 1778-79 land laws, passed during Thomas Jefferson's tenure as the state's governor, are the focus of the second chapter. These laws represented a blueprint for the region's settlement. Read with care they offer a window into the complex social and political trends of the era.

The third chapter of this study confronts the question of legacy: Namely, what were the long term effects of Virginia's policies and laws on the new United States, Native Americans, and Kentucky and its environment? Virginia's experience in Kentucky shaped the history of the two states and the national narrative as well. This study argues, for example, that Thomas Jefferson designed the land allotments of Northwest Ordinance of 1787 to avoid the problems associated with the distribution of land in Kentucky. Likewise, various states designed their land distribution systems to avoid Virginia's problems with its Revolutionary War veteran bounty program.

### **Literature and Historiography**

This study covers a broad range of literature including works on the Ohio Indians, Virginia planters, long-hunters, colonial and state politics, and Revolutionary and Indian warfare. However, several works deeply inform this thesis and support its argument. Thomas Perkins Abernathy's *Western Lands and the American Revolution* (1959) remains an exceptionally detailed work about the war on the frontier and the role of the frontier in colonial politics.<sup>2</sup> George Morgan Chinn's *Kentucky: Settlement and Statehood* (1975) provides the most complete

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<sup>2</sup> Thomas Perkins Abernathy, *Western Lands and the American Revolution* (New York: Russell & Russell, 1959).

narrative history of eighteenth century Kentucky.<sup>3</sup> Even portions of Theodore Roosevelt's *The Winning of the West* (1904) provide useful insight into the era.<sup>4</sup> Though his thesis remains much derided, his sources are of good quality.

Native Americans also feature prominently in this study. Richard White's *The Middle Ground Indians, Empires, and Republics in the Great Lakes Region, 1650-1815* (1991) discusses the Indians of the Ohio Valley and the *pays de'n haut* – French for Upper Country.<sup>5</sup> White's book provides both a helpful description of the Native Americans living north of the Ohio, as well as a detailed narrative of their relations with white settlers in Kentucky and elsewhere in the trans-Appalachian West.

Several recent studies of early Kentucky offer excellent accounts of the period in question. Craig Thompson Friend's *Kentucke's Frontiers* (2010) provides an updated albeit abridged version of Chinn's work.<sup>6</sup> Leslie Scott Philyaw's *Virginia's Western Visions: Political and Cultural Expansion on the American Frontier* (2004) explores the role of Virginia's political elites, particularly Thomas Jefferson, in shaping the cultural and political relationship between the original state and its new western counterparts.<sup>7</sup> John Mack Faragher's *Daniel Boone: The Life and Legend of an American Pioneer* (1992) draws deeply on the primary sources from Boone's period, including the complex and largely untapped Draper Manuscripts.<sup>8</sup> This work provides the best summary of Boone's role in Kentucky history. Finally, Peter Onuf's *Statehood and Union: A History of the Northwest Ordinance* (1987) provides the best discussion of the Northwest

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<sup>3</sup> George Morgan Chinn, Hambleton Tapp, and Libby Fraas, *Kentucky Settlement and Statehood; 1750-1800* (Frankfort: The Kentucky Historical Society, 1975).

<sup>4</sup> Theodore Roosevelt, *The Winning of the West* (New York: Putnam's, 1889).

<sup>5</sup> Richard White, *The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650-1815* (New York: Cambridge University Press, 1991).

<sup>6</sup> Craig Thompson Friend, *Kentucke's Frontiers* (Bloomington: Indiana University Press, 2010).

<sup>7</sup> Leslie Scott Philyaw, *Virginia's Western Visions: Political and Cultural Expansion on an Early American Frontier* (Knoxville: University of Tennessee Press, 2004).

<sup>8</sup> John Mack Faragher, *Daniel Boone: The Life and Legend of an American Pioneer* (New York: Holt, 1992).

Ordinances.<sup>9</sup> Two additional books are closely related to the subject of land speculation. Daniel M. Friedenbergs *Life, liberty, and the Pursuit of Land: The Plunder of Early America* (1992) is perhaps the best extant study on land speculation in the trans-Appalachian West during the colonial, Revolutionary, and early national periods.<sup>10</sup> The book focuses on the founding fathers and the role land speculation played in national and state politics. Kentucky features prominently in this study. Stephen Arons *How the West Was Lost* (1999) focuses more narrowly on Kentucky, and explores the regions evolution from Indian hunting ground to Henry Clays political "Bluegrass System."<sup>11</sup> Arons discussion of land distribution in Kentucky offers the starting point and inspiration for this study.

### Primary Sources

In addition to the newspapers, Indian treaties, official correspondence, government legislation, and other common sources used in studies of this type, this thesis draws on primary sources the existing literature largely overlooks. First and most important, this study looks at land grants and patents by the state of Virginia. The land grants help document the chaotic process of settlement within Kentucky. Virginia reserved a significant portion of Kentucky's lands, those south of the Green River, for Revolutionary War veterans. This program had the greatest potential for success among all of Jefferson's land laws, but it became an abject failure. Though many if not most of the patents offered to Revolutionary veterans ended up in other men's hands, the original patents are recorded in Joan Brookes-Smith's *Master Index, Virginia Surveys and Grants, 1774-1791* (1976) and the *Kentucky Historical Societys Index for Old*

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<sup>9</sup> Peter S. Onuf, *Statehood and Union: A History of the Northwest Ordinance* (Bloomington: Indiana University Press, 1987).

<sup>10</sup> Daniel M. Friedenbergs, *Life, Liberty, and the Pursuit of Land: The Plunder of Early America* (Buffalo, N.Y.: Prometheus Books, 1992).

<sup>11</sup> Stephen Aron, *How the West Was Lost: The Transformation of Kentucky from Daniel Boone to Henry Clay* (Baltimore: Johns Hopkins University Press, 1996).

*Kentucky Surveys & Grants* (1975).<sup>12</sup> The index contains thousands of land patents and surveys, the names of patentees, the general location and size of their claims, and the type of patent.<sup>13</sup> Revolutionary War veteran land patents from all thirteen states are documented in Lloyd DeWitt Bockstruck's *Revolutionary War Bounty Land Grants Awarded By State Governments* (1996), while William Lindsay Hopkins provides a list of veterans who appealed denials of patents in *Virginian Revolutionary War Land Grant Claims, 1783-1850 (rejected)* (1988).<sup>14</sup> Another relatively untapped source are the Draper Manuscripts. Collector Lyman Draper amassed these letters, diaries, and interviews during the early 1800s. Traveling around the trans-Appalachian West, Draper sought to document the memories of the last remaining members of the pioneer generation, including Daniel Boone's youngest surviving son, Nathan Boone. Draper also collected large numbers of family and personal documents and letters. He compiled nearly five hundred volumes of historical documents and interviews, which are currently stored at the University of Wisconsin Madison, with various Microfilm collections available elsewhere.

### Challenges

The subject of land distribution in Kentucky remains a side note in most histories of the state's early years. Land distribution, patenting, and military bounties receive only a chapter, or a few paragraphs in most Kentucky histories, almost certainly because of the chaotic nature of the extant records. Many patentees never came to Kentucky, but promptly sold their patents to speculators or anyone else who would purchase them. Many names on the books are false, with imposters amassing huge estates through dozens of fictional aliases. The complete records

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<sup>12</sup> Joan Brookes-Smith, *Master Index, Virginia Surveys and Grants, 1774-1791*(Frankfort: Kentucky Historical Society, 1976); Kentucky Historical Society, *Index for Old Kentucky Surveys & Grants*, Microfilmed by Kentucky Historical Society (Frankfort, Ky: The Society, 1975).

<sup>13</sup> Both databases are available online through the Kentucky Historical Society, and are fully searchable.

<sup>14</sup>Lloyd DeWitt Bockstruck, *Revolutionary War Bounty Land Grants: Awarded by State Governments* (Baltimore, MD: Genealogical Pub. Co, 1996); William Lindsay Hopkins, *Virginian Revolutionary War Land Grant Claims 1783-1850 (rejected)*, (Self Published,1988).



include only the names of the original patentees, and not those who received the land second hand. Still, the records indicate general patterns of land concentration in the hands of a few individuals.

Though scholars have described Kentucky's origins in some detail, they have intentionally glazed over the land issue because of the complex work needed to unravel the process. However, several examples of veterans selling their claims, false names, and foul play illustrate the effects of Virginia's land laws.

### **Significance**

A detailed study of Virginia's land policy in Kentucky does not exist. The challenges presented by the source material has steered scholars away from the difficult and tedious research. Moreover, in the modern American memory, early Kentucky remains the land of Boone and Simon Kenton. In comparison to the compelling narratives offered by such historical figures, studies of land policy may appear less interesting.

However, the study of land policy, distribution, and settlement is an exceptionally important part of early national U.S. history. Indeed, Kentucky was the first trans-Appalachian region to experience such rapid subdivision and distribution. Likewise, it was the first such settlement carried out under the influence of the Revolutionary ideology. Finally, Indians, squatters, land speculators, long hunters, politicians, and governments all played a part in the process. This makes Kentucky's settlement a useful case study of the intersection of a large number of interested parties in Revolutionary America. Kentucky represented many different things to the people who competed over its lands. The region's land offered a source of food, raw materials, funding for Virginia's war effort, soldier compensation, individual wealth, social advancement, and independence. More important, Kentucky's lands set precedents for many aspects of future western expansion. The lessons learned in Kentucky shaped other states' land

policies, and the national strategy for carving up the lands of the Old Northwest. Virginia's vision for Kentucky soon failed in a chaotic legal, military, and social mess sparked by the 1778-79 land laws, which also led to Kentucky's independence. Likewise, Kentucky revealed the abrupt ecological transformation of the trans-Appalachian West caused by white settlement. Ultimately, Filson's idealization of Kentucky proves insufficient to understand the intense conflict for the region.

## CHAPTER 1: "KENTUCKEE"

### "A Beautiful Prospect:" "Kentuckee" as Geographical and Ecological Construct

The modern state of Kentucky is comprised of lands south of the Ohio River, west of the Big Sandy River, and east of the Mississippi, with most of the state falling above the 36° 30" north parallel. Though the state's physical extent has remained fairly constant and clearly defined over two centuries, in the colonial era "Kentucky" denoted the lands west of the Appalachians, south of the Ohio, and north of Cherokee territory. Understanding the role that Kentucky played in early American history requires comprehending what the word "Kentucky" meant to seventeenth-century Native and Euro Americans. Kentucky represented more than a set of geographic delineations for each demographic. The names "Kentucky," "Kentuckee," or "Caintukee" all referred to the same region. However, they represented many different things to the various people and groups that vied for hegemony in the region. No scholar has determined the origin of the name "Kentucky," though some believe that it is an Anglicized derivative of an Iroquoian word meaning lands south of the Ohio River. John Filson, Kentucky's first historian, claimed that Indians referred to Kentucky "by the name of the Dark and Bloody Ground, and sometimes the Middle Ground."<sup>15</sup> The origins of the name may never be definitively ascertained, but Native and white Americans' perceptions of "Kentucky" were deeply rooted in the natural world.

Geography and ecology played primary roles in defining Kentucky. The region's geographic features not only gave shape to its future borders, but also laid the foundations for

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<sup>15</sup> Filson, *Discovery and Settlement of Kentucky*, 7.

its ecological regions. Portions of “Kentucky” differed significantly and thus offered their human tenants varying opportunities. As historians David Hackett Fisher and James C. Kelly surmise, “Biological conditions fixed the limits of life itself and shaped the process of settlement.”<sup>16</sup> Different users, moreover, saw varied opportunities in each of Kentucky’s ecosystems and topographical zones. Those uses brought various factions into conflict over the region’s resources. Indeed, Kentucky possessed unique geographic, geopolitical, and ecological features that earmarked the region as the primary bridgehead of European expansion across the Appalachians.

The Bluegrass region, which now surrounds Lexington, Kentucky, for fifty miles in any direction, lay at Kentucky’s ecological, geographic, and economic heart. Owning a piece of the Bluegrass’s rolling hills, verdant soils, and savanna ecosystem offered farmers in an agriculture-based economy the modern equivalent of striking oil. Describing Kentucky’s productivity, John Filson gushed, “This country is richest on the higher lands, exceeding the finest low grounds in the settled parts of the continent.” Potential settlers could expect unprecedented yields: “above one hundred bushels of good corn were produced from an acre in one season.” Filson even claimed that on occasion the land was “too rich for wheat till it has been reduced by four or five years cultivation.”<sup>17</sup> Filson’s observations represented more hyperbole and salesmanship than fact, but the Bluegrass’s reputation for remarkable agricultural production drew thousands of white settlers in the late eighteenth century. Such productive potency is derived from the Bluegrass region’s rich water-retaining loam soils, which rest on a bed of Ordovician limestone. This lime, rich in phosphorus, provides a natural fertilizer to the soils of the region.<sup>18</sup>

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<sup>16</sup> David Hackett Fischer and James C. Kelly, *Bound Away: Virginia and the Westward Movement* (Charlottesville: University Press of Virginia, 2000), 78.

<sup>17</sup> Filson, *Discovery and Settlement of Kentucky*, 19.

<sup>18</sup> See “Geology of Kentucky: Bluegrass Region,” Kentucky Geological Survey: University of Kentucky, <http://www.uky.edu/KGS/geoky/regionbluegrass.htm> (accessed April 2, 2013).

Other portions of the state offered varying degrees of productivity. The region south of the Green River, once known as the “Green River Barrens,” eventually became a second Bluegrass, though Filson saw it as little more than grazing and foraging land.<sup>19</sup> Euro-Americans reared in the forested eastern seaboard saw grassland as an indication of low productivity. Common knowledge dictated that the best lands produced trees of great size and diversity.<sup>20</sup> Likewise, the dense root networks of prairie grasses offered a greater challenge to the rudimentary plowing and tilling devices of eighteenth century settlers than did trees, which could be girdled and cleared with relative ease. Among these various grasslands and meadows stood mountains and hills divided by covered streams in largely deciduous forest of great diversity. Cane breaks also peppered the landscape, adding another layer of diversity to an already prolific ecosystem.

Kentucky’s diversity and abundance in flora certainly interested farmers seeking new opportunities. However, the region’s fauna offered explorers and hunters the most memorable material. Kentucky abounded with a quantity and diversity of game of that simply did not exist elsewhere in the colonies. Early settlers expressed the most interest in the larger quadrupeds. Elk, deer, black bear, and bison grazed in the meadows, prairies, and cane breaks in numbers that colonists had never seen. Thomas Walker’s expedition through Kentucky in 1750 relied almost exclusively on bush meat. Walker described his hunting successes in the journal he kept along the way: “We killed in the Journey 13 Buffaloes, 8 Elks, 53 Bears, 20 Deer, 4 Wild Geese, about 150 Turkeys, besides small Game. We might have killed three times as much meat if we had wanted it.”<sup>21</sup> Walker’s path narrowly missed the Bluegrass, and only briefly entered the

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<sup>19</sup> Filson, *Discovery and Settlement of Kentucky*, 16.

<sup>20</sup> Samuel N. Dicken, “The Kentucky Barrens,” *Bulletin of the Geographical Society of Philadelphia* 33 (Apr. 1935): 42-51.

<sup>21</sup> J. Stoddard Johnston, *First Explorations of Kentucky: Journals of Dr. Thomas Walker, 1750, and Christopher Gist, 1751* (Louisville: John P. Morton and Company, 1898), 79.

“Barrens.” Kentucky’s numerous natural salt licks concentrated bison, elk, and deer in numbers only surpassed in prairies further west. John Findley, an early explorer and Indian trader who followed Walker’s expedition, remembered, “Of bears and buffaloes, elk and deer, their number was legion; and at many of the salt-licks of the country, they congregated in such prodigious herds, that the sight was truly grand and amazing.”<sup>22</sup> Another frontiersman remarked that a greater abundance of wildlife “is not to be seen in any part of the known World.”<sup>23</sup>

Such prodigious numbers of wild beasts drew Kentucky’s most famous explorers, including Daniel Boone. Kentucky offered a biological bounty that further promoted the region’s reputation as a promised land. Though Kentucky’s geographical features certainly helped delineate its boundaries, the area’s natural resources created a region that John Filson called “a beautiful prospect.”<sup>24</sup>

### **A Hunting Preserve: Kentucky’s Environment under Indian Stewardship**

Kentucky’s productivity was due, in part, to natural factors. However, Kentucky’s landscape consisted of more than eastern woodland ecosystem, but included a diverse mix of ecosystems that supported unprecedented numbers of large animals. Native Americans intensively managed the eastern woodland ecosystem to encourage a maximum number of game animals. Buffalo, elk, deer, bear, and many other game species thrived in this ecosystem. This hunter’s paradise benefitted the local Indians immensely. The large numbers of buffalo provided the natives around Kentucky with their winter food source. The Shawnee, Chickasaw,

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<sup>22</sup> Nathan Boone cited in Belue, *The Long Hunt*, 76. .

<sup>23</sup> John Ormsby to William Barnsley, September 15, 1768 [*Historical Magazine*, 8:259] Fort Chartres, 15th Sept., 1768. Found in Clarence Alvord and Clarence Carter, *Trade and Politics, 1767-1769* (Springfield, 1921), 409.

<sup>24</sup> Filson, *Discovery and Settlement of Kentucky*, 13.

Cherokee, Yuchi, and several lesser tribes all hunted in Kentucky.<sup>25</sup> The buffalo that they killed provided them with food, eating utensils, saddles, rugs, mats, and clothing made of both buffalo leather and wool. Indians fabricated hoes from the bison's massive shoulder blades. Bags, shields, and various other implements were usually of buffalo hide.<sup>26</sup> Though not as dependent on the species as the Plains Indians became during the same period, Ohio Valley and southeastern Indians relied heavily on the species. Deer were the primary source of food and implements for most eastern Native Americans, but buffalo often and increasingly came a close second.

Native Americans' lives revolved around seasons. During the summer, Indians stayed in their semi-permanent villages to practice horticulture, fish, and engage in limited hunting. Hunting and gathering still supplemented horticulture, but Indian diets were not guaranteed. Even during good years, they faced challenges during the winter and spring months. Food supplies usually dwindled during the late winter months through early summer. Indians knew the late winter as "the starving time." As historian Richard White puts it, "winter became a time of particular horror."<sup>27</sup> Hunting was usually their only source of winter victuals, despite some surpluses from horticultural activity. Though not the rule throughout the southeast, most Indian villages simply uprooted during the winter, and headed toward their traditional hunting grounds to wait out the worst of the lean months. The trees defoliated made tracking easy; winter was the most practical time for hunting. Stephen Aron describes Shawnee hunting patterns as follows, "Winter hunts extended over weeks and months and involved travel over long

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<sup>25</sup> Gwynn Henderson, Cynthia E. Jobe, and Christopher A Turnbow, *Indian Occupation and Use in Northern and Eastern Kentucky during the Contact Period (1540-1795): An Initial Investigation* (Frankfort: Kentucky Historical Council, 1986).

<sup>26</sup> Ted Franklin Belue, *The Hunters of Kentucky: A Narrative History of America's First Far West, 1750-1792* (Mechanicsburg, PA: Stackpole Books, 2003), 19. Belue is referencing Charles Hudson's *The Southeastern Indians*, (Knoxville: University of Tennessee Press, 1976).

<sup>27</sup> White, *The Middle Ground*, 79.

distances.... Hunting trips were not exclusively male sojourns.... Whole families participated on longer hunting journeys.... During the peak of the hunting season, Ohio villages were virtually deserted. With the coming of spring, hunters and their families returned.”<sup>28</sup> Hunting patterns ensured a certain level of sustainability. The harshness of Indian life and epic scale of Indian deaths from white diseases ensured that, by the mid-eighteenth century, the much-reduced Indian population required a minimal number of wild game for their subsistence.

Indians’ use of fire had dramatically reshaped the landscape. Fire was the most important tool at Natives’ disposal, and accomplished several goals. First, Native Americans used slash and burn techniques to clear land for horticultural use.<sup>29</sup> However, Natives also practiced “fire-culture,” which involved burning vast areas of woodland, transforming deciduous forest into a lush savanna landscape.<sup>30</sup> The effects of these practices were dramatic. White settlers encountering these lands assumed the lack of tree cover indicated soil infertility, and nicknamed these Indian-made prairies “barrens.”<sup>31</sup> Though white settlers thought of the Kentucky “barrens” as poor crop land, they did not doubt its value as a hunting ground.

Native Americans also utilized fire as a means to hunt. Many Indians used “fire-rings” to concentrate and trap game.<sup>32</sup> Traider Thomas Nairne observed Creek fire rings “of 4 or 5 miles in circumference.”<sup>33</sup> Fires of this size, designed to burn inward, could just as easily burn outward. Countless anonymous fires cleared forests across the Bluegrass in the centuries before white encroachment. Native peoples also used fire to improve their future hunting prospects and

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<sup>28</sup> Aron, *How the West was Lost*, 8-9.

<sup>29</sup> Indian horticulture usually involved relatively small scale farming of native species like maize, legumes, and gourds. This system, though efficient, produced smaller surpluses than methods in use. See Stacy Kowtko, *Nature and the Environment in Pre-Columbian American Life* (Westport, Conn: Greenwood Press, 2006).

<sup>30</sup> For studies of Native use of fire see Steven J. Payne, *Fire in America: A Cultural History of Wildland and Rural Fire* (Princeton: Princeton University Press, 1982), 71-83.

<sup>31</sup> Dicken, “The Kentucky Barrens,” 42-51.

<sup>32</sup> John Lawson, *A New Voyage to Carolina* (Ann Arbor: University Microfilms, 1966) 215-16.

<sup>33</sup> Thomas Nairne and Alexander Moore, *Nairne's Muskhogean Journals: The 1708 Expedition to the Mississippi River* (Jackson: University Press of Mississippi, 1988) 52-53.



manage the habitat. Indians all over North America put whole regions periodically to the torch. Fire cleared out underbrush, improved animal forage, and improved hunting success by reducing cover. Native Americans burned portions of Kentucky to great effect. The Bluegrass region's expansive meadows and the prairie habitats of Kentucky's Barrens testified to the paradoxically destructive and fecund effects of fire.<sup>34</sup> Large quadrupeds thrived in this environment with its vast amount of available forage.

The burning of Kentucky's lands produced one the Indians' few sources of wealth. Other than labor, Native Americans had access to only two commodities valuable to Europeans: land and peltry. The fur trade became extremely important both to the Indians and the colonists. French, English, and Spanish traders exchanged European goods for beaver, deer, fox, otter, bear, mink, raccoon, wolf, and bison hides. By the early eighteenth century, the fur trade played an important role in many colonial economies. French Canada's economy depended on the fur trade and peltry, and for a time it was Carolina's largest export.<sup>35</sup> Between 1699 and 1714, the colonies of Virginia and Carolina exported a total of 1,087,878 deer skins to England, or an average of 72,500 skins a year.<sup>36</sup> Outside of fur bearing animals such as beaver or mink, deer hides had the greatest market value, because they were critical to the English leather industry. The popularity of buckskin breeches exponentially increased demand for the soft deer leather. As one historian surmises, "Buckskin breeches, it seems, served as the eighteenth-century equivalent of modern denim jeans."<sup>37</sup> The value of deer skins induced Native peoples to avoid employing them for personal use, and eastern Natives increasingly relied on other animals, like

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<sup>34</sup> Payne, *Fire in America*, 71-83.

<sup>35</sup> Kathryn E. Holland Braund, *Deerskins and Duffels: The Creek Indian Trade with Anglo-America, 1685-1815* (Lincoln: University of Nebraska Press, 1993), 29.

<sup>36</sup> A table containing exports of furs per year can be found in Paul Chrisler Phillips, *The Fur Trade* (Norman: University of Oklahoma Press, 1961), 331.

<sup>37</sup> Braund, *Deerskins and Duffels*, 88.

the buffalo, for sustenance and utility.<sup>38</sup> The industrial revolution of the mid-eighteenth century also sparked an increase in demand for a multitude of leather products. Indian hunters played a central role in the supply chain. Kentucky offered an abundance of many quadrupeds, long after these species were exterminated along the eastern seaboard. By the mid-1700s, Kentucky's vast supply fueled the skin and fur trades, serving as a giant reservoir from which nearby Native people extracted wealth.

By 1750, Kentucky had become a giant hunting preserve that saw only seasonal transient occupancy, as hunting parties and mobile villages wandered across it in search of game. Still, Kentucky's value placed it at the center of competition between Native groups, as well as venturesome whites who by the middle of the century began entering Kentucky in ever greater numbers. For many Indian nations, increasingly dependent on the skin trade, access to Kentucky became more important. As one Indian told Virginia explorer David McClure, "The elks are our horses, the buffaloes are our cows, the deer are our sheep, & the whites shan't have them."<sup>39</sup>

### **Indians and Kentucky's Lands**

Why no Indians called Kentucky home puzzled white travelers. John Findley, while traveling in the 1750s, was the last white man to see a permanent Indian settlement in Kentucky, and its inhabitants evacuated and burned it shortly after his departure.<sup>40</sup> The absence of a significant Native American presence in Kentucky ensured the region became the primary conduit for Euro-American incursion across the Appalachians. The causes of this vacuum were rooted in the geopolitical history of the American Indians.

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<sup>38</sup> Belue, *The Long Hunt*, 21.

<sup>39</sup> Franklin B. Dexter, ed., *Diary of David McClure: Doctor of Divinity, 1748-1820* (New York: Knickerbocker Press, 1899), 85.

<sup>40</sup> For more information, see Lucien Beckner, "Eskippakithiki: The Last Indian Town in Kentucky," *Filson Club Historical Quarterly* 6 (Oct. 1932): 355-82.

Several Native American groups separated by language, culture, and political affiliation claimed Kentucky as a hunting ground. Three main language groups inhabited the eastern woodlands at the time of large-scale European contact: the Algonquian, the Iroquoian, and the Muskegon.<sup>41</sup> Algonquian language families inhabited broad swaths of the continent, but in the eastern woodlands, they concentrated around the Great Lakes and along the eastern seaboard as far south as the Chesapeake. Algonquian, perhaps the most thoroughly researched of Native American languages, consists of dozens of dialects and sub-groupings that are mutually unintelligible in varying degrees. These groups had some of the longest and most constant contacts with British and French colonists, and so are among the best documented Native peoples in America. Two Algonquian groups, the Delaware and Shawnee, were particularly active in Kentucky during the Revolutionary period. Iroquoian peoples of the powerful “Six Nations Confederacy” and other detached groups, including the Cherokee, also played prominent roles in Kentucky.

The eastern woodland Indians experienced continuous and destructive conflict during the seventeenth century. From the time of Hernando De Soto, Native American populations had experienced near apocalyptic calamities. Long isolated from the trans-Atlantic world, vulnerable Indian populations fell victim to previously unknown diseases throughout the sixteenth century. No accurate or reliable figures of the death toll exist, and even estimates remain hotly debated, but modern scholars generally accept that Native American populations numbered somewhere around thirty million before 1500.<sup>42</sup> Smallpox, measles, pertussis, and many other European diseases drastically reduced Indian populations, with some scholars estimating declines as high as 90 percent. The pandemics ravaged long-lived civilizations throughout the Mississippi Valley.

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<sup>41</sup> Marianne Mithun, *The Languages of Native North America* (New York: Cambridge University Press, 1999), 327-35.

<sup>42</sup> David P. Henige, *Numbers from Nowhere: The American Indian Contact Population Debate* (Norman: University of Oklahoma Press, 1998).

The depopulation of the interior of the country rocked Native American cultures to their core. The survivors, who endured successive waves of outbreaks in centuries to come, slowly restructured their societies around smaller, subsistence-based communities. Permanent cities had all but disappeared from eastern North America by the time of the first French and English settlements. As societies regrouped, new power structures and territorial delineations began to form around language groupings and produced the world into which the newly arrived Europeans inserted themselves.<sup>43</sup>

Permanent European settlement further transformed the balance of power in the East. In the Great Lakes and Ohio Valley, French contact with the Iroquois produced a series of wars more violent and larger in scale than any documented inter-tribal conflicts. After the initial confrontation with the French, the Iroquois shifted tactics from direct competition and conflict to neutrality and economic exchange with French settlers along the St. Lawrence and with the British to the east. As a result, the Iroquois gained access to trade goods and firearms that gave them unprecedented power over their western neighbors. In search of captives to rebuild their dwindling ranks and beaver pelts to purchase European technology, the Iroquois conducted a violent campaign of conquest, driving their Algonquin neighbors before them. Iroquois victories in these so called "Mourning" or "Beaver Wars" forged Iroquois claims to the Ohio Valley. Iroquois warriors pressed the outgunned inhabitants of the Ohio Valley west, depopulating much of the modern Midwest. Groups they did not totally eliminate or assimilate were subjugated through treaty. Eventually, the French helped the Algonquins of the *pays d'en haut* defend themselves, forcing the Iroquois to end their campaigns and leading to the Grand

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<sup>43</sup> For a good summary of current scholarship on the pre and early contact Indian experiences see Daniel K. Richter, *Facing East from Indian Country: A Native History of Early America* (Cambridge, Mass: Harvard University Press, 2001), 1-68.

Settlement of 1701.<sup>44</sup> The Iroquois assault on their neighbors profoundly influenced future events in the Ohio Valley.

The Beaver Wars transformed political structures of the region and led to the geographic displacement of Ohio peoples, including the Shawnee. The Shawnee had at one time lived in Kentucky, but warfare scattered the tribe in various directions. Following the Shawnee diaspora most of the nation fell into an awkward dependence on their Iroquois enemies.<sup>45</sup> Most of the Shawnee moved to lands in modern central Pennsylvania. It took decades for portions of the depleted nation to filter back into the depopulated Ohio Valley. Facing pressures from the expansion of the Pennsylvania colony and from antagonistic Six Nations Indians, the Shawnee removed west beginning around the 1730s.<sup>46</sup> They were soon followed by the Delaware, Mingo, Miami and Cayuga fleeing white encroachment and Iroquois hegemony.<sup>47</sup> Together, these Indian nations helped form a zone that Richard White calls a “Middle Ground” in the Ohio Valley and the Old Northwest that offered its Native American inhabitants a degree of autonomy and isolation.<sup>48</sup>

### Virginia’s Claims to the West

Indian claims to the Ohio Valley placed them in direct competition with the most populous and powerful of the thirteen colonies. The “Old Dominion” of Virginia laid claim, albeit disputed, to the entire Ohio Valley and beyond. The question of what western lands belonged to

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<sup>44</sup> Daniel Richter and James H. Merrell, *Beyond the Covenant Chain: The Iroquois and Their Neighbors in Indian North America, 1600-1800* (Syracuse, New York: Syracuse University Press, 1987).

<sup>45</sup> Evidence of the Iroquois hegemony over the Shawnee can be found in volume three of Pennsylvania, *Minutes of the Provincial Council of Pennsylvania from the Organization to the Termination of the Proprietary Government: ... Containing the Proceedings of the Council* (Philadelphia: J. Severns, 1838) 3:442. The council’s minutes record an exchange between a Shawnee contingent that has re-immigrated to the Ohio country: “[The Shawnee] settled on the Sasquehannah & Delaware; that as they had joined themselves to the Sasquehannah Indians who were dependent on the five Nations, they thereby fell also under their Protection... yet being afraid of the Six Nations, they had removed backwards to the Ohio, and there had lately putt themselves under the Protection of the French.”

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

<sup>47</sup> Richter and Merrell, *Beyond the Covenant Chain*, 75-112.

<sup>48</sup> For a complete discussion of the “Middle Ground” see White, *The Middle Ground*.

Virginia placed it in direct competition with both Native Americans, as well as many other colonies. Virginia's original charter, granted in 1606, stated that the settlers could, "begin their plantacions and habitacions in some fitt and conveniente place between fower and thirtie and one and fortie degrees of the said latitude all alongest the coaste of Virginia and coastes of America."<sup>49</sup> According to Virginia's interpretation of the charter, the British crown gave the colony authority over the entirety of an area bounded roughly on its north and south by present-day New York and South Carolina, and running as far west as Virginia desired. Other colonies possessed their own competing charters. Not until 1776, when Virginia drafted its own state Constitution, did it recant its claims to the other colonies within its original charter:

The territories, contained within the Charters, erecting the Colonies of Maryland, Pennsylvania, North and South Carolina, are hereby ceded, released, and forever confirmed, to the people of these Colonies respectively, with all the rights of property, jurisdiction and government, and all other rights whatsoever, which might, at any time heretofore, have been claimed by Virginia, except the free navigation and use of the rivers Patomaque and Pokomoke, with the property of the Virginia shores and strands, bordering on either of the said rivers, and all improvements, which have been, or shall be made thereon.<sup>50</sup>

However, Virginians held firmly to the unsettled western lands granted by the charter of 1606:

The western and northern extent of Virginia shall, in all other respects, stand as fixed by the Charter of King James I. in the year one thousand six hundred and nine, and by the public treaty of peace between the Courts of Britain and France, in the Year one thousand seven hundred and sixty-three; unless by act of this Legislature, one or more governments be established westward of the Alleghany mountains. And no purchases of lands shall be made of the Indian natives, but on behalf of the public, by authority of the General Assembly.<sup>51</sup>

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<sup>49</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* (Charlottesville: Published for the Jamestown Foundation of the Commonwealth of Virginia by the University Press of Virginia, 1969), 1: 57-66.

<sup>50</sup> Francis Newton Thorpe, *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the State, Territories, and Colonies Now or Heretofore Forming the United States of America* (Washington: G.P.O., 1909).

<sup>51</sup> *The Journal of the Senate of the Commonwealth of Virginia* (Richmond: Davis Bottom Superintendent of Public Printing, 1910), Senate Document 3, page 6.

These documents established the legal basis for Virginia's western pretensions. Moreover, this important portion of Virginia's first Constitution points to the underlying forces encouraging western expansion in Virginia's economy, culture, and political power structure.

### **A Gentleman's Club: Planters, Politics, and Profits**

Virginia elites largely shaped the landholding patterns that evolved in Virginia and Kentucky. Historian Louis B. Wright summed up Virginia's political hierarchy best when he wrote, "The tight little aristocracy that developed in Virginia in the later years of the seventeenth century quickly gained a power and influence far in excess of the numerical importance of its members, who were vastly outnumbered by the yeoman."<sup>52</sup> Elite power developed in tandem with the explosion of tobacco cultivation in the Chesapeake. Though power shifted away from the Tidewater region and into the Piedmont prior to the Revolution, Virginia politics remained the domain of the elites.<sup>53</sup> Virginia claimed right of ownership to Ohio lands, but wealthy men of the Old Dominion saw the western lands as their own personal portfolio.

Scholars such as Charles Sydnor have found mostly positive consequences arising from Virginia's oligarchy.<sup>54</sup> He argues that Virginia's political system selected quality candidates for public office. This evaluation accurately reflects the success of tobacco culture and the trans-Atlantic mercantilist system as sources of planter wealth. However, consideration of elite involvement in land speculation highlights Lord Acton's famous maxim, "Absolute power corrupts absolutely." Thomas Perkins Abernathy cautions, "...the most successful speculators

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<sup>52</sup> Louis B. Wright, *The First Gentlemen of Virginia: Intellectual Facilities of the Early Colonial Ruling Class* (Charlottesville: University of Virginia Press, 1964), 2.

<sup>53</sup> See Emory Evans, *A Topping People: The Rise and Decline of Virginia's Old Political Elite, 1680-1790* (Charlottesville: University of Virginia Press, 2009).

<sup>54</sup> Charles Sydnor argues that the political system of Virginia promoted the rise of the most able and talented to political power. See *Gentlemen Freeholders: Political Practices in Washington's Virginia* (Chapel Hill: University of North Carolina Press, 1952).

and traders” in Virginia “were those who betrayed the public trust and used official position to bilk the people.”<sup>55</sup> In Virginia, special position meant opportunity. Still, elite exploitation of western lands had its limits. Following Virginia’s transfer to the crown in 1624, the colony was administered by a governor appointed by the King. The governor worked closely with the local political establishment of elected elites who sat in the House of Burgesses. More important, a handpicked cabinet of six eminent citizens advised the governor on matters of policy. This small group often, with but few exceptions, had the governor on their payroll and their side. Political hegemony allowed Virginia’s political elites to turn the western lands provided by the 1606/09 charter into a massive money making engine.

In agrarian Virginia, land ownership meant political enfranchisement and opportunity. According to Virginia law, “all and every person, male or female imported and coming into this colony and dominion free, has a right to fifty acres of land; and every christian servant, male or female imported after he or she becomes free, or time of servitude is expired, has a right to fifty acres of land for his or her importation.”<sup>56</sup> Virginia’s leaders hoped this law would promote immigration to the colony. However, as Robert Beverly stated in his 1705 account the colony, *History and Present State of Virginia*, “Each Servant has... a Right to fifty Acres of Land, where he can find any Unpatented: But that is no great Privilege.”<sup>57</sup> Planters frequently abused the system and pocketed the “head right” of many indentured servants. Each year, new immigrants and freed indentured servants pushed further to the outer fringes of settlement in order to find unpatented or unsettled land. Since wealthy Virginians controlled the land, they dictated where

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<sup>55</sup> Abernathy, *Western Lands and the American Revolution*, 368.

<sup>56</sup> “An Act concerning the Granting, Seating, and Planting, and for Settling the Titles and bounds of Lands,” Hening, *Statutes at Large*, ed., 3: 304.

<sup>57</sup> Robert Beverly, *The History and Present State of Virginia* (1705; Chapel Hill: University of North Carolina Press, 1947) 247.



and when people settled it, manipulated prices, and usurped the best lands on which to grow their tobacco.

The ancient system of “quitrents” also became a source of income and conflict for planters. Colonial quitrents were an adaptation of feudalism. Originally, serfs paid quitrents to their feudal lord to absolve them from obligatory services. By the seventeenth or eighteenth century, quitrents essentially amounted to a property tax due to whichever noble held title to the land, though the crown often assessed additional land taxes. The ownership of settled land thus had the potential for generating wealth for either the king or the region’s proprietor, as in the case of the Fairfax family in the Northern Neck of Virginia and the Penn family in Pennsylvania.<sup>58</sup> This system meant that land continually generated money for their proprietor or the king, no matter who technically owned them. There was much quitrent evasion throughout the colonies, but the major burden of payment fell on yeoman freeholders.<sup>59</sup>

Virginia’s land barons also exercised exceptional influence over settlement patterns along the frontier. Once investors purchased the land, they needed to find suitable tenants or buyers. For much of early Virginia’s history, settlers consisted primarily of freed indentured servants and recruits from outside the colony. William Byrd’s settling of French Huguenot refugees in Manakin Town, Virginia, just north of the fall line offers a perfect example.<sup>60</sup> Typically, planters intentionally settled these individuals along the margins of Virginia’s frontiers as a means to ensure the security of the larger plantations and towns further inland. In the Shenandoah Valley, for example, Virginia gentlemen controlled and profited from the

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<sup>58</sup> In Pennsylvania, North Carolina, Maryland, New York, and parts of Virginia and New Jersey, the land and its quitrents were granted to specific individuals including William Penn, Lord Fairfax, Lord Baltimore, Lord Bellomont, Lord Granville, and others who were entitled to all or a part of that region’s quitrent income.

<sup>59</sup> See Friedenber, *Life, Liberty, and the Pursuit of Land*, 85-88.

<sup>60</sup> For an in depth look at the Huguenot immigration to Virginia, see David E. Lambert, *The Protestant International and the Huguenot Migration to Virginia* (New York: Peter Lang, 2010).

settlement process in the mid-eighteenth century, even when it took on a remarkably different character than they intended.<sup>61</sup>

However, common Virginians could acquire their own land. Yeoman purchased land from the gentry or on the open market, though many chose the cheaper alternative and migrated beyond the protection of the larger settlements to squat on the best available lands on the fringe of Indian Territory. Avoiding competition with wealthy speculators, frontier settlers invoked the principle of “first come first served.” Settlers “preempted” land by “improving” the acreage and proving their residence in the area. Settlers believed that enduring further hardships would place them at the front of the line when the time came to lay legal claim to the land they had settled. They based their belief on the traditional principle of “preemptive rights” or “ancient cultivation,” in which the first individual to take up permanent residence in an area received legal title to the land.<sup>62</sup> Colonists had commonly recognized this practice from the earliest days of settlement, according to which settlers were entitled to their head right of fifty acres, plus an equal amount for every three acres cleared.<sup>63</sup> For many settlers, the strong attraction of gaining landed wealth relatively quickly outweighed the dangers of the frontier.

These factors shaped Virginia’s empire-building process. The Crown exercised minimal oversight over the colony. Following the demise of the Virginia Company in 1624, power to grant private property rights came from the governor of Virginia. Appointed by the king, the governor in turn answered to the royal cabinet in London. Until the mid-eighteenth century, governors of the colony distributed most lands directly to lobbying elites. Governors, dependent on appropriations from the House of Burgesses for their salaries, and seeking wealth and a

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<sup>61</sup> The Shenandoah was largely settled by German and Scots Irish immigrants recruited by Virginia. See Warren R. Hofstra, *The Planting of New Virginia Settlement and Landscape in the Shenandoah Valley* (Baltimore: The Johns Hopkins University Press, 2004).

<sup>62</sup> For a description of preemptive rights, see Aron, *How the West Was Lost*, 56-79.

<sup>63</sup> Abernethy, *Western Lands and the Revolution*, 89-90.

return to England, recognized the benefits of enriching the colony's aristocracy. This cozy relationship resulted in massive estates, and land holdings in the tens or hundreds of thousands of acres were quite common. Robert Carter, the land agent of the colony, amassed around three hundred thousand acres of land.<sup>64</sup> Through association with the governor, Benjamin Borden was able to accumulate six hundred thousand acres of land.<sup>65</sup> Indeed, historian Francis Philbrick has surmised that land patenting occupied more of the colonial government's time than all its other activities combined.<sup>66</sup>

Governors who challenged the system found it immovable. Alexander Spotswood, who served as governor from 1710 to 1722, soon realized the challenges posed by the Virginia land syndicate. An able, energetic, and gracious governor, Spotswood fit in well in chivalrous Virginia society, but he prioritized the interests of the crown over the interests of the local gentry. Small planters protested Spotswood's unpopular tobacco inspection law, which imposed quality restrictions on tobacco exports intended to decrease supply and shore up prices. The governor also promoted other reforms, including more exact quitrent records, the forfeiture of unimproved land after three years, and the reassertion of royal prerogative in the colony. These policies alienated many of the leading planter-speculators, men such William Byrd, John Custis, John Lewis, Robert Carter, Philip Ludwell, Henry Duke, and John Smith. Unfortunately for Spotswood, these men also sat on the council.<sup>67</sup> When Spotswood tried to bring suit against those who refused to comply with the new law, he found the relatives of council members staffing the colony's judicial system. Checked at every turn, the governor resigned. Spotswood cut a deal with his erstwhile enemies in exchange for 86,650 acres of Virginia real estate, and established a dynasty that became deeply integrated into the Virginia establishment, even

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<sup>64</sup> Friedenber, *Life, Liberty, and the Pursuit of Land*, 39.

<sup>65</sup> *Ibid.*

<sup>66</sup> Francis S. Philbrick, *The Rise of the West, 1754-1830* (New York: Harper and Row, 1965), 106.

<sup>67</sup> Evans, *A Topping People*, 45-65.

founding the colony's first major iron foundry.<sup>68</sup> The House of Burgesses and council members who brokered the deal received seventy-one thousand acres for their efforts. In the end, land was the one commodity to which no governor dared restrict access. Land seems to have corrupted even the hitherto scrupulous Spotswood. In the following decades, the oligarchy of Virginia expanded the volume and raised the stakes of land speculation to new extremes.

### **The Virginia Land Companies and the Seven Years War**

For a time, western settlement focused on the great valleys of the Appalachians like the Shenandoah. However, as settlement pressed further west, speculation moved even faster, pushing speculators' involvement into areas of direct interest to the Crown. Both the French and the English claimed the Ohio Country, but Indians hostile to Euro-American domination inhabited it. Though the speculators faced steep financial and personal risks, they found the opportunities even more enticing. Virginians took the lead in moving beyond the Blue Ridge Mountains into this new and more dangerous territory. Old Dominion speculators, a future president, and the famous land company that represented them ignited a tinderbox in the trans-Appalachian West.

By the 1740s, much of the best land in Virginia's Piedmont, Tidewater, Northern Neck, Southside, and Shenandoah Valley were claimed or under plow. Settlers and speculators looked with increasing interest at the lands west of the Blue Ridge Mountains. The council granted the first western patent in 1743 along the Greenbrier River in present day West Virginia to John Robinson and his Greenbrier Company. Thomas Lee, also a member of the council, began openly campaigning for a grant of five hundred thousand acres for his new Ohio Company, in which many leading Virginians such as George Mason and several Washingtons invested.<sup>69</sup> The land

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<sup>68</sup> *Ibid*, 68-69. See also Thomas J. Wertenbaker, *The Old South: The Founding of American Civilization* (New York: C. Scribner's Sons, 1942), 318-19.

<sup>69</sup> Friedenbergl, *Life, Liberty, and the Pursuit of Land*, 101.

that Lee and his associates sought lay in the disputed Ohio Country. When Virginia Governor William Gooch doubted his authority to grant land in the region, Lee appealed to the British Board of Trade. With powerful friends such as John Hansbury lobbying on Lee's behalf in the London merchant community, the company's grant request secured approval in 1749 on the condition that it build a fort in the region and settle one hundred families on the land within seven years. The British leadership sought to use this new settlement to check "the encroachments of the French by interrupting part of their communication."<sup>70</sup>

Opposition soon arose to the Ohio Company's claims. It faced serious rivals in the Pennsylvania fur trading syndicates, as well as major land speculation companies, some of them owned by rival Virginians. The Loyal Company, headed by Dr. Thomas Walker, posed the greatest threat. Walker's Loyal Company claimed eight hundred thousand acres in the region south of the Ohio, in present-day Kentucky. Not only did the two company's claims overlap, but they promised to collide in the future as settlement expanded along the north bank of the Ohio River. The Loyal Company moved quickly, sending Walker west in 1750 to explore the company's claims in what is now Kentucky.<sup>71</sup>

The Ohio Company also had well placed friends. Virginia's new governor, Robert Dinwiddie, invested in the company. He wrote to Thomas Cresap in 1752, stating, "I have the Success and Prosperity of the Ohio Company much at heart."<sup>72</sup> Moreover, the Ohio Company devised a more aggressive strategy than their competitors. The company sent adventurer and

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<sup>70</sup> Memorial of George Mercer on Behalf of the Ohio Company, June 21, 1765, in Kenneth P. Bailey, *The Ohio Company of Virginia and the Westward Movement, 1748-172: A Chapter in the History of the Colonial Frontier* (Glendale: The Arthur H. Clark Company, 1939) Appendix of Petitions, 311.

<sup>71</sup> See J. Stoddard Johnston, *First Explorations of Kentucky: Doctor Thomas Walker's Journal of an Exploration of Kentucky in 1750, Being the First Record of a White Man's Visit to the Interior of that Territory, Now First Published Entire, with Notes and Biographical Sketch; Also Colonel Christopher Gist's Journal of a Tour Through Ohio and Kentucky in 1751, with Notes and Sketch* (Louisville, Ky: J.P. Morton and Co, 1898).

<sup>72</sup> Robert Dinwiddie to Thomas Cresap, Jan. 23, 1752, *Official Records of Dinwiddie*, ed. R.A. Brock, 2 Vol. (Richmond: The Virginia Historical Society, 1883), 1: 17-18.

Indian agent Christopher Gist to explore the Ohio Valley just as Walker returned from his foray. Gist fulfilled two missions as he traveled through portions of Kentucky, crossed the Falls of the Ohio, and continued into Indiana and Ohio. First, he scouted and surveyed the best lands along his route. Second, he sought to legitimize Ohio Company activities in the region by cultivating relationships with Native American inhabitants who strongly opposed white settlement.<sup>73</sup> Later in 1752, Gist helped negotiate the Logstown Treaty with the Iroquois leader Tanacharison who permitted the company to build a fort at the Forks of the Ohio.<sup>74</sup>

In early 1754, a small party of Ohio Company employees began construction of Fort Prince George at the Forks of the Ohio to counter the chain of French forts under construction in the region. Upon hearing news of Virginia's activities in the Ohio Country, the French marched south and forced the small Virginia construction party to abandon their effort, though not before they sold their tools to the French. The French used these tools to construct the larger Fort Duquesne, named for their commander, Michel-Ange Du Quesne de Menneville, Marquis Du Quesne.<sup>75</sup> A young George Washington, also a member of the Ohio Company, took command of a relief force, and commenced hostilities with the French when he arrived at the Forks of the Ohio. The disastrous series of skirmishes that followed provided the spark for the global Seven Years War. Victory in 1763 and the terms of the Treaty of Paris left nearly all of France's North America colonies under British control. However, British attempts to grapple with the costs of war shaped future relations with the North American colonies and sowed the seeds of colonial rebellion. As for the Ohio Company, it paid dearly for the conflict it started. The company never

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<sup>73</sup> Abernethy, *Western Lands*, 6-8.

<sup>74</sup> While Tanacharison and the Six Nations supported the project, and even encouraged this activity in several treaties, the Ohio and Cherokee Indians generally opposed the Treaty of Logstown.

<sup>75</sup> Fred Anderson, *Crucible of War: The Seven Years' War and the Fate of Empire in British North America, 1754-1766* (New York: Alfred A. Knopf, 2000), 49.

fulfilled the requirements of its charter and it lapsed.<sup>76</sup> The long war on the frontier destroyed the Loyal Company as well. However, that Virginia's interests aligned so well with the interests of the Ohio Company reveals the depth of the relationship between land speculation companies and the colony's government.

Washington and his fellow Virginians were heavily involved in the frontier battles of the Seven Years War. However, aside from the men associated with the Ohio Company, few leading Virginians actively supported the war effort. The House of Burgesses refused to provide adequate funding, and only begrudgingly supported opportunities that would, as historian Fred Anderson surmises, "give an unpopular governor carte blanche to start a war that, for all they knew, would be no more than a pretext to expand the scope of the prerogative in Virginia government while enriching him and his Ohio Company cronies at public expense."<sup>77</sup> Still, the war deeply affected Virginia and the process of western expansion. Throughout the conflict, Virginia's government and its wealthy land speculating politicians viewed the West as their inheritance. Successive Virginia governors used western lands as a tool of military recruitment. Moreover, at the end of hostilities, wealthy Virginians saw western lands as fairly won and ripe for exploitation.

### **Speculation, Veterans' Grants, and the Proclamation of 1763**

For Governor Dinwiddie, land offered the best available tool to boost sluggish military recruitment. Land meant status in colonial Virginia. Ownership of land meant a political voice, the right to vote, self-sufficiency, and constituted the surest means to financial solvency. In February 1754, Dinwiddie issued a proclamation offering land bounties to anyone willing to fight

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<sup>76</sup> Members of the Ohio Company continued to press for legal recognition of their claims well into the late 1700s. The company name was also resurrected on several occasions in other speculative ventures in and around the Ohio Valley.

<sup>77</sup> Anderson, *Crucible of War*, 46.

for the Virginia line in the Seven Years War.<sup>78</sup> These bounties came directly from the Ohio Company's grant. By awarding company land to those who fought, Dinwiddie attempted to buy support for the war effort. Two hundred thousand acres were to be distributed to veterans immediately following the expulsion of the French from the region.<sup>79</sup> Unfortunately for the soldiers, that process took four years, and most sold their bounties at a bargain to men like George Washington. Likewise, many Ohio Company investors opposed the governor's action as it cut deeply into the company's profits. Real settlement around the forks of the Ohio would not occur until hostilities ceased in 1763.

Even with the French menace gone, however, settlement west of the Appalachians still faced obstructions. Native Americans, realizing the serious implications of French defeat, continued the war with England under the figurative direction of Algonquin chief Pontiac. Pontiac's rebellion represented the first serious concerted Native American effort to challenge whites on the frontier. The violence forced the British to choose between a conciliatory approach and a protracted Indian war.<sup>80</sup> The insolvent British government chose peace because it could ill afford an extended conflict with the Indians, and embarked on a series of appeasement policies, culminating in the proclamation of 1763, which barred most white settlement beyond the western face of the Appalachians. The proclamation directly targeted the activities of Virginians who sought to gain land by treaties with Indians, and who had done so much to precipitate the last conflict. The Proclamation stated:

Great Frauds and Abuses have been committed in purchasing Lands of the Indians, to the great Prejudice of our Interests and to the great Dissatisfaction of the said Indians: In order, therefore, to prevent such Irregularities for the future, and to the end that the Indians may be convinced of our Justice and determined Resolution to remove all reasonable Cause of

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<sup>78</sup> Bailey, *The Ohio Company of Virginia*, 215.

<sup>79</sup> *Ibid*, 216.

<sup>80</sup> See Gregory Evans Dowd, *War Under Heaven: Pontiac, the Indian Nations, & the British Empire*. (Baltimore: The Johns Hopkins University Press, 2002). Dowd argues that Pontiac's rebellion was more effective than many historians have suggested.



Discontent, We do with the Advice of our Privy Council strictly enjoin and require that no private Person do presume to make any purchase from the said Indians of any Lands reserved to the said Indians.<sup>81</sup>

For the first time, the barrier to western expansion came not from geography, Native warriors, or French regulars, but from the British government itself. Officially, the proclamation cut the Ohio Valley off from settlement and speculation, and thus denied Virginia's elites of what they considered theirs by right of conquest. George Mercer, secretary of the Ohio Company, spent years in London lobbying for the proclamation's repeal.<sup>82</sup>

The Proclamation of 1763 played a key role in fomenting the American Revolution, and helped push the leading men of Virginia into the conflict. Writing of George Washington, the historian W. E. Woodward notes, "A map of his political views in the pre-Revolutionary period would be simply a map of the Western Territory, with a few disappointing financial statements from his London agents tacked onto one corner."<sup>83</sup> Washington was particularly land obsessed, but his behavior reflected that of many of the Old Dominion's leading patriots, most of whom had invested in one land company or another.

The Proclamation of 1763 slowed but only briefly deterred speculators from their work. The lands beyond the Appalachians proved too enticing. The years between the end of the Seven Years War and the beginning of the Revolution saw the most active surveying of the West yet undertaken. Technically illegal, these activities took on a clandestine nature. Few feared detection, however, as most members of the political establishment participated in land speculation. In reality, the greatest risk was that a competitor would discover one's speculative

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<sup>81</sup> *Proclamation of 7 October 1763*, Great Britain, Sovereign (1760-1820: George III), Constitutional and Organic Papers, S 131006, South Carolina Department of Archives and History, Columbia, South Carolina. <<http://tm112.community.uaf.edu/files/2010/08/royalproclamation1763.pdf>> (Accessed April 19, 2013).

<sup>82</sup> Bailey, *The Ohio Company*, 255.

<sup>83</sup> W.E. Woodward, *George Washington: The Image and the Man* (New York: Boni and Liverwright, 1926), 222.

or surveying activities. Again, Washington stands as a good example. In a letter to William Crawford dated September 21, 1767, Washington wrote:

I offered in my last [letter] to join you in attempting to secure some of the most valuable lands in the King's part, which I think may be accomplished after a while, notwithstanding the proclamation that restrains it at present, and prohibits the settling of them all; for I can never look upon that proclamation in any other light (but this I say between ourselves) than as a temporary expedient to quiet the minds of the Indians.<sup>84</sup>

Washington viewed the Proclamation of 1763 as temporary. Likewise, he knew that others held the same opinion and pursued similar schemes to his own:

I recommend, that you keep this whole matter a secret... for several good reasons...First... because I might be censured for the opinion I have in respect to the King's proclamation, and then, if the scheme I am now proposing to you were known, it might give the alarm to others, and by putting them upon a plan of the same nature, before we could lay a proper foundation for success ourselves... All this can be avoided... under the guise of hunting game, which I presume, effectually do, at the same time you are in pursuit of land.<sup>85</sup>

Washington stressed the urgency of the situation to his associate: "Any person therefore who neglects the present opportunity of hunting out good lands, and in some measure marking and distinguishing them for his own... will never regain it."<sup>86</sup> Washington's sentiments were mirrored by many of the colony's speculators, who still viewed the West as their own backyard. In 1773, Washington asked Crawford to survey ten thousand acres at the Falls of the Ohio for patent, well beyond the boundary line established in 1763.<sup>87</sup> The proclamation did nothing to slow or prevent speculative activities. Indeed, this period saw fierce competition between land companies from Virginia, Pennsylvania, North Carolina, and even Britain.<sup>88</sup>

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<sup>84</sup> Washington to William Crawford, Sept. 21, 1767, *The Washington-Crawford Letters*, ed C.W. Butterfield (Cincinnati: Robert Clark & Co, 1877), 1-5.

<sup>85</sup> *Ibid.*

<sup>86</sup> *Ibid.*

<sup>87</sup> Washington to W. Crawford, Sept 25, 1773, *The Washington-Crawford Letters*, 29.

<sup>88</sup> Though the competition between speculative interests in the Ohio region is well documented, a short summary can be found in Michael Curtis, *Jefferson's Freeholders and the Politics of Ownership in the Old Dominion* (New York: Cambridge University Press, 2012), 42.

## Treaties

Even as the Proclamation of 1763 barred the way to settlement, speculators worked to secure treaties with the Native Americans who lived on the frontier. Representing land companies, colonial governments, wealthy benefactors, and their own private interests, agents sought cessions from the Indians to legitimize their claims over their western surveys in the event the Proclamation line was repealed. Kentucky became the focus of many of these treaties. In most cases, speculators sought not to negotiate with the Indians for permission to control the land, but rather to preempt competitors in any future legal battles over shaky western claims. Regardless of the Proclamation of 1763, speculative activities continued with an eye to the “Camden and Yorke Opinion” of 1757.<sup>89</sup> Delivered by the attorney and solicitor generals of England and Wales, the opinion stated that British courts would consider deeds purchased from indigenous landholders valid. Though the decision dealt with purchases of the East India Company on the Indian sub-continent, it became the primary legal justification for purchasing lands from Native Americans. For example, William Murray, land speculator and promoter of the Illinois Company, used the decision to justify his failed 1773 bid to purchase land in the Illinois Country.<sup>90</sup>

Thus, the signing of Indian treaties continued through the period between the end of the Seven Years War and the American Revolution. A series of treaties, the most important of which was the Treaty of Fort Stanwix (1768), demarcated the borders of the territory that eventually became Kentucky. Like the Treaty of Logstown before it, British agents who negotiated the Fort Stanwix treaty dealt with the key Native American power brokers on the

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<sup>89</sup> For a more comprehensive look at this legal opinion, see Jack M. Sosin, "The Yorke-Camden Opinion and American Land Speculators," *The Pennsylvania Magazine of History and Biography* 85 (January 1961), 38-49.

<sup>90</sup> See Anna Edith Marks, *William Murray, Trader and Land Speculator in the Illinois Country* (B.A. Thesis University of Illinois, 1919).

frontier. Sir William Johnson secured a land cession from the Iroquois of the Six Nations that fixed the region's borders on the northern bank of the Ohio River.<sup>91</sup> By the treaty, the Iroquois ceded all lands "beginning at the Mouth of Cherokee or Hogohege River where it emptys into the River Ohio and running from thence upwards along the South side of said River to Kittaning which is above Fort Pitt."<sup>92</sup> By deeding this land away to the British control, the Iroquois diverted white migration away from their western New York heartland, and into land occupied by other Indian nations.

The Ohio Indians most affected by the Fort Stanwix Treaty never consented to the annexation of their hunting grounds. Unlike Logstown, the Shawnees, Mingo, Delawares, and Cherokees living in the vicinity of Kentucky did not even attend the Fort Stanwix proceedings.<sup>93</sup> These nations were nominally subordinate to the Iroquois according to the Grand Settlement of 1701 and other subsequent agreements brokered by the British. But by the time of Fort Stanwix, the Ohio Indians were rising in power, and the Iroquois could little guarantee the bargain that sold Kentucky to the British.<sup>94</sup> Ohio Indians never accepted the Six Nation's hegemony over their foreign affairs and never acknowledged the legitimacy of the treaty. As historian Richard White notes, "The Treaty of Fort Stanwix stands as the most tangled agreement reached by Indians and whites in the eighteenth century. At root, it was a cynical compact born in the mutual weakness of its two major parties: the Iroquois and the British Empire. Both spoke for peoples – the Algonquians and the backcountry settlers – whom, in fact, they could not control."<sup>95</sup> With so many competing interests, the British sought out those parties that would agree to a redrawn

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<sup>91</sup> Edmund B. O'Callaghan, *The Documentary History of the State of New York*, 4 Vol. (Albany: Weed, Parsons, 1849), 1: 588

<sup>92</sup> E. B. O'Callaghan, *Documents Relative to the Colonial History of the State of New York*, 10 Vol. (Albany: Weed, Parsons, and Co. 1857) 8: 111–137.

<sup>93</sup> John Anthony Caruso, *The Appalachian Frontier: America's First Surge Westward* (Indianapolis: Bobbs-Merrill, 1959), 123.

<sup>94</sup> Richter and Merrell, *Beyond the Covenant Chain*, 93-114.

<sup>95</sup> White, *The Middle Ground*, 351.

western boundary. The British never consulted the Ohio Indians because they would never have consented to this exchange.

Like the Iroquois, the Cherokee had less direct control over Kentucky's lands than the Ohio Indians. However, conciliatory elements within the Cherokee nation willingly bargained away regions north of the Tennessee River. A series of treaties with the Cherokee gave the claims of white speculators varying degrees of legitimacy. As at Logstown, pseudo-official Virginians took the lead. The Cherokee bargained away portions of Virginia's advancing frontier at the 1768 Treaty of Hard Labor, the Treaty of Lochaber in 1770, and the Treaty and Purchase of 1772, the latter agreement ceding Cherokee claims to the Bluegrass.<sup>96</sup>

#### **Explorers and Long Hunters: White Men in an Indian Hunting Ground**

Virginia's settlers and speculators openly challenged the Proclamation of 1763. Groups of white men continued to cross into the western territories with impunity. As pressures mounted along the proclamation line, hunters, explorers, speculators, and surveyors entered Kentucky. What these men saw amazed them. The first Anglo explorations of Kentucky occurred prior to the Seven Years War. Thomas Walker and Christopher Gist, members of major speculative ventures, each traveled through Kentucky in the 1750s. Gist claimed that he "could sometimes see forty or fifty Buffalos feeding at once."<sup>97</sup> Living with the Shawnee through the winter of 1750-51, Gist learned much about Native customs, cultures, and hunting practices. He recorded killing many buffalo, usually only to "[take] out their tongues" or "a little... breast meat."<sup>98</sup> Gist's wasteful use of the buffalo typified men on the move who treated game as modern "fast food" and left the bulk of their prey to rot.

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<sup>96</sup> Charles C. Royce, *The Cherokee Nation of Indians* (Chicago: Aldine Pub. Co, 1975), 18-20.

<sup>97</sup> Christopher Gist, November 25, 1750, in J. Stoddard Johnson, *First Explorations of Kentucky* (Louisville, KY: John P. Morgan and Company, 1898), 110.

<sup>98</sup> Christopher Gist, March 4, 1751, *First Explorations of Kentucky*, 147, 154.

Dr. Thomas Walker, who left a far more detailed journal than Gist, also saw many a buffalo on his journey through Kentucky. Walker's party killed a buffalo almost every day of the expedition. When they stopped to provision at Roanoke, Virginia at the very western extremities of English settlement, he found a disturbing reality: "We went to the great Lick on A Branch of Staunton & bought corn of Michael Campbell for our Horses. This Lick has been one of the best places for Game in these parts and would have been of much greater advantage to the Inhabitants than it has been if the Hunters had not killed the Buffaloes for diversion, and the Elks and Deer for their skins."<sup>99</sup> The place where Colonel Byrd's party had once killed a buffalo during their 1705 expedition was not far from this area. However, by Walker's time, the buffalo were near extinction east of the Appalachians. Subsisting almost exclusively on hunting and foraging, Walker's party traveled part of the way on a "buffalo road... which we took and found the Ascent and Descent tolerably easie."<sup>100</sup> Walker's party continued to follow buffalo traces during their journey. Though the journey was fraught with peril, the men subsisted on, "13 Buffaloes, 8 elks, 53 bears, 20 deer, 4 Wild Geese, about 150 Turkeys, and besides small game" during their six-month long expedition. Walker also claimed, "We might have killed three times as much meat if we had wanted it."<sup>101</sup> Walker and his party had not seen the richest portions of Kentucky. They had missed both the Bluegrass and the "barrens," and had still seen a herd of "a hundred Buffaloes."<sup>102</sup> Without seeing Kentucky's greatest abundance, Gist and Walker saw enough to suggest, as Gist remarked, "it wants nothing but cultivation to make it the most delightful Country."<sup>103</sup>

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<sup>99</sup> Dr. Thomas Walker, March 15, 1749, *The First Explorations of Kentucky*, 37.

<sup>100</sup> Dr. Thomas Walker, April 13, 1750, *The First Explorations of Kentucky*, 47-48.

<sup>101</sup> Dr. Thomas Walker, June 19, 1750, *The First Explorations of Kentucky*, 70.

<sup>102</sup> Dr. Thomas Walker, May 2, 1750, *The First Explorations of Kentucky*, 57.

<sup>103</sup> Christopher Gist, March 4, 1751, *The First Explorations of Kentucky*, 147.

The promise of rich and virgin lands for the taking deeply excited land speculators back east. Indeed, the excitement led the speculators of the Ohio Company to spark an international war with France. Part of Gist's operations included negotiations with Native Americans on the subject of land cessions in Ohio country. Just before the war began a future associate of Daniel Boone, John Findley, established a trading post at one of the last Indian settlements in Kentucky, near what would later be called Blue Licks. He told Nathan Boone, Daniel Boone's son, that "Of bears and buffaloes, elk and deer, their number was legion; and at many of the salt-licks of the country, they congregated in such prodigious herds, that the sight was truly grand and amazing."<sup>104</sup> Men like Findley came to the region drawn by Gist and Walker's reports. Less than a year after Finley arrived at the Indian village, however, war broke out, and the town burned and abandoned.<sup>105</sup> Gist and Walker's glowing reports attracted an increasing volume of white frontiersmen and speculators. The frictions this created helped spark the Seven Years War.

After the conflict, a new class of men ventured deep into Kentucky. Known as "long-hunters" men like Daniel Boone, Simon Kenton, James Knox, and others sought to poach in these exceptional hunting grounds and scout the region for future settlement.<sup>106</sup> Long hunters mimicked Indian use of Kentucky's animal population. Buffalo meat, for example, was prized on the frontier. When living off the land, as many hunters did, a buffalo offered an excellent alternative to shoe leather. Frontiersmen also learned to produce important products from the buffalo, including boats, shelters, oil and clothing, all manufactured in the field. Thus, long hunters never hesitated to shoot a buffalo given its many uses. In 1851, for example, Nathan Boone recalled that his father once killed nine buffalo to build a boat from their hides.<sup>107</sup> Long

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<sup>104</sup> As quoted in Belue, *The Long Hunt*, 76.

<sup>105</sup> Lucien Beckner, "Eskippakithiki: The Last Indian Town in Kentucky," *Filson Club Historical Quarterly* 6 (October 1932), 355-82.

<sup>106</sup> See Belue, *The Long Hunt*.

<sup>107</sup> E. Douglas Branch, *The Hunting of the Buffalo* (Lincoln: University of Nebraska Press, 1997), 111.

hunters found buffalo encounters both exhilarating and dangerous. When exploring French Lick, in the vicinity of present-day Nashville, Isaac Bledsoe's party of ten long hunters saw an abundance of Buffalo in the region's savannas. In one case, "Bledsoe... found an area about one hundred acres so crowded with buffalo and other animals that he was afraid to dismount from his horse lest he should be run over and trampled to death. He shot two deer, but the carcasses were so trampled in the mire about the licks that he could not skin them."<sup>108</sup> Bledsoe thought "the numbers of buffalo there to be estimated not only in the hundreds, but the thousands."<sup>109</sup>

While these vast herds of buffalo provided raw materials in the field, long hunters poached deer, bear, and elk for sale back east. These frontiersmen greatly accelerated the volume of the destruction of Kentucky's herds. In the early 1760s, for example, John Knox led a party of forty long hunters into Green River barrens in western Kentucky. After hunting and trapping all that they could, they left over two-thousand deerskins behind, unable to carry them.<sup>110</sup>

The growing number of white incursions into Kentucky drew the interest of Shawnee and Delaware warriors intent on ending such encroachments. On several of Boone's travels to Kentucky, Indians waylaid and captured him, confiscated his furs, and threatened his life. When Boone's hunting party ran into a Shawnee band in Kentucky in 1769, the Indian leader Captain Will warned Boone, "Go home and stay there.... And if you are foolish as to venture here again, you may be sure the wasps and yellow-jackets will sting you severely."<sup>111</sup> They did so in 1774, when Boone led his family and friends on an abortive settlement attempt. Shawnee, Delaware, and Cherokee warriors captured, tortured, and killed Boone's son, James, during an attack.

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<sup>108</sup> *Ibid*, 173.

<sup>109</sup> Draper Manuscripts, 3B:50, as quoted in Belue, *The Long Hunt*, 93.

<sup>110</sup> Brent Altsheler, "The Long Hunters and James Knox Their Leader," *The Filson Club Historical Quarterly*, 7 (April 1933), 169-85.

<sup>111</sup> *The Life of Daniel Boone*, Draper Manuscripts 2B188., as quoted in John Mack Faragher, *Daniel Boone: The Life and Legend of an American Pioneer* (New York: Henry Holt and Company, 1992), 81.



## Lord Dunmore's War

As Virginia's population grew, yeoman, squatters, and all manner of immigrants and young men looked to the West as their future home. Virginia's western counties quickly began to fill as settlement traced its way down the Appalachian valleys. In 1772, population growth prompted the Virginia legislature to split Fincastle County off from Botetourt County. Though remote and settled predominantly by non-English immigrants, Fincastle County, like many of Virginia's other western counties, was still controlled by the same aristocracy that dominated the rest of the colony. A list of names appointed to the first Fincastle county court including William Preston, William Ingles, William Christian, John Montgomery, Stephen Trigg, Arthur Campbell, William Russell, Benjamin Estill, Samuel Crockett, and Alexander Mckee, demonstrates the gentry's political dominance of the western counties. Historian George M. Chinn summarizes the connections between the new western gentry and prominent men in longer settled regions of the Old Dominion:

Most of them had served as officers in the French and Indian War and were thus entitled to grants of land in the West. In addition, they were on intimate terms with the highest military and civil officials in Virginia, among them George Washington and Hugh Mercer, as well as the King's appointed ministers. Christian was the brother-in-law of Patrick Henry.<sup>112</sup>

These connections helped to ensure the continued hegemony of the Virginia elite over the western counties.

Boone's failed attempt to colonize Kentucky proved the opening salvo of what became Lord Dunmore's War. This conflict represented a new chapter in the long, drawn out Indian wars that lasted until 1815, when the Indians lost British support. Lord Dunmore's War opened the floodgates to white settlement. Evidence suggests that Dunmore incited the conflict, utilizing the Boone family tragedy and others like it as a pretense to seize land from the Shawnee. In

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<sup>112</sup> Chinn, *Kentucky: Settlement and Statehood, 1750-1800*, 40

1774, Thomas Wharton described Patrick Henry's reaction when asked about "the real intentions of Dunmore for prosecuting this unjust war." Henry replied, "his Lordship was determined to settle his family in America, and he was really pursuing this war in order to obtain by purchase or treaty from the Natives a tract of territory."<sup>113</sup> Colonel William Preston, advisor to Lord Dunmore and future Kentucky speculator, happily supported the governor, saying, "The Opportunity we have so long wished for, is now before us."<sup>114</sup>

Dunmore had called for a survey of Kentucky's lands in 1772, then organized an expedition the following year that sought to survey possible land grants for veterans of the Seven Years War.<sup>115</sup> The expedition attracted many veterans. Wealthy men like Washington, Hugh Mercer, and Henry took a keen interest in its success, hoping to profit from successful claims. Two of Kentucky's founders, James Harrod and Boone, led parties down the Ohio River and over land respectively. However, both expeditions quickly faltered in the face of Indian attacks, with Boone's party assaulted in the Cumberland Gap area.<sup>116</sup> Harrod returned to Kentucky the following spring and with a few dozen men established the short-lived settlement of Harrodstown not far from the Kentucky River. They spent weeks surveying land, making improvements, and erecting thirty-seven cabins throughout the Bluegrass in hopes of securing preemptive rights.<sup>117</sup> However, the escalating hostilities of Dunmore's War convinced the party to hurry back east. Shawnee raiders promptly burned the improvements as the war began in earnest in the fall. Following Virginia's 1774 victory over the Ohio Indians at Point Pleasant, the

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<sup>113</sup> Thomas Warton to Thomas Walpole, September 23, 1774, "Letter-Book of Thomas Wharton," in *Pennsylvania Magazine of History and Biography* 33 (October 1909): 445.

<sup>114</sup> Colonel William Preston as quoted in Friedenber, *Life, Liberty, and the Pursuit of Land*, 130.

<sup>115</sup> Kathryn Harrod Mason, *James Harrod of Kentucky* (Baton Rouge: Louisiana State University Press, 1951), 35-41.

<sup>116</sup> Boone and Harrod coordinated their movements and planned to meet in Kentucky.

<sup>117</sup> Chinn, *Kentucky: Settlement to Statehood*, 67.

Shawnee signed the Treaty of Camp Charlotte.<sup>118</sup> Most Ohio Indians ignored the treaty, but Virginians soon returned to Kentucky and never left.

### First Settlements and the Coming Revolution

Prior to Dunmore's War, exploration and settlements in Kentucky took place clandestinely and illegally – with the exception of the ill-fated Vandalia project – and failed to produce permanent settlement.<sup>119</sup> Settlers hesitated to move to a place that offered little legal or physical security. The conclusion of Dunmore's War gave these men greater confidence. Harrod and Boone began to prepare for a return to Kentucky in 1775. However, settlers must have wondered whether they had the support of Virginia and her governor. On January 28, 1775, Dunmore issued a cryptic proclamation announcing the terms of the Treaty of Camp Charlotte in the *Virginia Gazette*: "The Shawanese from whose Incursions the most dreadful Effects were felt... have agreed not to hunt on this Side of the *Ohio*, and have solemnly promised not to molest any Passengers on the Rivers, but, on the contrary, to give them every Assistance, and Protection."<sup>120</sup> Though the initial statement seemed encouraging, Dunmore also cautioned, "I HAVE therefore thought fit, with the Advice of his Majesty's Council, to issue this Proclamation, hereby requiring all Persons in the Government straightly to refrain from committing any Violence upon, or doing an Injury to *Indians* of whatsoever Tribe or Nation, and from every Encroachment upon their Territory which may give them Cause of Complaint."<sup>121</sup> Dunmore added, "I do direct and command all Magistrates and other Officers to be aiding and assisting in preserving the Peace now established, by immediately apprehending the Violators of

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<sup>118</sup> William J. Campbell, *Speculators in Empire: Iroquoia and the 1768 Treaty of Fort Stanwix* (Norman: University of Oklahoma Press, 2012), 200-201.

<sup>119</sup> For more on Vandalia, see chapter two, page 52.

<sup>120</sup> *Virginia Gazette*, Williamsburg, January 28, 1775 (Colonial Williamsburg Foundation online archive) (accessed March 7, 2013).

<<http://research.history.org/DigitalLibrary/VirginiaGazette/VGImagePopup.cfm>> Some spelling edits have been made to facilitate readability.

<sup>121</sup> *Ibid.*

it, and protecting the *Indians* by every Means in their Power.”<sup>122</sup> To make matters more confusing, the bulk of the paper in which Dunmore placed his proclamation contained coverage and analysis of the First Continental Congress. The Old Dominion was tense as the first bands of permanent settlers prepared to set out for Kentucky.

At the same time North Carolina speculator and politician Richard Henderson attempted to gain control of all the lands between the Green, Ohio, and Cumberland Rivers. Henderson and several other North Carolina investors formed the Transylvania Land Company to found a colony in the trans-Appalachian West. Henderson met with the Cherokee and negotiated the private land grab known as the Treaty of Sycamore Shoals (1775). Boone and other frontiersmen attended the conference, as did Dragging Canoe, the great Cherokee resistance fighter. Disgusted by the proceedings, Dragging Canoe was reported to have said: “We have given you this, why do you ask for more?... When you have this you have all. There is no game left between the Watauga and the Cumberland. There is a cloud hanging over it. You will find its settlement dark and bloody.”<sup>123</sup> Despite the threat, Henderson dispatched Boone to blaze the famed “Wilderness Trail” overland into the Bluegrass before negotiations were concluded. Through the month of March, Boone and a party of thirty men cut their way across Kentucky in a race to open the region to the Transylvania Colony’s settlers and preempt the best lands before others could arrive. Not until July did Boone’s party build a fort, in part because they suffered several Indian attacks. More important, the men were far more interested in surveying land for preemption than in preparing for the common defense.<sup>124</sup>

Both Boone and his party had a real sense of urgency. They faced many unknowns, including a dramatic shift in Virginia politics. As the men chopped trees and surveyed property

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<sup>122</sup> *Ibid.*

<sup>123</sup> Daniel Heath Justice, *Our Fire Survives the Storm: A Cherokee Literary History* (Minneapolis: University of Minnesota Press, 2006), 35.

<sup>124</sup> Chinn, *Kentucky: Settlement and Statehood*, 81-109; 131-64.

lines, Virginia's leaders opted for armed rebellion against Great Britain. During the summer of 1775 the colonies began to throw off their colonial governors, and Virginia's cadre of patriotic aristocrats were already participating in the Second Continental Congress in open defiance of Dunmore, who now directed an intensifying military campaign against Virginia's militia. As the colony prepared for war, events in Kentucky seemed of little consequence. However, following independence and a grinding war effort, Virginia began to take a keen interest in her western lands. But Virginia's gentry-dominated political and social framework struggled to adapt to the complex landscape on its western frontier.

## CHAPTER 2: LAWS, LAND, AND WAR

### Kentucky, Virginia, and the Revolutionary War

The Revolution redefined Virginia's relationship with the West. Prior to the war, British policy and Native American resistance had confined Virginians to the eastern slope of the Appalachians. Lord Dunmore's War in 1774 had rekindled conflict with the Native Americans and opened up the possibility of new territorial gains. National independence from Great Britain removed the paper barriers to expansion. In a few short years, the limited encroachments of long hunters, explorers, and traders turned into permanent settlements, open war, and a dramatic transformation of the land. The Revolution in the West remains noteworthy for its brutality as well as its role in shaping the future course of American expansion, and in forging the foundational relationships between western settlers and their eastern counterparts.

While historians often discuss Virginia's role in Kentucky's formation in terms of state and national politics, the social and economic trends at work during Revolutionary era were the engines that moved the process. From the humble settler to the governor of the state, individual Virginians had a personal interest in the status in the state's western territories. Concern about western lands contributed to the economic, political, military, and philosophical debates within the Old Dominion. The following narrative traces Virginia's complex relationship with Kentucky in the first years of the American Revolution until the passage of the land laws of 1779.

## The Revolutionary War in Virginia

As the most populous state in the new United States, the Old Dominion provided much of the Revolution's leadership and was the site of several important campaigns. Economic, political, and demographic issues propelled Virginia to open revolt against Britain. Increased immigration from Europe, Africa, and other American colonies swelled the Virginia's population from one hundred thirty thousand to four hundred thousand in the twenty-five years preceding the Revolution.<sup>125</sup> Available land became increasingly rare – a fact compounded by the Proclamation of 1763 – and many of the new arrivals either joined a growing class of tenant farmers or chose to face the rigors of Virginia's backcountry. Additionally, the colony dealt with a decade-long slump in the value of tobacco, the colony's primary staple crop. Several natural disasters, the specter of increased taxation, Enlightenment ideology, racial tension, and crushing personal debt, particularly among the elite, produced a society poised for political turmoil.<sup>126</sup>

These factors fostered an alliance between the gentry and the yeomanry. The landed and politically enfranchised classes largely supported the Revolution, while the merchant class and the more marginalized segments of society provided only limited support. Historians Woody Holton and Michael McDonnell suggest that Virginians' support for independence was far from universal, and the actions of freeholders, slaves, and Indians profoundly influenced the decisions of Virginia's elite leadership.<sup>127</sup> Virginia's leaders formulated the Revolutionary ideology and directed the war effort, but popular support remained lukewarm, sapped in part by the realities

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<sup>125</sup> United States. *Historical Statistics of the United States: Colonial Times to 1970*. (Washington: U.S. Dept. of Commerce, Bureau of the Census, 1975), 1168.

<sup>126</sup> For more on the internal economic and social conflicts within Virginia, see Timothy Breen, *Tobacco Culture: The Mentality of the Great Tidewater Planters on the Eve of Revolution* (Princeton: Princeton University Press, 1985); Michael A. McDonnell, *The Politics of War: Race, Class, and Conflict in Revolutionary Virginia* (Chapel Hill: University of Virginia Press, 2007); and Rhys Isaac, *The Transformation of Virginia, 1740-1790* (Chapel Hill: University of North Carolina Press, 1982).

<sup>127</sup> See Woody Holton, *Forced Founders: Indians, Debtors, Slaves, and the Making of the American Revolution in Virginia*. (Chapel Hill: University of North Carolina Press, 1999); and McDonnell, *The Politics of War: Race, Class, and Conflict in Revolutionary Virginia*, 291, 451.

and deprivations of war. Indeed, as Michael McDonnell demonstrates, Virginia consistently failed to entice young men to join the Virginia line and fight beyond the state's borders. Virginia's military leaders focused their recruitment efforts on laborers and the landless, while avoiding slaveholders and freeholders. Though Virginia had the largest population of the former colonies it provided a far lower proportion of soldiers than did northern states like Massachusetts. Virginia leaders struggled mightily to build a coalition of willing partners to prosecute the war even within the state's borders.<sup>128</sup> Additionally, the huge population of slaves in Virginia tied down many potential soldiers. Blacks more often supported the Crown, which offered manumission to runaways who joined the ranks of the British Army, forcing the patriots to mimic British policy to circumvent its effectiveness.<sup>129</sup> British forces waged a protracted war of raids and skirmishing along Virginia's coast, and made several forays into the interior, including a 1779 attack that resulted in the burning of the new capital of Richmond.<sup>130</sup> Sluggish recruitment and weak militia support meant that Virginia's war effort nearly always lagged behind that of its northern neighbors.

### **The Revolution in Kentucky**

Not only did the leadership of the Old Dominion struggle to build an effective internal coalition, it utterly failed to pacify Native Americans. For Indians up and down the Ohio River, colonial settlers rather than the British posed the greatest risk to their welfare. Virginia's western territories saw some of the heaviest fighting between Ohio Indians and white settlers in these years. Indeed, Lord Dunmore's War represented the first in a long series of conflicts between the Ohio Indians and Euro-American settlers that lasted almost unabated until the

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<sup>128</sup> Charles Patrick Neimeyer, *America Goes to War: A Social History of the Continental Army* (New York: New York University Press, 1996) 198-200.

<sup>129</sup> See McDonnell, *Politics of War*, 281-314.

<sup>130</sup> See Michael Kranish, *Flight from Monticello: Thomas Jefferson at War* (New York: Oxford University Press, 2010).



Treaty of Fort Meigs in 1817.<sup>131</sup> With British material, logistical, and occasionally human support the Ohio Indians tried to destroy the new beachheads of settlement in Kentucky and along the banks of the Ohio River.

Scholars have paid little attention to the campaigns of the western theater of the American Revolution. At the beginning of the war, Virginia's leadership shared this attitude. They viewed the western counties as strategically insignificant, and focused their attention on eastern Virginia. They employed the state's scarce resources in the defense of the Tidewater, slave control, and fulfilling Virginia's national commitments. Among the settlers in Virginia's western counties frustration with the lack of support from the mother state festered throughout the war. As late as 1781, Virginia's western counties suffered from a lack of manpower. As Kentucky settler John Floyd suggested:

It is now beyond a doubt that the attention of at least 6000 Savage Warriors is fixed on this spot and who will not disturb any other part of the Continent as long as we maintain our Ground. But on the contrary as soon as this Country is laid waste they will immediately fall on the Inhabitants of Washington, Montgomery, and Greenbrier & in short from South Carolina to Pennsylvania. I believe all the Counties on the west side the blue Ridge were kept for many years penned up in Forts by the Shawaneese, Mingoese, Delawares, & a few of their Adherents; if so what will be the consequence when at least fifteen powerful Nations are united and combined with those above mentioned against about twelve hundred Militia dispersed over three very extensive Counties. Those Nations have absolutely been hitherto kept off your back Settlements by the Inhabitants of Kentucky.<sup>132</sup>

Floyd's assessment was certainly hyperbolic. The Ohio Indians never assembled more than a few thousand warriors in their greatest campaigns. Native warriors could not force the surrender of the outgunned militia at Boonesborough in 1777, making the prospect of a pan-Indian invasion

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<sup>131</sup> For a good summary of this conflict, see Colin G. Calloway, *The Shawnees and the War for America* (New York: Viking, 2007).

<sup>132</sup> John Floyd to Thomas Nelson: October 6, 1781, in *George Rogers Clark Papers, 1771-1784* edited with introduction and notes by James Alton James, 19 Vols. (Springfield: Illinois State Historical Library, 1912), 2: iii.

of Virginia unlikely. Yet Floyd's words offer a window into the sense of isolation felt by western settlers, and the growing gulf between East and West.

Dramatic swings of momentum characterized the war in Virginia's western counties, with the outcome often in doubt. Though the Indians carried out no major attacks in 1776, random raids into Kentucky drove many settlers back across the Appalachians. Daniel Boone and Colonel Richard Calloway each had daughters kidnapped by a Shawnee raiding party.<sup>133</sup> The Boone's dramatic rescue of the girls added to his mystique, but a general sense of foreboding hung over the frontier. The Kentucky militia's manpower was much depleted as settlers hurried back to the relative safety of their respective points of origin. By early July 1776, John Floyd counted only thirty riflemen at Boonesborough.<sup>134</sup> 1776-77 saw continued raiding on both sides. Though small in scale, these raids had deadly results. In 1777, Shawnee warriors delivered seventy-seven prisoners and 129 scalps to Henry Hamilton, the British commander of Detroit.<sup>135</sup>

The following year, Shawnee raiders captured Boone and several of his compatriots. After living with the Indians for several months, Boone escaped and returned to Boonesborough just ahead of an invasion force numbering roughly five hundred Shawnee warriors and British militia led by Chief Blackfish. During the dramatic eleven-day siege of the fort in September, Boone and his comrades held off the Indian invaders against overwhelming odds, further embellishing the Boone mythology. While the Shawnee failed to destroy the critical fortifications at Boonesborough and Harrodsburg, the Shawnee raids virtually eliminated white settlement in the surrounding area.

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<sup>133</sup> Faragher, *Boone*, 131-39.

<sup>134</sup> William Stewart Lester, *The Transylvania Colony* (Spencer, Ind: S.R. Guard & Co, 1935), 16.

<sup>135</sup> Michael A. Lofaro, *Daniel Boone: An American Life* (Lexington: University Press of Kentucky, 2003), 83.

While 1777-78 represented the low point for Kentucky's white population, the Indians failed to drive them from their beachhead in the region.<sup>136</sup> The conflict along the Ohio dragged on for five more years, with neither side able to achieve its strategic goals. Though the Shawnee and their allies enjoyed a few dramatic victories, the Indians never completely eliminated white settlements. In 1782, three hundred fifty Native Americans and British loyalists under the command of William Caldwell delivered a devastating defeat to a force of Kentucky militia Blue Licks. This battle occurred months after General Charles Cornwallis's April 1781 surrender at Yorktown, illustrating the isolated nature of the western conflict which continued despite changing conditions in the East. Despite the continued fighting, settlers viewed the survival of the forts as harbingers of victory, and Kentucky's population grew quickly as the perception of security improved.

### **George Rogers Clark and the Campaign in the Old Northwest**

Indian and pioneer raids crisscrossed the Ohio River throughout the war. The endless cycle of reprisals and killings garnered interest from Virginia's leaders, whose western efforts focused primarily on dislodging British garrisons in Northwest. In fact, Virginia did not officially appropriate any money or material support to offensive campaigns in the West until 1779.<sup>137</sup> Prior to 1778, the fighting in Kentucky took place between local settlers and Indians supported by the British in Detroit. However, Virginia Governor Patrick Henry sought more than the tactical defeat of the state's British and Native American foes in the Ohio Valley. Instead, he envisioned loftier strategic goals, including total control of vast lands of the Northwest. Henry's young protégée, George Rogers Clark, worked tirelessly to achieve the governor's vision of Virginian hegemony over the Old Northwest. Clark acquired a reputation as a gallant and sometimes brutal Indian fighter and patriot. Many Native Americans feared the man who ordered or

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<sup>136</sup> Friend, *Kentucke Frontiers*, 115.

<sup>137</sup> Hening, *The Statutes at Large*, 18-21.

performed the tomahawking of several Indians during the 1778 siege of Fort Sackville.<sup>138</sup> Clark's successful campaigns against the British and their Indian allies solidified Virginian, and eventually American, claims to the West.

Virginia appointed Clark to head the state's western war effort, but he received little tangible support from the state. Clark's connections with Henry enabled him to advocate for the plight of western settlers. In 1776, Clark convinced Virginia's executive council to supply the western theatre with five hundred pounds of gunpowder, but only after he gave a personal financial guarantee of its safety. Disgusted with Virginia's lack of support for the West, Clark grumbled, "If a country is not worth protecting, it is not worth claiming."<sup>139</sup> Undaunted, Clark organized and occasionally "conscripted" volunteers to take the fight to the British posts north of the Ohio River.<sup>140</sup> In 1778, he led a series of spectacular if small-scale victories, including the capture of the British agent Henry Hamilton, greatly reducing British influence in the region and securing Clark's military reputation. Clark's capture of Kaskaskia, Vincennes, and Sackville provided a much-needed morale boost to the American cause, and expedited America's alliance with France. Clark's victories also bolstered the credibility of Virginia's claims over Ohio, Illinois, and Indiana. Nonetheless, Virginia never adequately compensated Clark or his men, aside from land grants in southern Indiana. Though substantial, these grants were located too far outside the bounds of white settlement to provide security or reasonable profit, and Clark died bitter toward Virginia. Still, his exploits left Virginia's oligarchy with a legitimate claim to the

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<sup>138</sup> "Report by Lieutenant-Governor Henry Hamilton on His Proceedings from November, 1776 to June 1781," in Clarence Walworth Alvorod, *George Rogers Clark Papers* (New York: AMS Press, 1972) 188-91.

<sup>139</sup> Temple Bodley, *George Rogers Clark: His Life and Public Services* (Boston: Houghton Mifflin Company, 1926) 31.

<sup>140</sup> Friend, *Kentucke's Frontiers*, 88.

Northwest.<sup>141</sup> His accomplishments promised Virginia's speculators access to new lands for many decades to come.

### **Native Americans and the American Revolution**

Native Americans had diverse responses to the American Revolution that depended on their location, the course of the war, and which subgroup or village they belonged to. Historian Colin Calloway describes this diversity in *The American Revolution in Indian Country: Crisis and Diversity in Native American Communities* (1995). For example, the Shawnee, the primary antagonists of Kentucky settlers, divided in their response to the Revolution because of the complex nature of their clan and kinship ties. Calloway argues that "the Shawnees... exemplify the inadequacy of standard portrayals of Indian experiences during the Revolution."<sup>142</sup> He notes, "The American Revolution in Shawnee country translated into a story of political fragmentation and burning villages" and highlights the tragic consequences of each choice facing the Shawnee.<sup>143</sup> Joining the British or the Americans brought almost equal risk of violent reprisal, while those who remained neutral "Faced... the prospect of war despite their best efforts for peace."<sup>144</sup> During the Revolution, Indians in the Ohio Valley faced a multiplicity of options and pressures, and their choices defy neat categorizations.

Though politically and socially fragmented, the Shawnee were ubiquitous during the Revolution in Kentucky. Calloway argues that the Shawnee had "a long tribal history of movement and dispossession on the cutting edge of the English frontier."<sup>145</sup> Constant friction with whites resulted in a Shawnee prominence in the historical record disproportionate to their

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<sup>141</sup> See Lowell Hayes Harrison, *George Rogers Clark and the War in the West* (Lexington: University Press of Kentucky, 1976).

<sup>142</sup> Colin G. Calloway, *The American Revolution in Indian Country: Crisis and Diversity in Native American Communities* (New York: Cambridge University Press, 1995), 158.

<sup>143</sup> *Ibid.*

<sup>144</sup> *Ibid.*, 171.

<sup>145</sup> Colin G. Calloway, *The Shawnees and the War for America* (New York: Viking, 2007), 42.

numbers. The Shawnee joined their Mingo, Delaware, and Miami allies in fighting the Americans. Yet at no point during the Revolutionary War did the entire Shawnee nation unite against backcountry settlers. Still, large factions among all the Ohio Indians prepared to go to war. In 1777, American settlers murdered Chief Cornstalk, the leading voice for peace among the Shawnee, reducing Native support for that option. Following Cornstalk's death, Native Americans made countless small and a few large-scale incursions into Kentucky. Chief Blackfish's unsuccessful 1778 campaign against Boonesborough represented the high point of Indian pressure on Kentucky settlements. However, the campaign in Kentucky also coincided with Clark's successes in the Illinois Country. Any hope of prosecuting a long term campaign in Kentucky melted away as Clark took control of British outposts throughout the *pays d'en haut*.

Clark never limited his campaigns to the reduction of British forts, but also attacked Native settlements. The Kentucky militia followed Clark's example of total war.<sup>146</sup> Native Americans responded in kind. Historian Richard White accurately describes the western theatre of the Revolution as "A War of Villagers."<sup>147</sup> Clark, supplied with only a small number of professional soldiers, relied on a militia force nearly as fickle as the Indians who served the British. By the middle of the war, Native Americans across the Ohio Country depended almost entirely on the British in Detroit for food and supplies, as their crops and homes suffered the ravages of total war. The white occupation of Kentucky disrupted the Ohio Indians' sources of food and income, and the loss of access to Kentucky's game severely limited their hunting opportunities.

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<sup>146</sup> American militia brought the concept of total war, something that had not existed in the Native American experience prior to contact with Europeans, to American soil. The policy of total war against Native Americans continued throughout the Revolutionary War, and included the targeting of food and weapons production and non-combatants. For more on this subject, see John Grenier, *The First Way of War: American War Making on the Frontier, 1607-1814* (New York: Cambridge University Press, 2005).

<sup>147</sup> White, *Middle Ground*, 2.

The challenges of constant violence and economic collapse shaped Ohio Indians' war effort. Even with substantial support from British bases throughout the *pays d'en haut*, the loose confederacy of Shawnee, Delaware, Mingo, and other nations struggled to bring the full weight of their numbers to bear against their American foes. The British attributed Indian military challenges to their fickleness. In 1781, General Frederick Haldimand bemoaned the inconsistency of his Indian allies writing, "There is no dependence upon even those Indians who are declared for our favor, and there are a number in that country our avowed enemies.... There has not been a single instance where the Indians have fulfilled their engagements but influenced by Caprice, a dream or a desire of protracting the war, to obtain presents, have dispersed and deserted the Troops."<sup>148</sup> Settlers and Indians resisted leaving their homes for protracted campaigns, both sides preferring raids followed by hasty retreats to their redoubts. By war's end, Kentucky's white population faced few Indian incursions, despite major Indian victories like Chief Joseph Brant's 1781 defeat of Pennsylvania militia led by Archibald Lochry or the Battle of Blue Licks (1782). As security improved, tens of thousands of settlers poured into Kentucky, diminishing the likelihood of an Indian reconquest of their hunting grounds. As the odds turned against the Ohio Indians, the fight increasingly became about the containment rather than the expulsion of white settlers from the western slope of the Appalachians.

South of Kentucky, the Cherokee faced similar difficulties. Like the Ohio Indians, the Revolution divided the Cherokee. They had experienced the depredations of total war in the 1750-60s against both Virginia and South Carolina.<sup>149</sup> Still, portions of the Cherokee nation participated in Lord Dunmore's War, comprising a significant portion of the party that attacked

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<sup>148</sup> Frederick Haldimand as quoted in White, *The Middle Ground*, 367.

<sup>149</sup> See John Oliphant, *Peace and War on the Anglo-Cherokee Frontier, 1756-63* (Baton Rouge: Louisiana State University Press, 2001).

Boone on his first attempt to settle Kentucky in 1774.<sup>150</sup> Other factions of Cherokee attempted to remain neutral, but warriors led by chief Dragging Canoe attacked white settlements throughout the South, including in Kentucky. After some short-lived success the Cherokee faced a terrible total war assault led by the North Carolina militia between 1776 and 1780. During the Revolutionary War, the Cherokee confronted far greater numbers of American militia, and enjoyed only intermittent support from the British. They suffered extensive damage to their settlements, including the complete destruction of the “Overhill Settlements” on the eastern slope of the Appalachians.

Only the Chickasaw prevented white encroachment on their land. When George Rogers Clark established Fort Jefferson at the fork of the Ohio and Mississippi Rivers in 1780 in the heart of Chickasaw territory, Chickasaw warriors surrounded and besieged it. With the fort’s occupants running short of supplies, Clark sent orders to abandon the exposed outpost. The settlers escaped into Spanish territory before eventually becoming the first American colonizers of Illinois.<sup>151</sup> The Chickasaw’s success at Fort Jefferson was the only Indian victory with long-term consequences in the war against white colonization of Kentucky. By 1780, Kentucky’s white population had grown too large for the Indians to remove.

### Legal Status

Throughout the Revolutionary era, Kentucky’s relationship to the mother state of Virginia remained ambiguous. After Revolution began, Virginia’s leaders focused more on the security and stability of the long settled portions of the state, where threat of British raids, invasion, and slave revolt remained constant. Frontier settlers thus received little attention from eastern leaders more concerned with securing their immediate surroundings. But if Kentucky

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<sup>150</sup> Faragher, *Boone*, 52.

<sup>151</sup> See Chinn, *Kentucky: Settlement to Statehood*, 229-34.



received only limited military aid, particularly during the first half of the Revolution, Virginia's leaders often took an active role in governing the West.

Before the Revolution, the Crown's Board of Trade had discussed the future of Virginia's western territories, including a new western colony called Vandalia.<sup>152</sup> Totalling nearly thirty million acres, Vandalia's borders followed the southern bank of the Ohio, from western Pennsylvania down to the Kentucky River. Unlike the various land companies that lobbied to secure and sell land west of the Appalachians under the supervision of various eastern colonies, the proprietors of the Vandalia project, including Benjamin Franklin, went straight to the British parliament and the Crown's Board of Trade. Various British leaders supported or became shareholders in the company known as the "Grand Ohio Company" or Walpole Company. Vandalia looked to become the fourteenth colony, before a few well-placed opponents of the project, including George Washington, conspired to delay final approval.<sup>153</sup> The coming of the independence in 1776 destroyed any remaining prospects for a new western colony.<sup>154</sup> Pennsylvania and Virginia, who both claimed portions of Vandalia, would not allow the project to block their state's access to the West. Though the proprietors of Vandalia continued to lobby the Continental Congress, the project died in 1776.

A bigger question loomed in 1776: the status of Richard Henderson's Transylvania Colony. Henderson had privately and illegally negotiated the Sycamore Shoals Treaty with the Cherokee in 1775. The treaty essentially gave Henderson a deed to:

all that tract, territory or parcel of land, situate lying and being in North America on the Ohio River, one of the eastern branches of the Mississippi beginning on the said Ohio River at the mouth of Kentucky, Chenoca, or what by the English is called Louisa River,

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<sup>152</sup> Vandalia was named for King George's wife Queen Charlotte, who was thought to have descended from the Vandals.

<sup>153</sup> Friedenberg, *Life, Liberty, and the Pursuit of Land*, 124.

<sup>154</sup> For a good summary of the politics surrounding the Vandalia project, see Jack M. Sosin, *Whitehall and the Wilderness: The Middle West in British Colonial Policy, 1760-1775* (Lincoln: University of Nebraska Press, 1961). 181-210.

from thence running up the said River and the most northwardly branch of the same to the head spring thereof, thence a southeast course to the top ridge of Powel's Mountain, thence westwardly along the ridge of said mountain unto a point from which a northwest course will hit or strike the head spring of the most southwardly branch of Cumberland River thence down the said River including all its waters to the Ohio River, thence up the said River as it meanders to the beginning, &c.<sup>155</sup>

Essentially, the treaty declared that all the lands between the Kentucky, Ohio, and Cumberland Rivers were Henderson's private estate. Accordingly, Henderson planted all of the colony's settlements south of the Kentucky River. Virginia's and North Carolina's royal governors issued proclamations declaring the sale invalid, but by late 1775, neither governor could dictate policy in the backcountry because of rapidly changing events in the colonies. Henderson, for his part, probably justified the treaty of Sycamore Shoals by pointing to the Shawnee concessions at Camp Charlotte and the 1757 Camden-Yorke opinion.

However, the Revolution made British legal opinion and royal proclamations irrelevant. After 1776, Henderson's claims to Kentucky faced the opposition of members of Virginia's new state government, many of whom had invested in land speculation companies – especially the Ohio and Loyal Companies – that competed for the same territories. As Thomas Perkins Abernethy notes, Virginia leaders “Thomas Nelson and Richard Corbin belonged to the Loyal Company; Philip Ludwell Lee, John Tayloe and Robert Carter were members of the Ohio Company; while William Byrd, Ralph Wormely and John Page had been associated with Patrick Henry in his unsuccessful plan to buy [the same] lands from the Cherokee in the spring of 1774.”<sup>156</sup> The Transylvania Company deal copied the one that Henry and his associates had sought to broker in 1774. Yet, Henderson's venture enjoyed only a brief season of support. George Rogers Clark, Arthur Campbell, and John Floyd all bought lands under Henderson's

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<sup>155</sup> Mann Butler and George Croghan, *A History of the Commonwealth of Kentucky*, 2<sup>nd</sup> ed. (Louisville: Wilcox, Dickerman & Co, 1834) Appendix D.

<sup>156</sup> Abernethy, *Western Lands*, 134.

control, and Henry provided some support to Henderson's claims at the Virginia Convention, leading some observers to believe that the two had reached an agreement.<sup>157</sup> Following his ascent to the governorship of Virginia, however, Henry lost any incentive to back Henderson's claims because he could now set the terms of state policy in the West. At the same time, many of the Transylvania Colony's settlers began lobbying Virginia for recognition, not as an independent western colony, but as a county of Virginia.<sup>158</sup> In December 1776, Virginia reorganized its western territories creating three new counties – Montgomery, Washington, and Kentucky – from Fincastle County and the new Transylvania settlements. With Kentucky's incorporation into Virginia, Henderson's Transylvania Colony vanished, and the fate of his land claims left to the mercy of his competitors.

### **Confused Loyalties**

Even as Virginia redefined the borders of the western territories, a wave of separatist movements began. Along with the proprietors of the major land companies, backcountry settlers actively lobbied state legislatures and the Continental Congress for support or recognition. A 1776 petition from settlers of Augusta County, Virginia, called for "a new Government" with "their own authority" and power to "send delegates to Congress to represent them as the fourteenth link in the American Chain."<sup>159</sup> Another larger attempt to establish a new state named Westsylvania in roughly the same area as the Vandalia Colony also circulated in 1776.<sup>160</sup> Similar petitions appeared in Kentucky on several occasions between 1775 and 1779. The desire for separation from the East and to control local land distribution along with local

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<sup>157</sup> Abernethy, *Western Land*, 132; Friendenberg, *The Pursuit of Land*, 130-32.

<sup>158</sup> Some settlers complained that Henderson began raising the prices for land claims in the area. Some scholars have suggested settlers wanted to get rid of Henderson as a middleman land broker. However, it seems more likely that in the light of renewed Indian threats associated with the Revolution they felt that they would be better off with the support and under the control of Virginia, rather than under the supervision of an individual. See Abernethy, *Western Lands*, 130-35.

<sup>159</sup> "Resolves of the Senate, Va, November 1, 1776," as quoted in Philyaw, *Virginia's Western Visions*, 73.

<sup>160</sup> Abernethy, *Western Lands*, 176-77.

politics contributed to the western state movement that simmered for the remainder of the Revolutionary War.

The backcountry settlements thus suffered from an identity crisis prompted by the unclear terms of their relationship to both the new national government and Virginia. The state responded by requiring western settlers to take a oath of allegiance to the Old Dominion. The oath read in part, "I do swear or affirm that I renounce and refuse all allegiance to George the third, king of Great Britain, his heirs and successors, and that I will be faithful and bear true allegiance to the commonwealth of Virginia, as a free and independent state, and that I will not, at any time, do, or cause to be done, any matter or thing that will be prejudicial or injurious to the freedom and independence thereof, as declared by congress."<sup>161</sup> Virginia threatened to strip those who refused the oath of their citizenship and have their land and firearms confiscated. Through this policy Virginia hoped to maintain control in the restive back country. However, Virginia's leaders lacked a comprehensive vision for the West from which they could develop a coherent policy.

### **A Tale of Two Governors**

By the start of the American Revolution, some of Virginia's elite families were in steep decline.<sup>162</sup> A new generation of younger planters had begun to reshape Virginia's leadership. Names like Washington, Jefferson, and Henry took their place alongside older families such as the Carters, Fairfaxes, and Byrds. These upstarts, hailing from Virginia's Piedmont, formed the core of the Old Dominion's Revolutionary leadership and soon dominated Virginia's internal politics. Of this group, Henry and Jefferson played key roles in shaping Virginia's relationship to Kentucky.

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<sup>161</sup> Hening, *Statutes at Large*, vol. 9: 281.

<sup>162</sup> Evans, *A Topping People*.

Contemporaries and historians often recognize Henry as a catalyst for independence in Virginia. His gift for fiery oratory was matched by a level of hubris that led him to abuse his political power on a scale that would have made Albert B. Fall – famed participant in the so called “Teapot Dome Scandal – blush. The bellicose politician saw no distinction between Virginia’s western land claims and his own personal fortunes. Indeed, Henry became involved in nearly every major private land acquisition scheme between 1760 and his death in 1799. He invested in Dr. Thomas Walker’s Loyal Company. He participated in the Illinois and Wabash Land Companies when acting as an advisor to Lord Dunmore. When Washington began buying the land bonuses of Seven Years War veterans, Henry received a significant portion of the two hundred thousand acres. In 1775, he attempted to negotiate an almost identical treaty to the one Richard Henderson extracted from the Cherokee at Sycamore Shoals. When he learned of Henderson’s success, Henry quickly allied himself to the Transylvania Company. Indeed, Henderson thanked him for his assistance in defending his claim in the Virginia legislature.<sup>163</sup> The Vandalia Colony also became one of Henry’s pet projects, even though other elite Virginians opposed the claims of its proprietors. Henry even issued a legal opinion in support of Vandalia’s land claims in Virginia territory. Vandalia proprietor Samuel Wharton reminded his brother Thomas that “half shares in the company be given to eight useful members of Congress... in addition to the share already set aside for Patrick Henry.”<sup>164</sup> In short, Henry attached himself to most major speculative ventures in the colonies, but his support for these projects frequently changed depending on the direction of the political winds. When he became governor of Virginia in 1776, Henry presided over Virginia’s annexation of the claims of the Transylvania and Vandalia Companies. Additionally, Henry proceeded to press Virginia’s interests beyond Kentucky. His close association with George Rogers Clark promoted Virginia’s military

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<sup>163</sup> Abernethy, *Western Lands*, 131.

<sup>164</sup> *Ibid*, 121.

expeditions in the West, and served as a vehicle to improve each man's financial fortunes. Every campaign that Clark undertook in the West also involved surveys and clandestine patents.<sup>165</sup>

Henry's speculations influenced the early years of the Revolution in the West. But by 1777 his speculative activities had become so controversial that he felt compelled to file a sworn deposition stating that he had not participated in illegal activities.<sup>166</sup> Henry left the governorship in 1778 after thoroughly enriching himself. Over the rest of his life, he remained involved in land speculation. Most famously, he invested in the highly corrupt Yazoo Land Company. In 1794, Henry and his associates bribed Georgia officials to sell them millions of acres in northern Georgia, and then attempted to pay for their portion in depreciated treasury bonds. When the state legislature rejected the sale, Henry faced legal exposure for fraud and financial ruin from the purchase of tens of thousands of dollars' worth of depreciated debt certificates. However, Alexander Hamilton's monetary policies nationalized Henry's investments in Virginia debt certificates, thus saving his cash, profits, and reputation.<sup>167</sup> Henry embodied the corrupt relationship between government and land speculation companies in late eighteenth century Virginia. The state's leading men, many of them "Founding Fathers" and "patriots," structured Virginia's relationship with the West to increase their personal wealth and status.

In contrast, Virginia's second governor, Thomas Jefferson, viewed western lands differently than most of the state's elite. Though, like Henry, a lawyer by trade, Jefferson's strengths were primarily intellectual. Through the written word, he articulated a vision for the western lands that incorporated America's republican ideals. Jefferson took a keen interest in the historical and legal origins of the British system of land tenure. British common law held that

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<sup>165</sup> Friedenberg, *Pursuit of Land*, 166.

<sup>166</sup> *Ibid.*

<sup>167</sup> Daniel Friedenberg's *Life, Liberty, and the Pursuit of Land* provides an excellent summary of the speculative activities of many Founding Fathers, including Henry. The outline provided here follows Friedenberg's.

private property, in the modern sense, did not exist. The King held sway over all the soil of the British Empire, and anyone granted property rights by the Crown did so out of reciprocal obligation to the crown. Thus, individuals did not own but instead held land as a sort of revocable trust. This legal doctrine, a vestige of the feudal system, was applied haphazardly in the colonies, where different notions of land ownership continued to evolve. In Britain, where lands were finite, patronage and feudal obligation continued to follow patterns dating back to the Norman invasion. Applying these principles on the American continent proved difficult. Certain North American regions followed in the feudal traditions of England. Pennsylvania and Virginia's Northern Neck, for example, were proprietary estates granted by the Crown. However, the remainder of the colonies were owned by various chartered companies or directly by the crown. The "waste and unappropriated lands" that these colonies claimed offered potential landownership to England's landless classes.<sup>168</sup>

During the years preceding the American Revolution, Jefferson embarked on a scholarly crusade to erode the legal and historical foundations of the Crown's hegemony over colonial land and to establish allodial (private) property rights. Jefferson best articulated his ideas in *A Summary View of the Rights of British America*, published in 1774 and eventually disseminated across the colonies and Great Britain. He argued that British common law, the foundation of British jurisprudence and property rights, grew out of feudalism, and was imposed on England after the Norman Conquest. This "error in the nature of our land holdings" Jefferson argued, was foisted upon unwitting American agriculturalists who "were farmers, not lawyers."<sup>169</sup> He continued:

While the crown continued to grant [lands] for small sums, and on reasonable rents; there was no inducement to arrest the error, and lay it open to public view. But his

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<sup>168</sup> See Philbrick, *Rise of the West*, 104-33.

<sup>169</sup> Thomas Jefferson, *Summary View of Rights in British North America* (1774), reprinted in Merrill D. Peterson, ed., *The Portable Thomas Jefferson* (New York: Viking Press, 1975), 3-21.

majesty has lately taken on him to advance the terms of purchase, and of holding to the double of what they were; by which means the acquisition of lands being rendered difficult, the population of our country is likely to be checked.<sup>170</sup>

Jefferson worried that the Crown's control of land allowed for abuses of power and limited opportunities in the colonies. He made no mention that land companies and major proprietors also controlled land prices and monopolized land distribution.

Jefferson challenged royal authority and advanced a vision for an American model of land ownership and private property rights:

It is time, therefore, for us to lay this matter before his majesty, and to declare that he has no right to grant lands of himself. From the nature and purpose of civil institutions, all the lands within the limits which any particular society has circumscribed around itself are assumed by that society, and subject to their allotment only. This may be done by themselves, assembled collectively, or by their legislature, to whom they may have delegated sovereign authority; and if they are allotted in neither of these ways, each individual of the society may appropriate to himself such lands as he finds vacant, and occupancy will give him title.<sup>171</sup>

Though arguing for a return to pre-Norman land ownership paradigm, Jefferson's radical view of property ownership was, in fact, out of step with the ideas of many of his fellow aristocrats.

Virginia's elite benefitted from the system of land patents and tenure, which they used to enrich themselves. Indeed, the gentry had controlled the colony's system of land distribution through the colony's executive council and the House of Burgesses since the mid-seventeenth century.<sup>172</sup>

During that period, Virginia's elite either ran out or recruited every royal governor to their cause.<sup>173</sup> Jefferson's suggestions not only subverted royal supremacy, but also threatened the land distribution system that had for so long enriched many of Virginia's leading men.

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<sup>170</sup> *Ibid.*

<sup>171</sup> *Ibid.*

<sup>172</sup> Philbrick, *Rise of the West*, 106; Friedenber, *Life, Liberty, and the Pursuit of Land*, 36-45.

<sup>173</sup> For a narrative of the relationship between Virginia's colonial government and their colonial governors, see Evans, *A Topping People*.



In 1777, Jefferson chaired a legislative committee that included George Wythe, Edmund Pendleton, and George Mason tasked with reforming the entirety of Virginia's laws.<sup>174</sup> The committee's extensive work continued into 1778, but it spent much of its time working on the subject of land, property rights, and the implementation of Jefferson's vision for Virginia's lands. Two of the six land laws passed in May 1779 reflected Jefferson's republican paradigm. Elements of the legislation promised to encourage Jefferson's vision of a politically empowered yeoman class, and create what historians now call "Jeffersonian democracy."<sup>175</sup> One month later, Jefferson became Virginia's governor. Though his legacy as governor continues to center on his 1781 "Flight from Monticello" to avoid capture by Colonel Banastre Tarleton's band of British cavalry, his most profound legacy from these years lay in the West. The administration and implementation of the land laws of 1779 became a critical component shaping the course of western settlement.

#### **A Summary of the Factors Influencing the Passage of the Land Laws of 1779**

By 1780, George Rogers Clark's victories in British-held territories dramatically improved security in Kentucky. Thousands of settlers had died in the struggle with British-allied Ohio Indians. Fayette County, one of three counties created from Kentucky County in 1780, suffered 860 deaths at the hands of Indian raiders between 1780 and 1782.<sup>176</sup> The Virginia government largely ignored the region during several periods of crisis. However, as security improved land ownership became the settlers' primary concern. Land was, after all, the primary reason that

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<sup>174</sup> Steve Sheppard, *The History of Legal Education in the United States: Commentaries and Primary Sources*, 2 Vol. (Pasadena, Calif: Salem Press, 1999), I:142.

<sup>175</sup> For more on Jeffersonian democracy, see Stuart Gerry Brown, *The First Republicans: Political Philosophy and Public Policy in the Party of Jefferson and Madison* (Syracuse, N.Y.: Syracuse University Press, 1954).

<sup>176</sup> Friend, *Kentucke's Frontiers*, 127. No tally of settler and Indian casualties during Revolutionary War exists. Some estimates claim, that over eight hundred settlers were killed in Fayette County during the Revolutionary years. Even if this number is exaggerated, and it probably is, actual casualties across Virginia's western counties may have numbered well into the thousands over the course of the war, a striking number when one considers the low population densities of the western settlements.

they risked all on the frontier in the first place. Settlers living on land in areas claimed by the now defunct Vandalia and Transylvania Colonies looked to Virginia to address the question of who would receive land and how it would be distributed. By early as 1776, five hundred sixty thousand acres of land divided into nine hundred claims had already been surveyed, during the Transylvania Company's tenure.<sup>177</sup> The question of what to do about Henderson, whose purchase from the Cherokee provided Virginia with the legal justification for the annexation of Kentucky, also remained uncertain. Those who had settled in Kentucky expected that Virginia would reward their sacrifices with traditional preemptions or "head rights." Settlers believed that those who improved virgin land should receive a preemptive deed to the improved acreage. Here, the line between modern notions of "pioneers" and "squatters" blurred considerably, and the ubiquity of land jobbing made real claims almost indistinguishable from fraudulent ones. Virginia's government followed a relatively lenient policy, even awarding Kentucky residents who settled prior to 1777 four hundred acres of land.<sup>178</sup> However, the state had no way to determine which settlers' claims were legitimate. Clark's victories drew more settlers to Kentucky, and the problems compounded. Men like Boone, Arthur Campbell, and James Harrod, allies of Henderson's, certainly expected more than four hundred acres for their efforts. Such concerns contributed to mounting dissatisfaction on the frontier.

By 1778, the Virginia legislature faced a more pressing problem: solvency. The state was virtually bankrupt. Virginia printed copious amounts of paper money and struggled to sell bonds. The resulting inflation made already meager army salaries worthless. The state's western lands offered its penniless government a potential source of revenue, as well as something more substantial than its paper currency to induce men to serve as soldiers. In addition, Virginia was

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<sup>177</sup> Chinn, *Kentucky: Settlement to Statehood*, 209.

<sup>178</sup> Charles Kerr, William Elsey Connelley, and E. Merton Coulter, *History of Kentucky* (Chicago: American Historical Society, 1922), 212.

eager to assert its claims over its western lands in the face of continued competition from other colonies.<sup>179</sup> As Thomas Perkins Abernathy argues, the Virginia government “wanted to obtain from the sale of lands funds with which to restore the credit of the State... to undermine the claims of non-Virginian speculators who were trying to get possession of the lands that Virginia claimed for herself... and to avoid further confusion by settling all outstanding claims to Western lands.”<sup>180</sup> Desperate to raise and pay an effective army, the state had few other options. Kentucky quickly became the solution to many problems facing the state in a time of crisis. The land laws of 1779 addressed issues of land title and distribution, western security, soldier’s pay, and state solvency. Virginia’s government hoped that the laws would prove a legal panacea.

### **The Best of Intentions: The Land Laws of 1779**

By passing the land laws in May 1779, the Virginia government essentially pressed the reset button on the frontier, and outlined the way in which Kentucky would be settled. The legislature passed six acts in the space of six months between May and October, the Military Provisioning Act, the First Land Law, the Second Land Law, the Military Warrant District Act, and the Military Bounty Act. Each of these laws affected the Kentucky settlements directly. Likewise, each sought to prevent disputes and problems on the frontier, albeit with limited success.

The Virginia Volunteer Army Act contained one key passage related to Kentucky. Most of the law pertained to annual recruitment, organization, and provisioning of soldiers, but paragraph three stated:

And for the defense and protection of the western frontiers against the Indian or other enemies, who may commit hostilities in that quarter, Be it enacted, That two battalions of the said volunteers be raised in the counties lying on that side the state.... The said battalions to be posted or garrisoned on the frontiers of this state, at such places as shall, from time to time, appear most convenient; the said battalions shall not be

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<sup>179</sup> See Philyaw, *Virginia’s Western Visions*, 70-93; and Abernathy, *Western Lands*, 230-41

<sup>180</sup> Abernathy, *Western Lands and the Revolution*, 218.

compelled to march out of the commonwealth, unless in case of an expedition against the enemy Indians, or in pursuit of any enemy who shall have invaded the frontier.<sup>181</sup>

This act was the first official attempt to secure the region from attack and to provide protection for settlers using regular soldiers. Though recent victories at Boonesborough and Clark's Illinois campaign had strengthened security, Virginia recognized that it needed to do more to entice inhabitants back into the still dangerous region.

After providing for Kentucky's security, the legislature moved to solve the problem of veteran's bounties. The Military Provisioning Act established the terms by which soldiers received a veteran's bounty:

At the end of the war every of the said soldiers, sailors, and marines, shall be entitled to a grant of one hundred acres of any unappropriated land within this commonwealth, and every of the officers commanding the said soldiers, sailors, or marines, shall be entitled to a grant of the like quantity of land as is allowed to officers of the same rank in the Virginia regiments on continental establishment, which they shall locate according to the directions of the laws, for which no purchase money shall be required on behalf of the commonwealth: Such of the said soldiers, sailors, or marines, as shall be disabled in the service, and the widows of those slain or dying therein, shall be entitled to immediate relief, and also to annual pensions as provided in one act of general assembly, passed at the last session entitled "An act for establishing a board of auditors for publick accounts."<sup>182</sup>

The state increased the size of the grant if the veteran in question had served until the cessation of hostilities. These soldiers would receive land bounties according to their rank and length of service, as outlined in the Military Bounties Act. An enlisted man serving until the end of the war could expect to receive four hundred acres of land, captains were entitled to three thousand acres, while major generals topped the list with a maximum potential of 17,500 acres.<sup>183</sup>

In 1779, much of Kentucky's land in the Bluegrass was already spoken for by either preemptive settlers or wealthy Virginia speculators. Though a soldier could attempt to claim land anywhere in the state, legislators found it prudent to set aside a region on territory not yet

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<sup>181</sup> Hening, *Statutes at Large*, Vol. 10: 18-21.

<sup>182</sup> *Ibid.* 23-27.

<sup>183</sup> *Ibid.*, 159-62.

encumbered by the litigious tug of war between speculators and squatters. A resolution in the second of the land act, placed the land reserved for veterans outside of the Bluegrass in an enormous tract south of the Green River, in southwestern Kentucky.<sup>184</sup> The state officially closed this 4.2 million acre region to settlement, preemption, and speculation.<sup>185</sup> Several more years passed before the state issued the first warrants, and the area remained almost completely unsettled until well into the 1790s, even as the rest of Kentucky swelled with immigrants. Virginia also possessed a military district in Ohio, but the laws required that the Green River tract be distributed before the state opened the Ohio areas for settlement.

Next, the legislature dealt with the preemptive claims of the settlers. The second law stipulated that settlers who could prove they had engaged in physical and bona fide settlement in Kentucky before January 1778 would receive preemptive deed allotments not to exceed fourteen hundred acres of land.<sup>186</sup> Next, the state officially awarded preemptive rights to Kentucky's pioneers, again totaling fourteen hundred acres per family.<sup>187</sup> The act stipulated that the state would not grant preemptions to anyone who could not prove residence prior to the act's passage. Richard Henderson received compensation for his troubles with a two hundred thousand acre tract south of the Green River.<sup>188</sup> The laws created a land office "for the purpose of granting lands within this commonwealth," and laid out the process by which the entirety of Kentucky would be sold off to raise money for Virginia's depleted treasury.<sup>189</sup> A final important provision stipulated that claims not made by the end of the assembly's session, became null and void. A concurrent section of this bill, section (B), established three land offices to act as an

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

<sup>185</sup> Bockstruck, *Revolutionary War Bounty Land Grants: Awarded by State Governments*, xxii, xxiv.

<sup>186</sup> *Ibid.*, 30-35

<sup>187</sup> *Ibid.*

<sup>188</sup> Friedenber, *Pursuit of Land*, 132.

<sup>189</sup> Hening, *Statutes at Large*, 3: 50-65.

arbiters of disputes and undertake the necessary paperwork.<sup>190</sup> The laws clearly stated that the state would acknowledge no new preemptive claims, and that it would now distribute all land either through the military system or the land patent office.

In general, the land laws of 1779 sought to restore order to a chaotic and muddled situation on the frontier, encourage settlement in still vulnerable regions, and begin the important task of meeting compensation obligations to Virginia's veterans. However, this genuine attempt at reform introduced some serious problems. The rest of this thesis will examine the effects, successes, failures, and legacies of Virginia's ill-fated land system.

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<sup>190</sup> *Ibid*, 3: 50-65

## CHAPTER 3: A LEGACY

### A Legislative Legacy in the West

Virginia's land laws of 1779 had a deep and lasting impact on many parties in the early republic. The state's attempt to organize and distribute Kentucky's lands impacted the state, frontier settlers, Native Americans, the nation, Kentucky's ecology, and the land itself. Thomas Jefferson never fully realized his vision of large scale allodial land ownership in Kentucky through the 1779 land laws of, and they produced significant difficulties in the region. Virginia's new policies opened the floodgates to settlement in Virginia's western territories, and transformed Kentucky from "backcountry" to "frontier."<sup>191</sup> Indeed, Kentucky's settlement represents America's reorientation from the East towards Europe to the West and expansion. Additionally, the land laws provided the first legal framework to ensure that settlers on lands claimed by Virginia were no longer outlaws on Indian lands but citizens of the United States. These new legal protections propelled the American nation westward. The scale and legal framework of Kentucky's transformation made it the archetype of western settlement and the laboratory for the ideals of the Revolutionary leadership. Kentucky's settlement occurred during the narrow window between independence and the ratification of the U.S. Constitution, making it a key precedent setting event in the process of western settlement.

#### 1779: Immediate Effects of the Land Laws

The first and perhaps most important effect of the land laws of 1779 was the dramatic rise in emigration to Kentucky. The Shawnee military campaigns of 1777-78 displaced most of

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<sup>191</sup> See Fischer and Kelly, *Bound Away*, 136-37, which offers an instructive summary of Virginia's reorientation from Europe to the West.

Kentucky's earliest settlers, who abandoned partially or completely their improved land claims.<sup>192</sup> The experience of the McAfee family illustrates the transient nature of Kentucky's earliest settlers. The male McAfees, predating Boone and Harrod in Kentucky by several months, set about building cabins and clearing land in the Salt River region in the spring of 1775.<sup>193</sup> After planting apple trees, they returned to Virginia to collect their families and belongings. In 1776, low water levels prevented them from traveling down the region's rivers, and delayed their return to Kentucky. After provisioning several cabins along their planned route, they went back to Virginia to wait until the following year. When they returned, they found their cabins destroyed in the fighting and postponed settlement further. The McAfees traveled west again to Kentucky in 1779 when they discovered that they might lose their land if they could not prove permanent residence. They hastily carried their families overland through the Cumberland Gap to their original claim on the Salt River, where they found their four-year-old apple trees bearing fruit.<sup>194</sup>

Improved security in the wake of George Rogers Clark's campaigns and the establishment of a clear land distribution policy encouraged many of Kentucky's first settlers to follow the McAfees' course. Likewise, thousands of new settlers rushed to Kentucky in the hope of securing land patents. The tide of settlers that poured into the region pushed the population from a few hundred in 1778 to over twenty thousand by the end of 1780.<sup>195</sup> The Wilderness Road traffic across the Cumberland Gap was supplemented by large numbers of settlers traveling by barge down the Ohio River to landing sites like Limestone and the Falls of the Ohio. By the end of the 1780s, Kentucky's population had ballooned to seventy three thousand,

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<sup>192</sup> In this context, "improved" means that settlers had demonstrated, whether by construction, planting, land clearing, or a combination of the above, that they intended to take up residence on the land and were in the process of making it livable.

<sup>193</sup> Abernathy, *Western Lands and the American Revolution*, 126.

<sup>194</sup> Chinn, *Kentucky: Settlements and Statehood*, 218-19.

<sup>195</sup> *Ibid*, 216.



despite continued conflict with the Indians.<sup>196</sup> Few of the new arrivals were veterans. Though the land laws stipulated that preemptions and military grants took precedent in land disputes, the state did not even start to issue warrants until 1781. By then, settlers had already claimed the best land in the Bluegrass multiple times over. Both the military and civilian land grant systems created problems that took decades to solve.

### **Problems with Preemptions**

Problems with the land laws became evident as early as the fall of 1779. Settlers old and new compiled a long list of complaints. Early pioneers had the opportunity to secure between four hundred and fourteen hundred acres depending on their time of settlement.<sup>197</sup> However, new arrivals found the system fraught with confusion and graft. The deadlines, though extended multiple times, created a rush on the land office. When it opened on May 1, 1779, the director, John May, was immediately forced to shut down again to work on a backlog of 1.6 million acres of claims.<sup>198</sup> The office did not reopen for almost three weeks.

The preemptive rights afforded to permanent settlers in Kentucky initially seemed generous, but also encouraged abuses. The land laws required that those seeking warrants provide proof of residence prior to January 1, 1778, and that “surveys and rights be returned to the said office within twelve months next after the end of this present session of assembly, otherwise they shall be, and are hereby declared forfeited and void.”<sup>199</sup> The narrow timelines and difficulty of confirming or denying residence discouraged honest citizens. So-called “land jobbers” and “outliners” sought to take advantage of the preemptive rights system by surveying and improving as much land as they could. Land jobbers erected cabins on unclaimed land and then submitted claims under false names to skirt the legal limits of the laws. Outliners built

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<sup>196</sup> Friend, *Kentucky's Frontiers*, 115.

<sup>197</sup> Hening, *Statutes at Large*, Vol. X: 30-35.

<sup>198</sup> Chinn, *Kentucky: Settlement and Statehood*, 222.

<sup>199</sup> Hening, *Statutes at Large*, Vol. X: 30-35.

cabins and planted crops, and then sold their preemptions to the newest immigrant seeking to get in line. Both land jobbers and outliners often worked on behalf of wealthy patrons back east.<sup>200</sup> Though residents maligned the practice, some joined in the frenzy. Many settlers, present in the region when Boonesborough and Harrodsburg were established, had also surveyed and improved acreage well in excess of what the laws allowed, and now stood to lose these claims. In all, 65 percent of those making claims in Kentucky during this period had multiple entries in the books, though the number of fraudulent preemptions, patented under false aliases can never be known.<sup>201</sup> Still, the chaotic race to survey the Bluegrass, and beat one's competitors to the front of the line resulted in a patchwork of overlapping parcels. Maps of early Kentucky surveys display land claims that sometimes overlapped in excess of three and four times.<sup>202</sup>

To settle these disputed claims, the land laws established four civil appeals courts in Kentucky, presided over by four commissioners tasked with arbitrating and deciding these cases.<sup>203</sup> These temporary courts were originally chartered to last through early 1780, but the Virginia legislature extended the courts mandate through April of the following year.<sup>204</sup>

Commissioners took an oath of service that read, in part:

I will do equal right to all manner of people, without respect of persons; I will not take by myself, nor by any other person, any gift, fee, or reward for any matter done, or to be done by virtue of my office, except such fees or salary as the law shall allow me; and finally in all things belonging to my said office, I will faithfully, justly, and truly, according to the best of my skill and judgment, do equal and impartial justice, without fraud, favor, affection, or partiality.<sup>205</sup>

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<sup>200</sup> Aron, *How the West was Lost*, 71.

<sup>201</sup> Friend, *Kentucke's Frontiers*, 115.

<sup>202</sup> Friend, *Kentucke's Frontier*, 117; Aron. *How the West Was Lost*. 78.

<sup>203</sup> Hening, *Laws of Virginia*, Vol. X: 30-35.

<sup>204</sup> Neal O. Hammon and Richard Taylor, *Virginia's Western War, 1775-1786* (Mechanicsburg, PA: Stackpole Books, 2002), 117.

<sup>205</sup> Hening, *Statutes at Large*, Vol. X: 30-35.

Despite the oath, the commissioners abused their office. John May, director of the warrant office in Louisville, complained about the corruption of these commissioners: "I find that the Commisioners... have granted certificates for Settlements & PreEmptions for all the prime Land in this Country some of them having entered largely into the Land Business by purchasing Claims & then sitting in Judgment upon them: and granting Certificates to themselves; and in order to procure Land having admitted hundreds of Claims entirely out of the Letter & meaning of the Law."<sup>206</sup> In 1780, frustration boiled over among the many settlers unable to find available land in the region. Prices continued to soar, as demand and inflation pushed prices from twenty pounds sterling per one-hundred acres, to one hundred sixty pounds. In an act of angry desperation, a mob burned the commission's records.<sup>207</sup> Neither the laws nor the courts offered an immediate solution, and legal battles over Kentucky's first claims dragged on for generations.

### **Problems with the Warrant Office**

John May's accusations of fraud in the land courts smacked of hypocrisy. From his desk at the patent office, he and his associates amassed hundreds of thousands of acres and presided over some of the most disastrous aspects of Kentucky's land sales. That state charged May's office with issuing new warrants for surveys and patents for lands. The system was simple in theory, but in practice, the patent system proved the weakest point of the land laws of 1779.

Virginia-issued land warrants did not specify a specific location for the acreage in question.<sup>208</sup> The recipient of the warrant was expected to find unclaimed land, survey it, and then submit a request for a patent to that land. The warrant, paid for in advance, merely gave its

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<sup>206</sup> As quoted in Hammon and Taylor, *Virginia's Western War*, 119.

<sup>207</sup> *Ibid*, 117.

<sup>208</sup> *Land Office Warrant Number 22*, Issued on behalf of a Major Thomas Merewether of the Virginia State Line, in the amount of 5,333 2/3 acres on, November 25, 1782, Revolutionary War Database, (Kentucky Secretary of State: Land Office Digital Archive)

<[apps.sos.ky.gov/land/military/revwar/Revdetail.asp?Type=v&warrant=0022.0](http://apps.sos.ky.gov/land/military/revwar/Revdetail.asp?Type=v&warrant=0022.0)> This warrant allows the surveyor to, "...survey or layoff in one of more surveys...." The warrant does not mention specific lands.

holder the opportunity to select lands from those not already claimed. Thus, one could own a warrant for one thousand acres of land and not hold any deeds. Ownership became official when the warrant holder exchanged it for land patents. Since the state sold all land, regardless of quality, on a first come – first serve basis, it was in the interest of citizens, speculators, and land companies to secure the best lands immediately. The structure of the system had important implications. First, the patent system offered wealthy Americans the opportunity to turn their rapidly depreciating Continental or state-issued currency into tangible assets in a market with high demand. Within a few years, wealthy speculators from all over the country had secured land holdings in Kentucky larger than some New England states. Speculators from outside of Virginia amassed some of the largest estates. Pennsylvanian Robert Morris and Alexander Wallcot of New England, for example, gobbled up one and a half million acres and one million acres, respectively.<sup>209</sup> Another twenty-one individuals or companies acquired estates of at least one hundred thousand acres from the patent office.<sup>210</sup> Dozens of others secured holdings in the tens of thousands.<sup>211</sup> As a result, much of the land in Kentucky was secured by men who in many cases would never set foot in the region. These massive estates offered a hedge to wealthy easterners whose net worth declined precipitously as Continental and state currencies plummeted in value. Extreme currency depreciation enabled speculators to purchase land valued at forty dollars per one hundred acres for as little as fifty cents.<sup>212</sup>

Lack of oversight allowed men like John May, first director of the land office, and Samuel Buell, May's associate, to amass holdings of seven hundred fifty thousand acres.<sup>213</sup> Many names appearing in the *Kentucky Land Grants* appear to be pseudonyms for those who wished to hide

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<sup>209</sup> Abernathy, *Western Lands and the American Revolution*, 228.

<sup>210</sup> Aron, *How the West was Lost*, 71.

<sup>211</sup> Friedenber, *Life, Liberty and the Pursuit of Land*, 213-21.

<sup>212</sup> Abernathy, *Western Lands and the American Revolution*, 228.

<sup>213</sup> Brookes-Smith, *Index of Virginia Surveys*, 11-14, 130-39.

their true identities. Thomas Shore, Kennon Jones, and Christopher McConnico, unknowns who appear nowhere else in the historical record, each received over four hundred thousand acres in patents.<sup>214</sup> The names of well-known Virginians such as George Mason, George Lewis, John Banister, Patrick Henry, Thomas and Humphrey Marshall, and the Hite the Meriwether families appear as well. They all received between fifty and two hundred thousand acres of Kentucky land. None of these men chose to settle in Kentucky. In the end, patents accumulated by this short list of speculators and pseudonyms above totaled roughly 6.5 million acres of land, nearly a quarter of Kentucky's landmass. As historian Daniel Friedenburt concludes, "the entire political structure of the United States, from the lower levels of state legislators and the governors to the U.S. legislature and then the Supreme Court and the presidency, was fueled for many decades thereafter by money made in this land speculation."<sup>215</sup> Virginia's leading men, many of whom went on to leadership roles in the new federal government, grew wealthy by speculating in Kentucky lands and exploiting the land patent system. Jefferson's attempt to expand the yeomanry through the sale of Kentucky's lands instead became a hedge fund for the wealthy.

In addition, the chaos of the system produced numerous disputed claims. When the courts became involved, the wealthy usually gained the upper hand. Celebrity and experience offered no advantage in the courts, as Daniel Boone discovered. He owned warrants worth thousands of acres as a result of both military bounties and preemptions, but came out of Kentucky's courts with no land to his name. He later left the state in disgrace and disgust.<sup>216</sup> By 1800, the top 10 percent of Kentucky tax payers owned almost a third of the state, even after

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<sup>214</sup> Willard Rouse Jillson, *The Kentucky Land Grant: A Systematic Index to All of the Land Grants Recorded in the State Land Office at Frankfort, Kentucky, 1782-1924* (Baltimore: Genealogical Pub. Co, 1971).

<sup>215</sup> Friedenburt, *Life, Liberty, and the Pursuit of Land*, 220.

<sup>216</sup> Faragher, *Daniel Boone*, 242-45.

generous distributions of lands to squatters in the mid-1790s.<sup>217</sup> The conflict between the landed and landless classes in Kentucky continued for generations. On occasion, the discontented continued the practice of torching government buildings to destroy the paperwork associated with contentious legal proceedings.<sup>218</sup> Disputes of boundaries and deeds continued until the Civil War. The chaotic nature of the land distribution system in Kentucky was summed up perfectly by the visiting Rev. David Rice, when he accurately predicted that the “spirit of speculation was flowing in such a torrent that it would wear down every weak obstacle that stood in its way. I looked forward to fifty or sixty years and saw the inhabitants engaged in very expensive and demoralizing litigations about their landed property.”<sup>219</sup>

### **The Failure of the Military Component of the Land Laws**

Kentucky residents remembered the land laws of 1779 for the chaotic situation they produced in the state’s civil court system. Equally significant, the laws failed to reward Revolutionary War veterans, one of the primary reasons for their passage. The state created the Green River Military District to entice and retain recruits to Virginia’s state line. How many soldiers enlisted to obtain land is unknown. However, the fate of these lands reveals that few veterans emigrated to the district.

The Green River Military District failed, in part, for ecological reasons. Though the region contained a large area of virgin land, several factors converged to slow settlement. The first problem was one of perception. The earliest explorers of the Kentucky christened the Green River Country the “barrens” because they believed its treeless landscape meant poor soil

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<sup>217</sup> Lee Soltow, “Kentucky Wealth at the End of the Eighteenth Century,” *Journal of Economic History* 43 (Sept. 1983), 620-26.

<sup>218</sup> Aron, *How the West Was Lost*, 84.

<sup>219</sup> Robert H Bishop, ed., *An Outline of the History of the Church in the State of Kentucky, during a Period of Forty Years: Containing the Memoirs of Rev. David Rice and Sketches of the Origin and Present State of Particular Churches, and of the Lives and Labours of a Number of Men Who Were Eminent and Useful in Their Day* (Lexington, Ky: Thomas Skillman, 1824), 36.

quality. For generations, colonists raised in the forested east coast, assessed the quality of land based on the types and diversity of tree species it supported.<sup>220</sup> The Bluegrass contained a mix of meadows and forests, while the barrens consisted almost entirely of grassland.<sup>221</sup> Moreover, plowing prairie soil was difficult, as the dense root networks of the prairie grasses posed a far more serious challenge to eighteenth century plows than the soft soils of the eastern woodlands. Thus, the district's reputation did not encourage veterans offered land to settle there. One explorer described the area as, "So sterile and inhospitable that neither man nor beast can live there."<sup>222</sup> Settlement was slow, and did not begin in earnest until nearly ten years after the state issued the first warrants.

Second, the Green River Military District was isolated, south of the Falls of the Ohio, and rather dangerous. Virginia opened the region for settlement in 1782, the same year as the painful Battle of Blue Licks.<sup>223</sup> Consequently, few veterans ventured from Virginia to what was still a hostile frontier. Most of the surveying, awarding, and granting took place without the presence of the grantee.<sup>224</sup> In addition, Virginia officers preferred military grants in the Bluegrass. Thus, though many officers may have claimed lands in the Green River region, few actually moved there, choosing to settle in the safer and more prosperous region around Lexington.<sup>225</sup> Lower-ranking soldiers seem to have preferred to sell off what land they received

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<sup>220</sup> Aron, *How the West Was Lost*, 151.

<sup>221</sup> Dicken, "The Kentucky Barrens," 42-51

<sup>222</sup> Thomas Ashe, *Travels in America Performed in 1806 For the Purpose of Exploring the Rivers Allegheny, Monongahela, Ohio, and Mississippi and Ascertaining the Produce and Condition of Their Banks and Vicinity* (Newburyport: William Sawyer Company, 1808), 171

<sup>223</sup> Joan E. Brookes-Smith, *Master Index Virginia Surveys and Grants 1774-1791*. (Frankfort: Kentucky Historical Society, 1994). V.

<sup>224</sup> Analysis of the records of the *Master Index of Virginia Surveys and Grants, 1774-1791*, indicates a pattern of surveys occurring on behalf on one individual, but grants given to another. In many cases, the original owner of the survey warrants in question was not the recipient of the land.

<sup>225</sup> An analysis of Green River land grants finds few large grants to officers of the Virginia line. See Bockstruck, *Revolutionary War Bounty Land Grants: Awarded by State Governments*.

in exchange for cash.<sup>226</sup> Speculators were happy to oblige them. John May and Samuel Buell, operators of the patent office, carried on a lively trade in grants and warrants and amassed holdings all over the state, including the Military District.<sup>227</sup> Neither of these men served in the Revolution, but each still held large sections of the district reserved for the veterans.

The military warrant system also failed in part because Virginia distributed the land unequally. Essentially, the system operated on a first come, first-serve basis, and as a result the distribution of the Green River District mirrored the larger land crisis in Kentucky. Common soldiers lacked the means to seek out good lands, while wealthy officers possessed the money and incentive to pursue their claims. The system fundamentally favored the rich, as the disparity between the acreages awarded enlisted men and officers reveals. The huge disparity in the size of bounties between enlisted men and officers further discouraged large scale migration.

The majority of Green River Military District lands were patented between 1782 and 1787. Virginia opened another military bounty tract in Ohio for survey and settlement in 1787 and 1794 respectively. The 4.2 million acre reservation for Virginia's veterans had been preserved out of the state's cession of its land claims in Ohio.<sup>228</sup> Yet the Green River district remained almost devoid of Virginia veterans, and *The Master Index of Virginia Surveys and Grants* reveals that a few individuals engrossed much of the land.<sup>229</sup> Veterans continued to sell off their Green River land grants for many years. Papers across the region and the country were filled with advertisements for Green River tracts well into the 1790s. For example, George Muter advertised in the April 25, 1795 issue of the *Kentucky Gazette*, "FOR SALE: Two Tracts of LAND,

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<sup>226</sup> Aron, *How the West was Lost*, 151.

<sup>227</sup> Brookes-Smith, *Index of Virginia Surveys*, 11-14, 130-39.

<sup>228</sup> Abernathy, *Western Lands and the American Revolution*, 336.

<sup>229</sup> Analysis of the records of *the Master Index of Virginia Surveys and Grants 1774-1791* indicates a pattern of land surveys occurring on behalf of one individual, but the grant being awarded to another. This indicates that, in many cases, the original owner of a survey warrant did not own the land at the time of the issuance of the patent.



Part of my Military right, one containing 1000 acres, lying on the Green river, about five miles above the mouth of Big Barren: the other containing 1500 acres, lying on Boyd's creek, a branch of Big Barren."<sup>230</sup> Though Virginia issued 4,748 military warrants in Kentucky, few veterans settled there.

Rather than a military community, the Green River district became a realm of absentee owners. Such absenteeism made it a squatter's paradise. Those arriving in Limestone and Louisville in the late 1780s found few opportunities. Squatting could not result in "preemptive rights" to Bluegrass land, much of it claimed two or three times over. These landless immigrants soon moved south to the only region where they had a chance to live free of rent. The surprising quality and availability of the prairie land, intended as a veterans' settlement, offered a haven for the indigent. In 1795, eight of every ten families in Logan County, the heart of the Barrens, were landless.<sup>231</sup> An increasing number of families migrated south to the relatively empty region. These "Southside" squatters soon petitioned the new state government of Kentucky for the same preemptive rights extended to earlier settlers under the Virginia land laws of 1779.<sup>232</sup> In response, Kentucky granted preemptive rights to the landless population of the state in 1795, offering perhaps the only populist land distribution in line with Jefferson's vision for Kentucky.<sup>233</sup> The law stipulated that squatting would be illegal following its passage, but the legislature granted preemptions in 1797 and again in 1800.<sup>234</sup> By this time, the number of southsiders had

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<sup>230</sup> *Kentucky Gazette* (Lexington), April 25, 1795.

<sup>231</sup> Aron, *How the West was Lost*, 152.

<sup>232</sup> James A. Ramage, "The Green River Pioneers: Squatters, Soldiers, and Speculators," *Register of the Kentucky Historical Journal* 75 (July 1977): 177-79.

<sup>233</sup> William Littell, "An Act for the Relief of the Settlers on the South Side of the Green River," *The Statute Law of Kentucky; With Notes, Praellections, and Observations on the Public Acts* 3 Vols. (Frankfort: Johnson and Pleasants, 1808), 3: 349-52.

<sup>234</sup> *Ibid*, 682-87.

risen to nearly thirty thousand, or one sixth of Kentucky's total population.<sup>235</sup> Thus, the Green River never became a military reserve, but rather a squatter's paradise.

Other issues further reduced the effectiveness of Virginia's land system. Requests for warrants continued well into the mid-1800s, long after many Revolutionary War veterans had died. The children, grandchildren, and next of kin entitled to benefits upon the death of their father or husband filed for warrants for men who never sought their claims.<sup>236</sup> Many soldiers missed out on the warrant system because paperwork was easily lost in the turbulent years of the Revolution. Some soldiers never had any paperwork to begin with or simply never chose to file. Eventually, Virginia's Revolutionary War records were moved to Washington.<sup>237</sup> To complicate matters further, many of these records were lost in two fires in the city in 1800 and 1814, the latter occurring when the British burned the Capitol during the War of 1812.<sup>238</sup> A volume compiled by a William Hopkins includes hundreds of affidavits in which individuals did not receive their warrants due to inadequate paperwork or perceived fraud. In most of these cases, next of kin with little documentation tried to claim the benefits of deceased soldiers, with some cases dragging on into the 1850s.<sup>239</sup>

When the Ohio Military District was opened to survey and settlement in the 1790s, the lands of Kentucky's Military District, now almost entirely patented, contained only a handful of soldiers.<sup>240</sup> In total, Virginia issued 4,748 military warrants for land in the Kentucky Military District, mostly to officers or second hand purchasers.<sup>241</sup> The failure of the military component

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<sup>235</sup> Ramage, "Green River Pioneers," 178.

<sup>236</sup> Hening, *Statutes at Large*, X:18-21.

<sup>237</sup> William Lindsay Hopkins, *Virginia Revolutionary War Land Grant Claims 1783-1850 (rejected)* (Richmond: Self Published by William Lindsay Hopkins, 1988), 1

<sup>238</sup> Patrick G Wardell, *Virginia/West Virginia Genealogical Data From Revolutionary War Pension and Bounty Land Warrant Records* (Maryland: Heritage Books, Inc, 1994), iii.

<sup>239</sup> Hopkins, *Virginia Revolutionary War Land Grant Claims*, 1.

<sup>240</sup> Aron, *How the West was Lost*, 151.

<sup>241</sup> Bockstruck, *Revolutionary War Bounty Land Grants: Awarded by State Governments*, xvii.

of the land laws shaped the national approach to land distribution in the Northwest Territory. The land system also presented more immediate problems for the residents of Kentucky.

### **Petitions and Independence**

Though Virginia's land laws of 1779 certainly brought settlers to Kentucky, the system had serious problems. The primary concern of new residents was security, but such issues overlapped with their economic interests. Large absentee land claims throughout the region created impediments to new settlements, restricted settlers' access to land, and threatened the security of those settlements already in place. Speculator holdings fragmented the frontier settlements and opening up corridors for Indian attack. As early as 1779, frontiersmen from Harrodsburg petitioned the Virginia legislature for redress:

We are surrounded by numerous savage nations, Disjoined from every other settlement in the United States, and amounting to only fifteen hundred men here a tract of Country of five Million acres of tillable Land nearly secured under rights from Virginia to defend for those whom ease and Cowardice prevent settling.<sup>242</sup>

Indeed, the frontier was a brutal and violent place, and common settlers most at risk. When Virginia failed to respond, Kentuckians took matters into their own hands, and sought the Continental Congress's approval for the right of self-determination and statehood.

In May 1780, citing "grievances too heavy to be born," six hundred forty of Kentucky's leading men signed a petition calling for Congress to create a new state out of Kentucky County and various other of Virginia's western holdings. The signatories cited multiple concerns, chief among them the damaging effects of the new land laws on security:

We your petitioners being situate in a wide Extensive Uncultivated Country and Exposed on every side to incursions of the Savage Indians humbly Conceive Ourselves appressed by several acts of the general assembly of Virginia for granting large Grants for waist and unappropriated lands on the Western Waters without Reservation for Cultivating and Settling the same whereby Settling the contry is discouraged and the inhabitant are greatly exposed to the Saviges by whome our wives and Childring are daly Cruily murdered Notwithstanding our most Humble Petitions Canot Obtain Redress.... Take

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<sup>242</sup> Chinn, *Kentucky: Settlement and Statehood*, 292.

Proper Methods to form us into a Separate State or grant us Such Rules and regulations as they in their Wisdoms shall think most Proper, during the Continuance of the Present War.<sup>243</sup>

The petitioners also noted the great distance and detachment between Kentucky and Virginia's government, making a convincing argument for regional autonomy. A few months later, three hundred forty Kentuckians signed an even more provocative petition addressed to Congress sarcastically suggested that the Kentuckians might move across the Ohio and live with the Indians if Congress did not address the issue of autonomy.<sup>244</sup>

Some settlers even threatened to break away and join with Spain if their demands were not met. Kentucky's economic viability depended on trade down the Spanish controlled Mississippi River and the port of New Orleans. While supportive of the American Revolution, Spain also saw the new nation as a threat to its sparsely populated North American territories. Spanish efforts to contain the spread of American settlers gave rise to one of Revolutionary America's strangest stories of espionage. General James Wilkinson arrived in Louisville in 1784, immediately joining in the frenzy of land speculation. Wilkinson also found the time to destroy George Rogers Clark's career, work multiple deals with the Spanish governor of Louisiana to promote Spanish interests in the American West, and even campaigned for Kentucky's secession to Spain.<sup>245</sup> Few western settlers seriously considered talk of joining the Spanish as anything more than propaganda designed to pressure the federal government to act in favor of statehood. However, Wilkinson's role as an American-Spanish double agent demonstrates that ties with Spain sometimes ran deeper than even the petitioners knew.<sup>246</sup>

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<sup>243</sup> Theodore Roosevelt, *The Winning of the West*, 3 Vol. (New York: Review of Reviews Co, 1904), I: Appendix A 253.

<sup>244</sup> Friend, *Kentucke's Frontiers*, 127.

<sup>245</sup> For more on James Wilkinson, see Andro Linklater, *An Artist in Treason: The Extraordinary Double Life of General James Wilkinson*, (New York: Walker, 2009).

<sup>246</sup> For a more complete discussion of political discontent in Kentucky, see Patricia Watlington, *The Partisan Spirit: Kentucky Politics, 1779-1792* (New York: Atheneum, 1972).

## The Land Laws and Statehood

Virginia made attempts to respond to the complaints of Kentucky's restless population, and amended the land laws many times. A law passed in May 1783 granted extensions to those filling preemption claims, nearly four years after the land office was established.<sup>247</sup> After the law's brief expiration in 1785, the legislature reinstated it 1786 and then extended it through 1787.<sup>248</sup> Despite these reforms, squatting continued on private and military district lands. The extension of the land commission, multiple preemption allowances, and eventual military assistance did little to quell the underlying dissatisfaction sparked by the land laws because Virginia's leaders failed to acknowledge the fraud plaguing the land office system.<sup>249</sup> Ultimately, the land laws of 1779 laid the groundwork for Kentucky's separation from Virginia. Kentucky's population growth coincided with renewed interest in the establishment of western states. Jefferson toyed with the idea of Kentucky statehood as early as 1781-82, when he remarked in his *Notes of the State of Virginia* that the state might be "bounded, at some future day, by the meridian of the mouth of the Great Kanhaway."<sup>250</sup>

During and after the Revolution, questions arose about the future of the western lands. The conflicting claims of Virginia and other states delayed the adoption of the Articles of Confederation for four years. The articles passed Congress in 1777, but many northern states, seeking a partition of Virginia's western claims, would not sign them until Virginia agreed in 1781 to surrender all of its claims north of the Ohio River.<sup>251</sup> By sacrificing the Ohio territories, Virginia lost little because the British and Indians still controlled these lands. However, Virginia's leaders had no wish to relinquish Kentucky, despite increasing tension between the government

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<sup>247</sup> Hening, *Statutes at Large*, Vol. XI: 91-293

<sup>248</sup> *Ibid*, Vol. XII: 237-40.

<sup>249</sup> *Ibid*, Vol. X: 341.

<sup>250</sup> Thomas Jefferson, *Notes on the State of Virginia* (Richmond, Va: J.W. Randolph, 1853), 139.

<sup>251</sup> Hening, *Statutes at Large*, Vol. X: 547-67.

and the frontier settlers over land distribution and security. Complicating matters, the Spanish denied trans-Appalachian settlers the use of the Mississippi River, greatly reducing Kentucky's export potential, and dragging down the fortunes of both Kentucky's settlers and Virginia's land speculators.<sup>252</sup> In addition, Kentuckians could not attack Indians across the Ohio River without Virginia's consent. These issues, combined with the distance between the state capital and the western lands, forced the Virginia legislature to acknowledge that the Old Dominion should relinquish its claim to sole proprietorship over the area.<sup>253</sup>

By 1785, Kentuckians clamored for independence. A convention held at Danville, Kentucky, in August 1785 petitioned Virginia to make Kentucky a "free, sovereign, and independent republic."<sup>254</sup> The delegates invoked many of the ideals of the American Revolution in their claims for statehood, but their primary grievances revolved around the land laws of 1779. These laws had led to widespread litigation over competing claims, while Kentucky's legal system, according to the petitioners, "subjects the inhabitants to expensive and ruinous suits in the High Court of Appeals, and places the unfortunate poor, the men of mediocrity, complete in the power of the opulent."<sup>255</sup> One of the convention's resolutions displayed both the general discontent with the fundamental principles of the land system, and the currency of the ideals of Jefferson republicanism:

It is subversive to the fundamental Principles of a free republican Government to allow any individual, or Company or Body of Men to possess such large tracts of Country in their own right as may at a future day give them an undue influence, and because it opens a door to speculation by which innumerable evils may ensue to the less opulent

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<sup>252</sup> See Arthur Preston Whitaker, *The Spanish-American Frontier, 1783-1795: The Westward Movement and the Spanish Retreat in the Mississippi Valley* (Boston: Houghton Mifflin Company, 1927).

<sup>253</sup> Chinn, *Kentucky: Settlement and Statehood*, 429-31.

<sup>254</sup> Official Danville Petition as cited in John Mason Brown, *The Political Beginnings of Kentucky. A Narrative of Public Events Bearing on the History of That State Up to the Time of Its Admission into the American Union* (Louisville: J.P. Morton and Co, 1889), 70: and Temple Bodley and Samuel M. Wilson, *History of Kentucky* (Chicago: S.J. Clarke Pub. Co, 1928), 66-67.

<sup>255</sup> Temple Bodley and Samuel M. Wilson, *History of Kentucky* (Chicago: S.J. Clarke Pub. Co, 1928), 66-67

part of the Inhabitants and therefor ought not to be done in the future disposal of lands in this District.<sup>256</sup>

The populist theme of the Danville convention underscored settlers' abhorrence of speculation and absenteeism, given voice in the language of Jefferson's republican vision of the West.

The Virginia Assembly responded to the pressure in October, passing "An act concerning the erection of the district of Kentucky, into an independent state." However, several of the act's articles betrayed the economic interests of Virginia's leading men in Kentucky. The law required that as a condition for statehood all absentee lands be protected under the land laws of 1779: "That all private rights and interests in lands within the said district, derived from the laws of Virginia, prior to such separation, shall remain valid and secure under the laws of the proposed state, and shall be determined by the laws now existing in this state." To protect absentee land holders from punitive taxations, the laws required that, "lands within the proposed state... shall not be... taxed higher than the lands of residents at any time prior to the admission of the proposed state... in congress." Finally, to protect the integrity of the patents themselves, the law stipulated that "no grant of land, nor land warrant to be issued by the proposed state, shall interfere with any warrant heretofore issued from the land-office of Virginia, which shall be located on land within the said district now liable thereto, on or before the first day of September, one thousand seven hundred and eighty-eight."<sup>257</sup> The "opulent" men who so frustrated Kentucky's settlers included protection as their own claims of the price for independence. The path to statehood dragged on for another seven years, but the legacy of the land laws could not be undone. These protections, built into the agreement for statehood, ensured that Kentucky's new government would not invalidate the claims of absentee speculators.

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<sup>256</sup>Thomas P. Abernethy, "Journal of the First Kentucky Convention Dec. 27, 1784--Jan. 5, 1785" *The Journal of Southern History* (February, 1935), 1: 67-78.

<sup>257</sup>Hening, *Statutes at Large*, Vol. XII: 37-40.

Despite all the concerns over the legalities of land ownership, hostile Indians, the rigors of travel, and economic problems in the Mississippi watershed, Kentucky's population ballooned from a few hundred in 1777, to seventy three thousand by the time of the national census of 1790. At the turn of the century, the new state of Kentucky had over two hundred thousand residents, a majority of whom were not Virginians.<sup>258</sup> Populist pressures demanded redistribution of land. Squatters ignored the legal system and did as they pleased. The stipulations placed on Kentucky's statehood allowed little chance of redress for those who pursued land ownership through the established legal process. Quietly, settlers began to leave Kentucky for lands less burdened by litigation. Many of Kentucky's earliest settlers lost all of their claims in the new state, and even as Kentucky's population continued to grow, thousands moved on to seek their fortunes across the Ohio River, Daniel Boone among them.<sup>259</sup> At times Kentucky threatened to explode into violence, as in Pennsylvania in 1791, but the Indian lands of the West absorbed Kentucky's discontented settlers instead. As historian Stephen Aron writes, "The effects of outmigration were invisible; they were apparent only in what did not happen. Yet if thousands of pioneers had not moved on, Kentucky's colonization would have been even more chaotic and probably less peaceful."<sup>260</sup>

### Jefferson and His Land Laws

The land laws of 1779 failed to meet Jefferson's republican ideals. Despite his intention to transform Virginia's relationship to land ownership, the outcome fell short of his goals. Jefferson had proposed radical ideas such as handing out free land to any "person of full age" in

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<sup>258</sup> Charles Brunk Heinemann and Gaius Marcus Brumbaugh, *First Census of Kentucky, 1790* (Baltimore: Southern Book Co, 1956).

<sup>259</sup> Faragher, *Boone*, 235-63.

<sup>260</sup> Aron, *How the West was Lost*, 80. See also John D. Barnhart, "The Migration of Kentuckians Across the Ohio River," *Filson Club Historical Quarterly* 25 (January 1951): 24-32.



order to broaden democracy.<sup>261</sup> Rather than promoting the political and economic enfranchisement of hundreds of thousands of lower and middle class Virginians, the land laws instead allowed speculators both large and small to profiteer under a legal framework that favored absenteeism and squatting. Potential yeoman found their land claims tied up in court for decades. Most Virginians supported Jefferson's populist approach, especially in light of the unpopular and corrupt practices of the land companies and more conservative politicians like Patrick Henry.<sup>262</sup> The process of land distribution revealed that although new faces dominated Virginia's government elites still monopolized political control. In many ways, the Revolution changed little about Virginia political and economic life. Despite the popularity of republican ideals in the West, when Kentucky became a state in 1792 roughly two-thirds of adult white males owned no land.<sup>263</sup> Historian Thomas Perkins Abernathy concludes, "There is an element of historical irony that Jefferson, the father of democracy, should have helped to draft an act by which democracy was defeated in Virginia at the moment when it might have had its birth."<sup>264</sup> Jefferson's vision of a large and politically enfranchised yeomanry was usurped by Virginia's well entrenched economic and political interests. As Abernathy concludes, "Thus the growth of the country was retarded, the resident population forced to protect the property of those who took no part in its defense, and the great public domain was exploited by a few individuals for their private gain."<sup>265</sup> Jefferson could not singlehandedly reshape the government of Virginia, and land laws it passed poorly reflected his own views. In 1776, Jefferson predicted that "selling

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<sup>261</sup> Paul Leicester Ford, ed., *The Writings of Thomas Jefferson* 12 Vols. (New York: G.P. Putnam's Sons, 1892), 2: 25-26. This quote comes from the first Virginia constitution that Jefferson wrote.

<sup>262</sup> Abernathy, *Western Lands and the American Revolution*, 226-27.

<sup>263</sup> Aaron, *How the West was Lost*, 79.

<sup>264</sup> Abernathy, *Western Land and the American Revolution*, 228.

<sup>265</sup> *Ibid.*

lands to [western settlers]... will disgust them, and cause an avulsion of them to the common union. They will settle the lands in spite of everybody.”<sup>266</sup> His prophecy proved largely accurate.

### **The Legacy of Virginia’s Policies on Other States and the Northwest Ordinances in Ohio**

Jefferson had another opportunity to shape land ownership and distribution in the West, this time at the national level, and in the light of another failure of Virginia law. The 4.2 million acre Virginia Military District in southeastern Ohio was officially opened for patent in the early 1790s. Land distribution in this veterans’ plat followed a nearly identical pattern of graft and abuse as in the Green River District of Kentucky. The United States Army suffered several important defeats in the Northwest Indian War in the early 1790s, limiting white encroachment into Ohio. The Virginia District lay near the site of General Arthur St. Clair’s disastrous defeat on the Wabash River in 1791 during which Shawnee and Delaware warriors decimated a one thousand strong U.S. army detachment.<sup>267</sup> In response, Revolutionary War veterans sold off their land warrants in the Ohio Country for a pittance as they had done on the Green River. In the end, “A total of 2,095,220 acres were patented in the U.S. Military district, 70 percent of it by approximately one hundred men.”<sup>268</sup> The Virginia system produced similar results in both the Green River and Ohio Districts. In both cases, wealthy men, typically Virginian, used the system to enrich themselves.<sup>269</sup>

The Northwest Land Ordinances of 1785-87 clearly reflected Virginia’s experiences with the land laws of 1779 in Kentucky and Ohio. Following the passage of the Articles of Confederation, most leaders recognized that new states would need to be created in the

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<sup>266</sup> Ford, *The Writings of Thomas Jefferson*, Vol. 2: 80.

<sup>267</sup> See Wiley Sword, *President Washington’s Indian War: The Struggle for the Old Northwest, 1790-1795* (Norman: University of Oklahoma Press, 1985); and Alan D. Gaff, *Bayonets in the Wilderness: Anthony Wayne’s Legion in the Old Northwest* (Norman: University of Oklahoma Press, 2004).

<sup>268</sup> Jerry A. O’Callaghan, “The War Veteran and the Public Lands,” *Agricultural History* 28 (1954): 163-68.

<sup>269</sup> See Friedenber, *Life, Liberty, and the Pursuit of Land*, 280, for a summary of the individual holdings of key speculators.

western territories. Three imminent Virginians – Washington, Jefferson, and James Monroe – represented three different philosophical approaches to the issue.<sup>270</sup> Jefferson, who had signed the disastrous land laws of 1779, promoted quick statehood as the regions filled with people. More important, Jefferson viewed the western territories as an engine for democracy that would provide the nation with a self-sufficient yeomanry. By dividing the vast Northwest into subdivided grids sold at a set price and with predetermined deeds, Jefferson hoped to avoid the pitfalls that characterized Virginia’s experience in Kentucky.<sup>271</sup> Washington, on the other hand, distrusted the western settlers and their fickle loyalty, and sought stringent requirements for new states to enter the union. Monroe adopted a compromise between Jefferson and Washington, raising the bar for statehood but including Jefferson’s vision of allodial land ownership and an expanded yeoman class. Indeed, Jefferson’s transformation of western land distribution through the Northwest Ordinance sowed the seeds of what some historians have called a “Jeffersonian Revolution.”<sup>272</sup> Jefferson’s policies enjoyed broad support among the thousands of settlers who migrated west to settle new lands and pressed for preemptive rights despite continued speculative activity.<sup>273</sup> Indeed, Northwest Territories experienced the same culture of speculation found in Kentucky, and the same desire to raise public funds that had motivated Virginia to sell Kentucky now motivated the national government to sell speculative companies rather than to individuals.<sup>274</sup> However, Jefferson’s “Rectangular Survey System” of land distribution brought improvements over the disasters of the Virginia system.<sup>275</sup>

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<sup>270</sup> L. Scott Philyaw, *Virginia’s Western Visions*, 113

<sup>271</sup> Peter S. Onuf, *Statehood and Union: A History of the Northwest Ordinance*, (Bloomington: Indiana University Press, 1987), 44-66. Onuf describes the philosophy behind each of the Northwest Ordinances.

<sup>272</sup> See Curtis, *Jefferson’s Freeholders*, 71-72

<sup>273</sup> Benjamin H. Hibbard, *A History of the Public Land Policies* (Madison: University of Wisconsin Press, 1965), 33.

<sup>274</sup> See Friedenber, *Life Liberty and the Pursuit of Land*, 275-83; Onuf, *Statehood and Union*, 33.

<sup>275</sup> Albert C. White, *A History of the Rectangular Survey System* (Washington, D.C.: Bureau of Land Management, 1983). 11-16.

Likewise, Virginia's military warrant system offered lessons to other states embarking on similar programs. The state of New York undertook a program of land grants in the late 1780s and early 1790s modeled after Jefferson's Northwest Ordinances rather than the Virginia land laws of 1779. In New York, a private and non-commissioned officer could expect a generous grant of five hundred acres, while the state capped compensation for a major general at fifty five hundred acres.<sup>276</sup> In addition, Virginia's first come first-serve model was replaced with a more equitable lottery system, in which the state matched randomly drawn names and deeds which were surveyed and marked prior to distribution. Veterans knew exactly what land they were getting as soon as they received their deed, and could thus make educated guesses about their property's market value. Virginia veterans did not enjoy this luxury, and many sold their land for pennies on the dollar, without ever knowing what they had.<sup>277</sup> While not all states followed Jefferson's approach, New York's program of land distribution represented the best example of an equitable system of land distribution devised along the Jeffersonian model.

### **Native Americans**

Native Americans were also deeply affected by the land laws and the partitioning of Kentucky. More than George Rogers Clark's victories in Illinois, the large numbers of settlers moving west after 1778 forever ended the possibility of a Native American reconquest of Kentucky. The Shawnee and their allies changed their strategy from ejecting settlers from Kentucky, to preventing settlement north of the Ohio River. Before 1779, the outcome in the West remained in doubt; after 1779, Kentucky's population grew exponentially. Western settlers' anti-Indian sentiments also increased as violence continued. As frontiersman Major William Croghan wrote: "The country beyond the Alleghenies talks of nothing but killing Indians

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<sup>276</sup> Bockstruck, *Revolutionary War Bounty Land Grants: Awarded by State Governments*, xvii.

<sup>277</sup> Chinn, *Kentucky: Settlement and Statehood*, 291

and taking possession of their lands.”<sup>278</sup> The notorious Gnadenhutten Massacre of 1782 – in which Pennsylvania militia slaughtered ninety-six unarmed Lenape converts living at the Moravian mission – further emphasized the fact that many whites sought to exterminate the Indians.<sup>279</sup> Constant aggression and settlement pushed the Ohio Indians further into alliance with the British.

When the British surrendered the Northwest Territory in the Treaty of Paris (1783), the Indians faced an uncertain fate. Still, they continued to resist white encroachment, enjoying several major victories and intermittent British support until 1815. However, the federal government directed its attention more fully to the West after 1783, making plans for the partition of lands north of the Ohio still under Native American control. Jefferson’s Northwest Ordinances of 1785-1787, the same laws that sought to ensure the propagation of republican ideals, took and divided Indian lands for distribution to white settlers. As historian Peter Onuf notes, “Jefferson’s philanthropy provided the moral and intellectual rationale for the removal of Indians across the Mississippi under President Andrew Jackson.”<sup>280</sup> One race’s disenfranchisement allowed for the investiture of portions of another. Thus, Ohio Indians paid the cost for Jeffersonian republicanism, veterans’ grants, and the financial burden of the American Revolution many times over.<sup>281</sup>

### **Buffalo as an Archetype of Environmental Transformation**

The Kentucky that John Filson described in 1784 was already dramatically different than only a few years before. The expatriation of Native American hunters and the partitioning,

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<sup>278</sup> As quoted in Jack M. Sosin, *The Revolutionary Frontier, 1763-1783* (New York: Holt, Rinehart and Winston, 1967), 135.

<sup>279</sup> For an examination of the Moravian Missionary efforts among the Delaware, see Earl P. Olmstead, *Blackcoats among the Delaware: David Zeisberger on the Ohio Frontier* (Kent, Oh: Kent State University Press, 1991).

<sup>280</sup> Peter S. Onuf, *Jefferson's Empire: The Language of American Nationhood* (Charlottesville: University Press of Virginia, 2000), 19.

<sup>281</sup> See Calloway, *Shawnee and the War for America*; and White, *Middle Ground*, 366-468.

fencing, and plowing of the lands dramatically changed the ecological composition of a region that was a Native American hunting preserve less than a decade before. White settlement dramatically transformed nearly every aspect of the natural world. Most dramatically, the American bison, so prolific in Kentucky prior to 1775, was eliminated by the beginning of the 1800s. The loss of this species dramatically illustrates the other changes occurring in Kentucky's ecology during the late eighteenth century.

When James Harrod and Daniel Boone led colonists into Kentucky in 1774 and 1775, the buffalo still roamed the region. However, the arrival of permanent white settlement had an immediate impact on their numbers. Whites depended on wild game in the early years of settlement. The deprivations of war with the Indians and the British increased colonists' needs. Men hired themselves out as hunters, while other men worked to improve the land. Whereas Indians and long hunters had carefully husbanded Kentucky's herds, the region's new permanent residents often hunted for sport. Richard Henderson, the colony's proprietor, wrote:

We found it very difficult at first and indeed yet, to stop the great waste in killing meat. Many men were ignorant of the woods, and not skilled in hunting... would shoot, cripple and scare the game without being able to get much... Others of wicked and wonton dispositions, would kill three, four, five of ½ dozen buffaloes, and not take half a horse load from them all.<sup>282</sup>

At the first convention of the Transylvania Colony, Boone proposed a bill to prevent the "wanton destruction of game."<sup>283</sup> Such efforts had limited success, and sport killing became increasingly popular.

English traveler Nicholas Cresswell, floating down the Ohio River to Kentucky, witnessed many acts of wasteful killing in the name of sport. Sometimes, he and his companions shot

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<sup>282</sup> Henderson, as quoted in Belue, *The Long Hunt*, 109.

<sup>283</sup> Samuel Hazard, *Hazard's United States Commercial and Statistical Register, Illustrative of the History and Resources of The American Union, and of Each State* (Philadelphia: L.W.M. F. Geddes, 1840), 25-26.

buffalo as the animals swam across the river, and other times they fired indiscriminately at a herd near a salt lick. Another time, Creswell reported:

We saw two Buffalo Bulls crossing the River. When they were about half way over four of us got into a Canoe and attacked them in the River, the rest went along the shore to shoot them, as soon as they came ashore. The River was wide and we had fine diversion fighting them in the water. The man in the head of the canoe seized one of them by the tail and he towed us about the river for half an hour. We shot him eight times, let him get ashore and he ran away. Our comrades ashore very angry with us and they have a great right to be so.<sup>284</sup>

In fact, Creswell's companions seem to have spent most of their time killing for sport, leaving Creswell fairly frustrated with all the wastefulness. He wrote as much in his journal, "Our stupid company will not stay to jerk any [meat], tho' we are in want of provisions."<sup>285</sup> Privately Creswell seems to have regretted his behavior, but participated in the killing on every occasion. For all the abundance of game, Creswell and his companions nearly starved to death.

For many frontiersmen – and some women – killing animals was a rite of passage. James Harrod's wife Ann seemed relieved when she killed a buffalo, saying, "I never could do much with a gun. I did manage to kill a cow [bison] and a bear, or the girls would have never got done laughing at me."<sup>286</sup> Killing a bison became, for many new arrivals to Kentucky, a symbol of rugged manliness. Some men developed rash and creative ways to kill the buffalo. Frontiersmen recorded several instances of men killing buffalo by hand. In 1779, for example, a soldier serving under Colonel John Bowman saw a buffalo and, "Desirous of performing some valiant exploit," the man jumped onto the back of the animal and stabbed it to death.<sup>287</sup> In another case, a settler named Tom Hood jumped out of a tree onto a passing buffalo and nearly died before he

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<sup>284</sup> Nicholas Creswell, May 17-June 18, 1775, *The Journal of Nicholas Creswell: 1774-1777* (Carlisle, MA.: Applewood Books, 1924), 75-89.

<sup>285</sup> *Ibid.*

<sup>286</sup> As quoted in Belue, *The Long Hunt*, 128.

<sup>287</sup> Adapted from a quote in Belue, *The Long Hunt*, 128.

could hamstring the animal.<sup>288</sup> In both cases, the men sought enhanced reputations. One witness described Hood as “simple and daring” man who “sought this kind of notoriety.”<sup>289</sup> But such pleasure killing was unsustainable.

Filson’s described the buffalo to educate a population considering moving to the frontier but now several generations removed from seeing a bison:

AMONG the native animals are the urus, or zorax, described by Cesar, which we call a buffalo, much resembling a large bull, of a great size, with a large head, thick short crooked horns, and broader in his forepart than behind. Upon his shoulder is a large lump of flesh, covered with a thick boss of long wool and curly hair, of a dark brown colour. They do not rise from the ground as our cattle, but spring up at once upon their feet; are of a broad make and clumsy appearance, with short legs, but run fast, and turn not aside for any thing when chased, except a standing tree. They weigh from five to ten hundred weight, are excellent meat, supplying the inhabitants in many parts with beef, and their hides make good leather.<sup>290</sup>

Yet even Filson admitted that Kentucke’s wilderness was changing rapidly:

I have heard a hunter assert, he saw above one thousand buffaloes at the Blue Licks at once; so numerous were they before the first settlers had wantonly sported away their lives. There still remains a great number in the exterior parts of the settlement. They feed upon cane and grass, as other cattle, and are innocent harmless creatures.<sup>291</sup>

The dramatic increases in settlement across the trans-Appalachian West accelerated the bison’s demise. In the 1777, Kentucky had only two hundred eighty residents in Boonesborough and Harrodsburg, but a decade later, Kentucky had seventy three thousand residents and stood on the cusp of statehood.<sup>292</sup> Newcomers imagined their own frontier hunting adventures. As a result, much wild game, already depleted to dangerously low levels, was quickly eliminated.

Native Americans, who had once followed sustainable patterns of hunting, were replaced by a

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<sup>288</sup> *Ibid.*

<sup>289</sup> *Ibid.*

<sup>290</sup> Filson, *The Discovery, Settlement and Present State of Kentucke*, 21.

<sup>291</sup> *Ibid.*

<sup>292</sup> Friend, *Kentucke’s Frontiers*, 115.



largely white population that reveled in the extermination of Kentucky's wild game. Settlers eliminated bison in the Bluegrass quickly, and the last remnants of the herds persisting only in the more sparsely populated regions in the western part of the state. In 1820, a small herd was seen just south of the Green River in Hart County, the last in Kentucky.<sup>293</sup>

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<sup>293</sup> Franklin Gilbert Roe, *The North American Buffalo: A Critical Study of the Species in Its Wild State*, 2<sup>nd</sup> Ed. (Toronto: University of Toronto Press, 1970), 237.

## CONCLUSION

### The Legacy of Competition After Statehood

The hundreds of thousands of settlers who responded to John Filson's call to come to Kentucky arrived in a region wracked by a legacy of conflict. Violence, political blunders, legal wrangling, and environmental transformation produced something entirely different than the glowing descriptions found in Filson's pamphlet. Even as the Indian wars ebbed and Kentucky achieved statehood, settlers grappled with how to overcome the mountain of litigation that Virginia's land laws had produced. Squatter preemptions offered only limited solutions. Disputed claims continued to haunt Kentucky's court system. But Thomas Jefferson's vision of widespread land ownership and nearly universal white male suffrage continued to resonate with poor and landless citizens. A case heard by the Kentucky Court of Appeals illustrates the contentious legacy of the land laws of 1779.

In 1794, Simon Kenton – famed companion of Daniel Boone – sued Alexander McConnell over a property boundary dispute. *Kenton v. McConnell* called into question all fundamental aspects of the land laws of 1779, the extent to which an improved area of land proved ownership of surrounding unimproved lands and the definition of "improvement." In 1779, including Virginia's land commission found "Satisfactory proof that the said [Kenton] has a right to a settlement of 400 acres of land, including the said improvement and pre-emption of 1000 acres adjoining, and that a certificate [be issued] accordingly."<sup>294</sup> A year later, Francis McConnell obtained a patent for an overlapping claim. The error was discovered when

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<sup>294</sup> Kentucky, et al. *Reports of Civil and Criminal Cases Decided by the Court of Appeals of Kentucky*. 1810, 257. <<http://books.google.com/books?id=R0IsAQAAAMAJ>>, (accessed April 16, 2013).

McConnell's son sold his deceased father's property. After an extensive analysis of the appropriate interpretation of the land laws of 1779, Kentucky's court of Appeals sided with McConnell, stating that although Kenton claimed residence in 1775, he had no proof of "raising corn" as the statute stipulated.<sup>295</sup> The Court never disputed Kenton's presence in Kentucky. Yet it overturned his claim on a series of rather ambiguous technicalities. Kenton was forced to surrender the overlapping portions of his claim and pay McConnell's court fees.<sup>296</sup> More important, the court "ruled that the Virginia Land Commission Court had exceeded its authority when it determined the rights to numerous land disputes in Kentucky in 1779-1780."<sup>297</sup>

The ruling proved deeply unpopular with those who had received patents under the land laws. Many believed that nefarious forces were at work to undo early claims, and that virtually any preemption awarded under the terms of the land laws had become suspect. The legislature reacted by attempting to remove the justices responsible for the ruling. This case, coupled with other unpopular rulings by the Court of Appeals, helped precipitate Kentucky's second Constitutional Convention in 1799. Nine members of the state senate moved to block a convention. Some saw this action as a return to the aristocratic traditions of Virginia. An author writing under the pen name of Gracchus – surname of the brothers who championed populist land policies as tribunes in the Roman Senate – challenged the senators: "Those opposed to the convention say you are free from oppression, that your rights are secured under the present constitution; that any change is unnecessary and hazardous.... And what does this mean but that you are ignorant and besotted? Well may you blush to find a man among you so destitute of

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<sup>295</sup> *Ibid*, 262.

<sup>296</sup> (*Lexington*) *Kentucky Gazette*, February 28, March 7, 1795.

<[http://eris.uky.edu/catalog/xt7zw37kqr2s\\_2/viewer?>](http://eris.uky.edu/catalog/xt7zw37kqr2s_2/viewer?>) (Accessed April, 16, 2013).

<sup>297</sup> Robert M. Ireland, *The Kentucky State Constitution: A Reference Guide* (Westport, Conn: Greenwood Press, 1999), 4.

genuine republicanism as to suggest such degrading ideas.”<sup>298</sup> The claims of the anonymous Gracchus illustrate the currency of Jeffersonian republican ideals among Kentucky’s poor and landless, to resentment of the legacy of Virginia’s land laws continued into the nineteenth century. The struggle over Kentucky’s lands played out for decades, and influenced the formation of Kentucky’s state government. In spite of the popular unrest among many of Kentucky’s residents, the Constitution of 1799 continued to recognize laws and agreements made under Virginian rule.<sup>299</sup>

### **Kentucky’s Legacy Outside the State**

Kentucky remained influential beyond its borders. Emigration and outmigration continued throughout the decades following statehood. The Battle of Fallen Timbers (1794) and the Treaty of Greenville (1795) opened much of the Old Northwest to white colonization. As the Ohio Country became more populous, local Indians struggled against increasingly bleak odds. However, they learned from the bitter lessons of Kentucky and drew closer together to resist further white encroachment in the 1790s and again in the 1810s.<sup>300</sup> The losses of Kentucky and Ohio sowed the seeds of the pan-Indian alliances of the early 1800s, embodied by the Shawnee statesman Tecumseh.

By the time it achieved statehood, Kentucky’s environment had been so transformed by hunting and deforestation that Indians could scarcely depend on it for game as they had only two decades earlier. By the early 1800s, large mammals like bear, elk, and wolves followed the

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<sup>298</sup> Bennett Henderson Young, *History and Texts of the Three Constitutions of Kentucky With Illustrative State History Prefacing Them and Marginal Notes Showing All Alterations in the Fundamental Law: To Which is Added the Act Calling the Convention of 1790, the Magna Carta, the Compact with Virginia and the Constitution of the United States, with the Amendments and Annotations* (Louisville: Courier-Journal Job Print. Co, 1890), 41.

<sup>299</sup> *Ibid*, 48-49.

<sup>300</sup> See John Sugden, *Tecumseh: A Life* (New York: Holt, 1997).

course of the bison.<sup>301</sup> The only remaining evidence of Kentucky's bison was the roads on which the settlers traveled to Kentucky, the buffalo traces worn several feet deep into Kentucky's soils.<sup>302</sup> White settlers (and their black slaves) turned forests, cane breaks, and prairies into farmland, as Kentucky was reshaped into the agricultural economy whites desired.

Kentucky's experience was felt outside the state as well. Virginia's population continued to migrate west, fleeing depleted soils and an entrenched aristocracy.<sup>303</sup> Statesmen and settlement in the Northwest Territory attempted to correct the mistakes made in Kentucky. The mass migrations further west during the early 1800s followed patterns similar to those in Kentucky. Yet the process of land distribution varied from place to place. Throughout this migration, Jefferson's vision of a republican polity based on a landholding yeomanry remained the banner of western expansion, even as speculation continued to play an insidious role.<sup>304</sup>

#### PERSPECTIVE

Fundamentally, this narrative argues that the struggle for Kentucky's lands remained rooted in the perspectives and agency of the people who contested for it. That struggle profoundly impacted all participants. Indians, speculators, squatters, and politicians sought to use Kentucky lands differently, their varying perspectives rooted in what each group valued in the land. Native Americans valued Kentucky for its natural productive capacity. Speculators saw Kentucky's lands as an investment to exploit. Squatters and yeoman farmers wanted to transform Kentucky's natural ecology into the manicured patchwork of farms and woodlots that sustained the bulk of early America's population. Some politicians, like Jefferson, sought to use

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<sup>301</sup> Belue, *The Long Hunt*, 163-64.

<sup>302</sup> Archer Butler Hultbert, *Historic Highways of America*, 2<sup>nd</sup> ed., 16 vols. (New York Manuscript Press, 1971), 1:120; and George R. Wilson, *The Buffalo Trace*, Indiana Historical Society Publications, Vol. 15, number 2, (Indianapolis: Indiana Historical Society, 1946), 187.

<sup>303</sup> See Fischer and Kelly, *Bound Away*.

<sup>304</sup> Friendenberg, *Life Liberty, and the Pursuit of Land*, 321-56.

Kentucky's land to advance broad idealistic goals, while others hoped to use the land to solve important state and national problems.

While the conflict over Kentucky transformed Kentucky, it also transformed the peoples involved. Native Americans, governments, speculators, and settlers all experienced profound changes as a result of their struggle in the region and the land laws of 1779. The Euro-American colonization of Kentucky, wrought by the gun, the plow, and the pen, represented a watershed moment that transformed the West. The conflict in Kentucky served as the harbinger of future conquest, colonization, and transformation that played out across the continent in America's rapid westward expansion.

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