

# « LAWFLESS PEOPLE FROM HABIT & EDUCATION » : AUTHORITY AND POPULAR SOVEREIGNTY ACROSS THE AMERICAN REVOLUTION

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During the first half of the eighteenth century, the concept of political authority underwent significant changes in the American colonies. The once unquestioned acceptance of royal authority gradually gave way to the definition of a pragmatic basis of justification of a government's legitimacy, that came to be increasingly identified with its ability to promote and protect interests.

However, the principles of utilitarian philosophy blended in America with those of natural rights' doctrine, highlighting the idea that the major obligation of a government was that of procuring the happiness of its subjects. In colonial argumentation, discussion concerning the advantages and disadvantages of the imperial connection was often related to its effectiveness in making colonial subjects happy. James Otis, for example, maintained that « Kings were made for the good of the people, and not the people for them »<sup>1</sup>.

Although potentially subversive, statements' like this were not openly meant to challenge the well established loyalty to the Monarch and the Constitution that colonials, deeming themselves English subjects, considered their shared legacy of the Glorious Revolution. Colonial arguments largely fitted into the framework of the English constitutional tradition, and only slowly evolved toward the patent assertion of popular sovereignty.

One necessary step to this end consisted in locating the supreme authority elsewhere with respect to the Monarchy, and the Constitution itself provided an element of undoubted significance in colonial experience. In 1774, for instance, one contributor to the Boston press asserted that the true object of loyalty was a « good legal constitution », rather than the authority and interest of one man<sup>2</sup>.

The emergence of Parliament as an additional source of authority, and the concomitant rise of colonial assemblies, brought drastically to the surface

<sup>1</sup> J.R. Pole, *The Gift of Government: Political Responsibility from the English Restoration to American Independence*, Athens, GA, 1983, chap. 1; James Otis, *A Vindication of the Conduct of the House of Representatives of Massachusetts Bay*, Boston, 1762; Joyce O. Appleby, *Economic Thought and Ideology in Seventeenth Century England*, Princeton, NJ, 1978.

<sup>2</sup> Lawrence H. Leder, *Liberty and Authority: Early American Political Ideology, 1689-1763*, Chicago, 1968, pp. 60-90, and 81 in particular, cit. in Pole, *The Gift of Government*, p. 27.

the issues at stake, fostering the development of conflict over representation. Although contemporaries did not immediately perceive it in these terms, the strife clearly implied a re-definition of the concept of sovereignty<sup>3</sup>.

One important stage of the process of definition of the relationship between metropolitan authority and colonial rights was represented by the North Carolina Regulation movement. In the long altercation that opposed the Regulators to governor William Tryon from 1766 to 1771, we have a glaring illustration of their different perceptions of the use of authority, as well as of the relationship between rulers and ruled. Indeed, their respective positions could be described as the poles of a wide range of views entertained on the subject by people on both sides of the Ocean.

Tryon's view was to be considered extremely conservative even by English standards, and was shared by a vast number of British political leaders. It substantially denied colonials equal status with the English. This kind of conservatism was however very different from that of the Rockingham whigs. Although the latter's ideas were perhaps as hierarchical and authoritarian as those of George III, their belief in the absolute supremacy of the British Parliament over the colonies was coupled with their conviction of the inexpediency of exercising it. They thus favored the repeal of the Stamp Act. Among them, Edmund Burke based his opposition to the use of coercive measures on the ground of the common origin of American colonials and the English, by which they were entitled to the enjoyment of the same rights pertaining to every Englishman. What the Rockinghams did not support was any diminution of British sovereignty. In this they differed from Chatham, who believed that the supremacy of Parliament was constitutionally limited and that it had no right to impose internal taxation<sup>4</sup>.

The North Carolina Regulators, on their part, did not challenge royal authority, and declared themselves « True and Faithful Subjects of His most Sacred Majesty King George the Third ». However, they were just one step removed from the assertion that, whenever a government is oppressive and no longer provides for the people's interests and well-being, they have the right to overturn it and choose a better one<sup>5</sup>.

<sup>3</sup> Alison Gilbert Olson, *Anglo-American Politics, 1660-1775*, Oxford (England), 1973, pp. 99-122; Edmund S. and Helen M. Morgan, *The Stamp Act Crisis: Prologue to the Revolution*, Chapel Hill, NC, 1953; Jack P. Greene, *The Quest for Power: The Lower Houses of Assembly in the Southern Royal Colonies, 1689-1776*, Chapel Hill, 1963; Edward Countryman, *The American Revolution*, London, 1985, pp. 41-73.

<sup>4</sup> Lewis B. Namier, *England in the Age of the American Revolution*, London, 1961, p. 39; Bernard Donoghue, *British Politics and the American Revolution: The Path to War, 1773-1775*, London, 1964, pp. 132-33; H.D. Mahoney, *Edmund Burke: Selected Writings and Speeches on America*, Indianapolis, 1964; G.H. Guttridge, *English Whiggism and the American Revolution*, University of California Publications in History, XXVIII, Berkeley, CA, 1942, pp. 77-78; K. Hotblack, *Chatham's Colonial Policy*, London, 1917, pp. 184-185.

<sup>5</sup> Petition of the Inhabitants of Orange County to William Tryon, May 1768, in William S. Powell (ed.), *The Correspondence of William Tryon and Other Selected Papers*, Raleigh, NC, 1981, vol. VII, 1768-1818, pp. 98-99.

The settlers of backcountry North Carolina had long lived in the context of the Presbyterian political philosophy and adhered to the principles of the compact theory of the State. Their spirit of independence had been nurtured by geographic isolation and by a growing opposition to the coastal élite. Especially the Scotch-Irish inhabitants of the backcountry boasted a tradition of resistance to abuse by the English, and were not likely to submit passively to arbitrary taxation<sup>6</sup>.

In their Advertisement N° 1 of August 1766, the Regulators denounced the Stamp Act, signifying what they believed to be their just remonstrances against the infringement of their rights as English subjects. Thus, the nature of the conflict that opposed them to British authority in the person of governor Tryon revolved around the « legitimacy » of their action. Whereas the Regulators deemed their potest « just and legal », Tryon labelled their conduct « rash, inconsistent and illegal ». Referring to their having formed an Association, he pronounced it devoid of validity, for, « the most solemn Oaths derive their Existence in Law. They are not otherwise binding than as they are Legal »<sup>7</sup>.

The Regulators lamented the inequality of the tax system, and maintained they « ought to be taxed according to the profits of each man's estate ». Furthermore, they denounced the extortionate behavior of sheriffs and tax collectors, demanding that justice and governmental control be restored in the colony. Tryon candidly replied that taxation

is the Indispensable Lot of Mankind who lives in Society to give part of their Property to that Government, which affords them a secure and quiet enjoyment of the Remainder. Therefore, whoever refuses to pay such part which the Occasions of Governm<sup>t</sup> may require, forfeits his Title of Protection from it and leaves his Family and Property, at the Will of his Lawless Associates<sup>8</sup>.

Thus, for Tryon, the Government was the sole arbiter in determining the amount of taxation and the use to be made of the money collected. No

<sup>6</sup> William Henry Foote, *Sketches of North Carolina, Historical and Biographical*, New York, 1846, pp. 84-147; John W. Wheeler, *Historical Sketches of North Carolina from 1584 to 1851*, Philadelphia, 1851, vol. 1, pp. 48-60; William D. Cooke, ed., *Revolutionary History of North Carolina in Three Lectures*, Raleigh, New York, 1853, pp. 13-18; William Edward Fitch, *Some Neglected History of North Carolina*, New York, 1914, pp. 29-53, 72-103; David N. Doyle, *Ireland, Irishmen, and Revolutionary America, 1760-1820*, Dublin, 1981, chap. 5.

<sup>7</sup> Fitch, *Some Neglected History*, p. 48; William Tryon to Samuel Spencer, May 1768; Regulators to William Tryon and the Council: Advertisement N° 11, May 21, 1768; Tryon to the Regulators of Orange County, August 13, 1768. *Correspondence of William Tryon*, pp. 100, 161, 169.

<sup>8</sup> Cooke, *Revolutionary North Carolina*, p. 18; *Pennsylvania Gazette*, August 15, 1770, Draper Manuscript Collection, Newspaper Extracts, 2, JJ, 186, State Historical Society of Wisconsin (microfilm edition); Tryon to Spencer, May 1768, *Correspondence of William Tryon*, p. 101. On the Regulators and the origins of the movement see Marvin L.M. Kay, *The North Carolina Regulation, 1766-1776: A Class Conflict*, in Alfred F. Young (ed.), *The American Revolution: Explorations in the History of American Radicalism*, DeKalb, Il., 1976, pp. 73-123; James P. Whittenburg, « Planters, Merchants, and Lawyers: Social Change and the Origins of the North Carolina Regulation », *William and Mary Quarterly*, 34 (1977), pp. 215-238; A. Roger Ekirch, « North Carolina Regulators on Liberty and Corruption, 1766-1771 », *Perspectives in American History*, 11 (1977-78), pp. 199-258.

doubt he included with the « Occasions of Government » the building of his magnificent palace.

This fundamental incomprehension between Tryon and the Regulators about the legitimate use of governmental power marked the central point of the conflict between colonials and British authority. An irreconcilable one, based as it was on growing colonial conviction that the legitimization of authority sprang from a government's ability to command the spontaneous allegiance of the ruled. This, however, depended on the former's effectiveness in guaranteeing and safeguarding what they believed to be their established rights, among which, most important, that of not being taxed without their consent, but only through the agency of their representatives. However, if the government was corrupt, oppression would ensue: « Where there is no virtue, there can be no liberty », said Hermon Husband<sup>9</sup>.

Although the Regulators' reasoning implied as a logical consequence the assertion of popular sovereignty, the argument was not developed at that time in its full-fledged exposition. Rather, it was a sounding declaration in principle that had to come to grips with American reality.

With the elimination of the Crown as a reference point, the former colonies found themselves lacking a valid alternative theoretical framework that could provide a firm foundation for the legitimization of authority. This problem was further complicated by the sometimes extremely diverse political experiences of the several colonies, by reason of which it has been argued that they went into the revolution on completely different assumptions<sup>10</sup>.

Thus, the chaotic situation that accompanied the transition from colonial dependence to independent nationhood was to be ascribed to the void generated by the lack of legitimization of the authority which once belonged to the British Crown. The weak form of government the former colonies gave themselves, was inherently unfit to overcome the impasse. Not only was the central government denied the tools to exercise its power over the States, but the latter were often unable to command the loyalty of their citizens.

The disparate claims advanced by the several parties were founded on different assumptions, and their requests rested upon as many diverse perceptions of the Revolution and its achievements, as each of their individual colonial experiences could have produced. The conflict that ensued was best seen in the Western country, where jurisdictional controversies among the States, and between them and the central government, overlapped with other forces. Some of these were old, like the land companies that derived their

<sup>9</sup> On colonial understanding of virtue and corruption, see J.G.A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition*, Princeton, 1975, as a major challenge to Bernard Baylin's ideology of liberty as expressed in his, *The Ideological Origins of the American Revolution*, Cambridge, MA, 1967.

<sup>10</sup> Olson, *Anglo-American Politics*, p. 162; for the general situation and conflicts among several forces between the Revolution and the ratification of the Federal Constitution, see Peter S. Onuf, *The Origins of the Federal Republic: Jurisdictional Controversies in the United States, 1775-1787*, Philadelphia, 1983, pp. 3-46 especially.

title from a colonial habit of land acquisition. Others were new, like the frontiersmen's claims to retain the lands they had settled on the basis of the principle of popular sovereignty, that they considered as the most important achievement of the Revolution.

The strife over control of the Western country underscores the disorientation of contemporaries. Unable to derive the legitimacy of their title over the Western territories from an uncontested superior authority, they skillfully made use of arguments drawn from their colonial experience, or from the theoretic principles that had justified the breakup with that same tradition. Ultimately, the land allure revealed itself stronger than any theoretic principle recently asserted in the Declaration of Independence.

As for the States' claims to the Western territories, the basic contradiction between their arguments, as well as the incongruity of founding their pretensions upon old colonial charters, was cogently demonstrated by Thomas Paine in his *Public Good*. In it, Paine made a plea for popular sovereignty, and substantially denounced the States' attitude toward the Western settlements as neo-colonialist. Said he:

A right, to be truly so, must be right within itself: yet many things have obtained the name of rights, which are originally founded in wrong. Of this kind are all the rights by mere conquest, power or violence<sup>11</sup>.

One complicating factor in defining the juridical foundation of claims over the Western lands was the existence of strong private interests. These were represented not only by the land companies, but also by the emergence of massive speculation by individuals who were often prominent political figures. Both the land companies and the individual speculators soon came into conflict with the plain settlers, who had steadily spilled over the crest of the Appalachians during the latter part of the colonial era, and increasingly so after the Proclamation of 1763. With the Revolution, the settlers were provided with a powerful argument to claim for themselves the lands they had occupied as squatters. As one advocate of Western separatism put it, the land belonged to the individual who cultivated it<sup>12</sup>. However, as one scholar has argued, the revolutionary right to create new governments was a political right. It could not automatically give title to land or territory without upsetting property relations. There followed that territorial jurisdiction, like property itself, rested on a title. Thus, paradoxically, separatists were compelled to subordinate State claims to national claims, becoming the most dynamic and innovative among the forces confronting each other in the West<sup>13</sup>.

<sup>11</sup> Moncure Daniel Conway (ed.), *Thomas Paine: Writings*, New York, 1899, 4 vols., III, pp. 32-67, and p. 35 in particular.

<sup>12</sup> Samuel C. Williams, *History of the Lost State of Franklin*, Johnson City, TN, 1924, p. 47.

<sup>13</sup> Onuf, *Origins of the Federal Republic*, p. 40.

Whereas the position of the States was made stronger by the Articles of Confederation, that made spontaneous cession by the State a pre-requisite for Western State-making, the settlers appealed to the central government as the guardian of the principle of popular sovereignty. They maintained, in fact, that jurisdiction over the Western country had automatically devolved from the British Crown to the United States by virtue of the Revolution<sup>14</sup>.

Perhaps the relationship between the land companies and the plain settlers is the best fit to illustrate the extreme polarization of old and new views of authority, as well as the emergence of a pragmatic idea of popular sovereignty. A trend of continuity between pre-revolutionary perceptions and the developments occurring across the Revolution is provided by the instance of the Transylvania Land Company, formed in 1775 by nine persons, three of whom at least had been the object of the Regulators' anger during the Hillsborough riots of 1770. On that occasion, judge Richard Henderson of the Hillsborough Superior Court, lawyer John Williams — his cousin — and merchant Thomas Hart had been abused and beaten, Henderson's house was set on fire, and the three men were finally forced to flee the country<sup>15</sup>.

Henderson and his associates were conservatives, pro-establishment men. One of their number, William Johnston, was a friend of Edmund Fanning, lawyer, judge, and powerful official of Hillsborough, perhaps the individual most hated by the Regulators. After 1771, when Fanning left North Carolina with Tryon, Johnston became his agent<sup>16</sup>.

The Transylvania associates had undertaken land speculation with the purpose of founding a new colony « for the glory of North Carolina », with the more immediate aim of procuring wealth and prestige to themselves and their descendants. In their experiment, they condemned the principles that had inspired the Regulators. In 1775, upon hearing that North Carolina governor Josiah Martin had consented to some of the requests long advanced by them, Richard Henderson contemptuously remarked that « Martin turned Regulator joined by (...) a number of other scoundrels »<sup>17</sup>.

At the outbreak of the Revolution, Henderson and his partners would identify themselves as tories, and, as they had never justified the Regulators' protest, by the same token they were virtually bypassed by the ideological

<sup>14</sup> Petition to Congress from the inhabitants of a « tract of Country called Kentucky », August 1782, in Williams, p. 9.

<sup>15</sup> *Pennsylvania Gazette*, Nov. 8, 1770, Draper MSS, Newspaper Extracts, 2, JJ, 155.

<sup>16</sup> Letter of Edmund Fanning from Point Pleasant, Nova Scotia, December 17, 1785; List of Property belonging to William Johnston's estate with specification of what he held in right of Col. Fanning, *Walter Alves Papers*, Southern Historical Collection, Wilson Library, University of North Carolina, Chapel Hill (SHC).

<sup>17</sup> Petition of the Proprietors of the Transylvania Company to the Honorable the General Assembly of North Carolina, May 7, 1782, *John Steele Henderson Papers*, SHC; The Journal of Colonel Richard Henderson related to the Transylvania colony in Kentucky, May 20 to July 25, 1775, see May 31 entry. Besides Henderson, the other members of the Company were Thomas and Nathaniel Hart, John Williams, John Luttrell, William Johnston, James Hogg, David Hart, and Leonard Bullock.

ferment of the Revolution that saw among the natural and inalienable rights of the people that of choosing their own government. Unfortunately for them, the paths of the Transylvania associates would again cross those of men of « regulating principles ».

In early 1775, Henderson and his partners had negotiated a treaty with the Cherokees at Watauga, whereby they purchased title to an enormous expanse of land. Roughly encompassed by the Ohio, Kentucky, Holston and Cumberland rivers, their purchase covered an area approximately corresponding to present-day Kentucky and Tennessee. It therefore included most of the existing settlements West of the mountains<sup>18</sup>.

The Company thus faced the double problem of dealing with the people who had squatted on the lands it now claimed for itself, and of securing the recognition of its title from a superior authority that was no longer surely identified with the Crown. Uncertain about the outcome of the colonial rebellion, and totally missng – or disregarding – the tenets of the independentist movement, the proprietors made up their minds to forward a memorial to the Continental Congress. In framing it, they cleverly grounded the legitimacy of their title on having purchased lands from the Indians, « the sole and uncontested owners of the country ». While disapproving of the late incorrect behavior of the British Parliament, they nevertheless confirmed their allegiance to the Crown, and, in case the Continental Congress tamely decided to surrender to its authority, they hoped that Transylvania might be accepted as a further colony. At the same time, however, they maintained « their hearts [were] warmed with the same noble spirit that animates the United Colonies », and prayed that « the infant colony of Transylvania ... may be added to the number of the United Colonies »<sup>19</sup>.

After this easy play with alternative allegiances, the memorialists went on for an equally easy description of the conditions set by the proprietors for land ownership in Transylvania, which included a two shillings quit-rent-an old feudal fee that had long made the North Carolina tax system one of the most unjust and burdensome among those of the American colonies<sup>20</sup>.

The memorial of the Transylvania Company was so devoid of any vibrant involvement with the current political issues, and at the same time so deeply imbued with personalistic views of government, as to elicit the apprehension of delegates in the Continental Congress. James Hogg, the Company's envoy to that body, wrote that he was heartily prayed that Transylvania be made a free government, and that no mercenary or ambitious views in the proprietors might prevent it. He was told that quit-rents were a mark of vassallage, and that it was hoped that they would not be established in Transyl-

<sup>18</sup> Memorial of the Proprietors of Transylvania, cit.

<sup>19</sup> Minutes of a meeting of the Proprietors of Transylvania, September 25, 1775, held at Oxford, North Carolina, *Vernon E. Howell Collection*, SHC.

<sup>20</sup> On the role and importance of quit-rents in the tax system of colonial North Carolina see Coralie Parker, *The History of Taxation in North Carolina during the Colonial Period, 1763-1770*, New York, 1928. The Regulators protested against quit-rents in Advertisement N° 4.

vania. Some delegates even threatened opposition, if the Company did not act upon liberal principles. These attitudes were described by Hogg as being dictated by their speculative covetousness<sup>21</sup>.

Be it as it may, the matter was handed over – as was the case with the other land companies as well – to the States directly affected by their claims: in this case Virginia and North Carolina.

From the very beginning, the Transylvania Company had to cope with the opposition of the people who had settled on their lands some time before, especially in the Harrodsburg area of Kentucky, on Duck river. Between March and July 1775 Henderson undertook a trip through Powell's Valley up to Boonesborough, Kentucky, to see the situation of the lands included within his purchase. He also planned to open a land office. Upon reaching the Duck river area he found that a certain Captain Harrod and his men had settled there, and thought it most advisable to secure them to the Company's interest. He also tried to win the benevolence of Captain Floyd, a leading man in the settlement. He noted in his diary:

About fifty men came on Harrods invitation. These men had got possession some time before we got here and I could not certainly learn on what terms or pretence they meant to hold land, and was doubtful that so large a body of Lawless people from habit & Education would give me great trouble & require the utmost exertion of our abilities to manage<sup>22</sup>.

The settlers refused to pay any money to the proprietors, upholding their pre-emption rights. In the attempt to induce them to regularize their position toward the Company, Henderson and his associates tried to allure them with the promise of the institution of a representative government in the Colony<sup>23</sup>. Therefore, they called for the election of delegates from the various settlements to participate in a convention to be held at Boonesborough with the purpose of defining the respective rights and obligations of the proprietors and the settlers, and to devise a plan of government for the new Colony. Although in his opening address to the Convention Henderson proclaimed that « all power is originally in the people », and that the laws « derive force and efficacy from our mutual consent », the proprietors retained the veto power to prevent the possibility of legislation in contrast with their claims. It was clear that the immediate purpose of their making concessions to the spirit of self-government was that of securing from the settlers the payment for the lands they had entered. Besides, the proprietors were trying to establish effective means of control over future settlement. Consequently, in early December 1775, John Williams – one of the proprietors and Company agent at Boones-

<sup>21</sup> *Colonial Records of North Carolina*, X, pp. 300, 373.

<sup>22</sup> The Diary of Richard Henderson, *Draper MSS*, Kentucky Papers, 1, CC, 4.

<sup>23</sup> To the Settlers and Inhabitants of that part of Transylvania by the name of Harrodsburg Greetings: An Address by the Proprietors, December 1, 1775, *J.S. Henderson Papers*; Frederick J. Turner, « Western State-Making in the Revolutionary Era », *American Historical Review*, 1 (1896), pp. 78-79.



borough – called for a convention of the delegates from the various settlements to furnish a recommendation for the appointment of a Land Surveyor « who shall give general satisfaction to the people ». The fact that only a few delegates convened was ascribed by Williams to the « dispersed situation of the people and the extreme badness of the weather ». However, there are good reasons to believe that he was just trying to minimize the seriousness of the situation with Henderson, who had meantime returned to North Carolina. The absenteeism of the delegates was in fact largely due to their continued unwillingness to recognize the Company's claims, and thus to comply with its rules and regulations. This attitude was reinforced by the observation of its land policy. Williams explained to Henderson the reasons of discontent:

The number of entries on our book is now upwards of nine hundred, a great part of which was made before I came to this place, when the people could make entries without money and without price; the country abounded with land-mongers; since there is a two dollars exacted on the entry made, people are not quite so keen (to pay)<sup>24</sup>.

However, he reassured Henderson that he was trying to remove their principal objections, and that they seemed to begin to be reconciled with the Company's terms,

except some few whom I have been obliged to tamper with, and a small party about Harrodsburg, who it seems, have been entering into a confederacy... The principal man, I am told, at the head of this confederacy, is one Hite; and him I make no doubt to convince he is in an error.

The settlers' resistance was indeed more than justified, as they had had an opportunity to test the outright speculative intentions of the proprietors. Williams himself was in reality considerably worried about the settlers' protests, to the extent that he had resolved to move the Land Office to Harrodsburg. Furthermore, to recover at least partially the people's trust, he had been forced to make substantial concessions:

One of the great complaints was, that the Proprietors, and a few gentlemen, had engrossed all the lands at and near the Falls of the Ohio...; I, therefore, found myself under the necessity of putting a stop to all clamours of that kind, by declaring that I would grant no large bodies of land to any person whatever, which lay contiguous to the Falls; which I have done in a solemn manner<sup>25</sup>.

In effect, the proprietors had already reserved twenty thousand acres of the best lands for themselves and their friends, besides those lying close to mines and other important natural resources. Williams justified his measure as one of general good policy, that would contribute to pacify the people.

In the early months of 1776, the title of the Transylvania Company – like

<sup>24</sup> John Williams to the Proprietors of the Transylvania Company, January 3, 1776, *Howell Collection*.

<sup>25</sup> John Floyd to Joseph Martin, May 19, 1776, *Draper MSS*, Tennessee Papers, 1, XX, 10.

those in general of the land companies – began to be seriously questioned. This encouraged the settlers to even more strongly refuse to accept its terms. By mid-May, John Floyd, who had become the Company's land surveyor, wrote to Colonel Joseph Martin of Virginia:

All the news I have amount to nothing more than the Harrodsburg Men have made a second revolt & Harrod & Jack Jones at the head of the Banditti... They utterly refuse to have any Land Surveyed or comply with one of the office rules. My interest prevents my saying a syllable about the matter<sup>26</sup>.

In June, the proprietors issued a proclamation that was a desperate attempt to prevent people from abusively taking possession of the Company's lands until the final settlement of the dispute concerning its title. However, as Virginia progressively defined the legal basis of its territorial claims, the settlers were provided with an additional tool to forestall the Company's pretensions. In the Summer of 1776, Harrod's party petitioned the Virginia General Assembly, asking to be taken under the State's protection. They complained about the Company's land policy and semi-feudal methods, and elected two delegates to represent them in the General Assembly, one of whom was George Rogers Clark. The dispute dragged on for over two years, before the Assembly finally consented to hear the Company's attorney. Despite Henderson's offer to surrender the greater part of the claims held by the Company in order to retain intact at least a part of them, the Company's title was declared void, and Transylvania was granted 200,000 acres as a compensation for the loss<sup>27</sup>.

In 1778, perceiving that the great bulk of the Kentucky lands was virtually lost to the Company, Henderson had intensified his efforts to retain at least title to the North Carolina section of his purchase. In this he hoped to succeed thanks to his personal prestige in his own State and to his numerous political connections. The next year, in fact, he was able to obtain an appointment as one of the commissioners to draw the boundary line between Virginia and North Carolina. In September, he wrote to Robert Burton, one of his partners in the Powell's Valley development plan:

The only consolation I have for the great sacrifice of leaving my family [sic], is the flattering prospect of considerable gain. Contrary to the expectations of myself and every other person, the Line will certainly leave the Long Island five or six miles South... and upon the whole give us two million of acres of Land at least within our Indian Purchase<sup>28</sup>.

However, the people of the Holston Valley hated the logic of company proprietorship too, and it was a meagre satisfaction to Henderson to remark that « men, who two years ago, were clamorous against Richard Henderson

<sup>26</sup> Proclamation by the Proprietors of the Transylvania Company, June 26, 1776, *J.S. Henderson Papers*; Richard Henderson to John Williams, October 29, 1778, *Howell Collection*.

<sup>27</sup> List of the Proprietors of Powell Valley's Development Plan: Henderson & Co., *Alves Papers*; Richard Henderson to Robert Burton, September 12, 1779, *Robert Burton Papers*, SHC.

<sup>28</sup> *Ibid.*

& Company, and Damning their Title, are now with pale faces, haunting our Camps and begging [sic] our friendship with regard to their Land »<sup>29</sup>. In fact, in the span of a few years, the Company would lose the North Carolina portion of its purchase also. In the early 1780's, the Company addressed petitions to the General Assembly for the recognition of its title or, at least, to obtain due compensation for the loss. Eventually, in 1783, its title was declared void, and Transylvania was granted another 200,000 acres. This addition to the equal amount of land already received from Virginia, made Henderson and his associates extremely wealthy, but marked the end of their dreams of uncontrasted colonial exploitation<sup>30</sup>. What was left to them was mere land speculation, something in which Richard Henderson had long been engaged, also on behalf of his North Carolina friends.

In 1778, the Virginia Land Bill, providing that good title was established only by an actual authorized survey, and declaring null and void other surveys « made by any other person, or upon any other pretext », raised apprehension among North Carolina speculators. On that occasion, Henderson wrote to Burton to instruct their friends not to speculate in Virginia lands on the Ohio, for it would be too risky and probably turn into an economic loss. However, it seemed that the measure was opposed by a majority of the people, who were determined to remonstrate to the next Assembly in the strongest terms. In the uncertainty of whether the bill would be turned into law or not, some time later Henderson urged his friends to send him as many land warrants as possible, for he was confident he could locate many thousands of acres before a final decision was made<sup>31</sup>.

The foundation of the claims advanced by both the land companies and the States over the Western territories mingled in often equivocal ways with the widespread practice of autonomous land acquisition, by which no one considered it unusual to secure land and then proceed to seek recognition of property right. After all, the logic of the land companies was fully understood, and, although their claims could not be recognized — being at odds with the very essence of the Revolution — they were generously compensated, as in the case of the Transylvania Company. Nor were individual politicians who were also land speculators immune from ambiguous involvement with the land companies. Hugh Williamson, North Carolina delegate in the Continental Congress, was one of the agents of the Transylvania Company before the Virginia General Assembly. For his services, he was compensated with ten thousand acres of chosen land, which Willie Jones — another North Carolina politician and agent for Transylvania — judged an inadequate reward<sup>32</sup>.

<sup>29</sup> *Ibid.*

<sup>30</sup> *North Carolina General Assembly*, « an act to invest certain lands in fee simple in Richard Henderson and others », April 18, 1783.

<sup>31</sup> Henderson to Burton, September 12 and 29, 1779, *Burton Papers*; see also Onuf, *Origins of the Federal Republic*, p. 85.

<sup>32</sup> Willie Jones to Hugh Williamson, October 9, 1777, *Hayes Collection*, SHC.

The battle against the Transylvania Company had been won largely owing to the fact that the Kentucky settlers had sustained and reinforced Virginia's authority by placing themselves under its protection. In the early 1780's, the same settlers appealed to Virginia again to obtain the application of what the Declaration of Independence had proclaimed in principle, and the state constitution asserted in more detailed terms. They claimed the right to self-government following the principle of popular sovereignty.

However, the several petitions addressed by the citizens of Kentucky to the Virginia General Assembly met with strong opposition from every quarter of the eastern political establishment, which found their requests «extravagant» when not «an insult to Virginia». Western protesters and separatists in general, who based their resistance to authority on the primary role in the process of political formation attributed to them by the recent revolution – soon experienced how their notion of popular sovereignty contrasted with the interests of the Eastern States. They were branded with such epithets as «banditti», «revolters», «lawless people». Virginia eventually passed a law declaring any attempt at creating a separate state high treason. Probably the protests of Western separatists would have been crushed by armed intervention – as had been the case with the North Carolina Regulators – had Virginia been able to mobilize its citizens for the purpose. In fact, although in the critical period protests and remonstrances were admitted as just expressions of the popular voice, this had the «political» value of mere recommendation to the rulers. Authority continued to be placed with a class of politicians who were still determined to make a discretionary use of it. This was clearly seen in their determination to draw the utmost advantages from the Western territories until cession became unavoidable.

Both James Madison and Thomas Jefferson believed that it was indispensable to cede Virginia's Western lands to Congress before spontaneous movements wrested from their hands every bargaining power. The validation of land titles held by Virginia citizens, and the assumption by Kentucky of its share of the Continental expenses is what they mostly thought about. Even Patrick Henry disapproved of the behavior of separatists<sup>33</sup>.

Virginia's selfish conduct forced the settlers to even more insistently appeal to the central government as the guardian of the principle of popular sovereignty. As Arthur Campbell, a leading advocate of Western separatism stated, «the Constitution and the voice of the people» were to be the guidelines to inspire every «wise republican»<sup>34</sup>. Upon these two pillars, the young nation would be able to refound the legitimacy of authority. Too, the acceptance of these principles would help Americans to overcome the struggle over possession of the Western lands. The people of Kentucky formalized this concept in a Convention held in January 1785, when they resolved that:

<sup>33</sup> Williams, *Lost State*, pp. 8-11, 27; William Breckinridge to Daniel Boone, January 12, 1786, *James Breckinridge Papers*, Alderman Library, University of Virginia, Charlottesville.

<sup>34</sup> Williams, *Lost state*, pp. 10-11.

To grant any Person a larger quantity of Land than he designs Bona Fide to seat himself or his Family on... is subversive of 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 ... as may at 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 part of the Inhabitants and therefore ought not to be done in the future disposal of Lands in this District<sup>35</sup>.

<sup>35</sup> J.R. Pole, *The Revolution in America, 1754-1788: Documents on the Internal Development of America in the Revolutionary Era*, London, 1970; *Attitudes of Kentucky Settlers from the Journal of the First Convention of Kentucky, January 4, 1785*, pp. 379-382.